LEGAL SERVICES CORPORATION ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES, AND THE ADMINISTRATION OF JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 3719

TO AMEND THE LEGAL SERVICES CORPORATION ACT TO PROVIDE AUTHORIZATION OF APPROPRIATIONS FOR "IONAL FISCAL YEARS, AND FOR OTHER PURPOSES

FEBRUARY 22 AND 23, 1977

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LEGAL SERVICES CORPORATION ACT

TUESDAY, FEBRUARY 22, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:15 in room 2226, Rayburn House Office Building, Hon. Robert W. Kastenmeier [chairman of the subcommittee], presiding.

Present: Representatives Kastenmeier, Drinan, Ertel, Railsback, and Butler.

Also present: Gail P. Higgins, counsel; Thomas E. Mooney, associate counsel.

Mr. KASTENMEIER. The committee will come to order.

This morning we begin the oversight and the reauthorization hearings on the important subject of the Legal Services Corporation. Our witnesses this morning are the Corporation's representatives: Dean Roger C. Cramton of Cornell Law School, who is the Chairman of the Board of Directors of Legal Services Corporation; and Mr. Thomas Ehrlich, formerly dean of the Stanford Law School, and now president of the Corporation.

Tomorrow we shall hear from representatives of the American Bar Association, the National Legal Aid and Defenders Association, and representatives of the legal services programs and the client community.

In July 1974, Congress passed the Legal Services Corporation Act of 1974 which created a private nonmembership, nonprofit corporation, whose main purpose was to fund legal assistance projects throughout the Nation. The nature of the new Corporation is in contrast to that of its predecessors, which were part of the executive branch: that is, the Office of Economic Opportunity, and later the Community Services Administration. The new Corporation has been set up outside of the Government, free from political influence, in order to enable the development of legal assistance based on professional judgments and not on the winds of political change. The Board of Directors of the Corporation is appointed by the President with the advice and consent of the Senate. The act authorizes 11 members, the majority of which must be attorneys, and no more than six of which may be members of any one political party. That, we note, is an anachrononistic provision but, nevertheless, is still effective.

The Board held its first meeting on July 14, 1975, and has been meeting regularly ever since.

Presently, the Board has 10 members. For the record, I would like to list their names.

Roger C. Cramton, chairman, dean, Cornell Law School; Marshall J. Breger, professor, University of Texas Law School; J. Melville Broughton, Jr., attorney, Raleigh, N.C.; Senator Marlow W. Cook, presently an attorney in Washington, D.C.; Robert J. Kutak, attorney, Omaha, Nebr.; Rodolfo Montejano, attorney, Santa Ana, Calif.; Revius O. Ortique, Jr., attorney, New Orleans, La.; Glee Smith, Jr., attorney, Larned, Kans.; Glenn C. Stophel, attorney, Chattanooga, Tenn.; Samuel D. Thurman, dean, the University of Utah Law School.

The role of the Corporation is, and must be, an ambitious one: to meet the legal needs of the Nation's 29 million poor people. From 1972 to 1975 the poor suffered as the Federal legal services program was frozen at an annual level of $70 million, although costs were increasing by more than 30 percent due to inflation. Nearly one-third of the legal services offices that existed in 1971 were closed. The number of attorneys decreased by more than 300.

The effects of this major cutback are slowly being overcome. Now, with the creation of the new Corporation, the legal services community has begun to see the possibility of reaching the minimum needs of the poor through the Corporation's direction.

The short term goal of the Corporation is to have two attorneys per 10,000 poor persons, which is the Corporation's criteria for minimal access to legal services. The Nation has an average of 11.2 attorneys per 10,000 of the general population. The appropriation for fiscal year 1976 including transition period was approximately $116 million. This year the Corporation has been funded at $125 million, although I know the Corporation had requested $140 million. The Corporation's budget request for fiscal year 1978 is $217 million, approximately $50 million less than the legal services projects and client groups have recommended. And yet only 2 million poor persons live in areas where there exists a minimum level of two attorneys per 10,000 poor.

The challenge to the Corporation is great. It is my hope that during these 2 days we may examine the Corporation's activities and goals, and develop a reauthorization proposal which will reflect the needs of the poor and will allow their attorneys to represent them with professional judgment unimpeded by unnecessary restrictions.

Yesterday I introduced H.R. 3719, a bill which would provide a basis for discussion on the reauthorization legislation, for if "equal justice under law" is to be a meaningful phrase, legal access to quality services must be given to the poor, as well as to the rest of the Nation.

[Copies of H.R. 3719, Public Law 93–355, H.R. 5528, and H.R. 6666 follow:]

95TH CONGRESS
1ST SESSION

H. R. 3719

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 21, 1977

Mr. KASTENMEIER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Legal Services Corporation Amendments Act of 1977".

CLIENT REPRESENTATION ON BOARD

SEC. 2. Section 1004(a) of the Legal Services Corporation Act (42 U.S.C. 2996c(a)) is amended by inserting after the first sentence the following: "As soon as practicable, as vacancies arise, after the date of the enactment of the Legal

Services Corporation Amendments Act of 1977, at least three of the voting members of the Board of Directors shall be, at the time of appointment, representatives of associations, groups, or organizations of eligible clients and at least one such representative shall be, at the time of appointment, an eligible client.".

GOVERNMENT IN SUNSHINE AMENDMENT

SEC. 3. Subsection (g) of section 1004 of the Legal Services Corporation Act (42 U.S.C. 2996c(g)) is amended to read as follows:

"(g) The Corporation and each State advisory council established in connection with this title shall be subject to the requirements and provisions of section 552b of title 5, United States Code (relating to open meetings).".

AMENDMENTS RELATING TO POWERS, DUTIES, AND LIMITATIONS OF THE CORPORATION AND RECIPIENTS

SEC. 4. (a) Paragraph (3) of section 1006(a) of the Legal Services Corporation Act (42 U.S.C. 2996e(a)(3)) is amended to read as follows:

"(3) to undertake directly or by grant or contract, the following activities relating to the delivery of legal assistance—

"(A) research;

"(B) training and technical assistance; and

"(C) service as a clearinghouse for information.".

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

"(6) No court shall, without providing for reasonable compensation, appoint for the purposes of furnishing legal assistance an attorney employed by a recipient, unless the appointment is made pursuant to a law, rule, or practice applied generally to lawyers practicing in the court where the appointment is made.".

(c) Section 1006(e)(2) of the Legal Services Corporation Act (42 U.S.C. 2996e(e)(2)) is amended by inserting "and staff attorneys" before "shall be deemed to be State or local employees for purposes of chapter 15 of title 5, United States Code.".

ASSISTANCE CRITERIA AMENDMENTS

SEC. 5. (a) Paragraph (2) of section 1007(a) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(2)) is amended by striking out subparagraphs (B) and (C) and inserting in lieu thereof the following:

"(B) establish guidelines to insure that eligibility of clients will be determined by recipients on the basis of factors which include—

"(i) the liquid assets and income level of the client,

"(ii) the fixed debts, medical expenses, and other factors which affect the client's ability to pay,

"(iii) the cost of living in the locality, and

"(iv) such other factors as relate to financial inability to afford legal assistance; and

"(C) insure that recipients adopt procedures for determining and implementing priorities for the provision of legal assistance to eligible clients under this title.".

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

"(5) insure that no funds made available to recipients by the Corporation shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any Executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies, except where—

"(A) representation by an attorney as an attorney for any eligible client is necessary to the

provision of legal advice and representation with respect to such client's legal rights and responsibilities; or

"(B) a governmental agency, legislative body, a committee, or a member thereof—

"(i) requests personnel of the recipient to testify, draft, or review measures or to make representations to such agency, body, committee, or member,

"(ii) permits the general public to participate (by comment or otherwise) in the consideration of a measure, or

"(iii) is considering a measure directly affecting the activities of the recipient or the Corporation.".

POLITICAL ACTIVITIES OF STAFF ATTORNEYS

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

"(6) insure that all attorneys while engaged in legal assistance activities supported in whole or in part by the Corporation refrain from—

"(A) any political activity,

"(B) any activity to provide voters or prospective voters with transportation to the polls or pro-

vide similar assistance in connection with an election (other than legal advice and representation), or

"(C) any voter registration activity (other than legal advice and representation).".

AMENDMENT RELATING TO LIMITATIONS ON USE OF FUNDS

SEC. 7. Subsection (b) of section 1007 of the Legal Services Corporation Act (42 U.S.C. 2996f(b)) is amended to read as follows:

"(b) No funds made available by the Corporation under this title, either by grant or contract, may be used—

"(1) to provide legal assistance with respect to any fee generating case, matter, or proceeding, except as authorized by regulations promulgated by the Corporation;

"(2) to provide legal assistance with respect to any criminal case, matter, or proceeding, except to provide assistance to a person charged with an offense involving hunting, fishing, trapping, or gathering fruits of the land, when the defense asserted involves rights arising from a treaty with Indians or to a person charged with a misdemeanor or lesser offense, or its equivalent, in an Indian tribal court;

"(3) to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures

to act and the action is brought against an officer of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction;

"(4) for any political activities prohibited in paragraph (6) of subsection (a) of this section;

"(5) to make grants to or enter into contracts with any private law firm which expends 50 per centum or more of its resources and time litigating issues in broad interests of a majority of the public; or

"(6) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this paragraph shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal service to eligible clients.".

AMENDMENT RELATING TO GOVERNING BODIES OF RECIPIENTS

SEC. 8. Subsection (c) of section 1007 of the Legal Services Corporation Act (42 U.S.C. 2996f(c)) is amended to read as follows:

"(c) (1) In making grants or entering into contracts for legal assistance, the Corporation shall insure that any recipient organized solely for the purpose of providing legal assistance to eligible clients is governed by a body with the following composition: at least one-third of the members shall be, when selected, representatives of associations, groups, or organizations of eligible clients, and at least one of these client representatives shall be an eligible client at the time of selection; at least 60 per centum of the members shall consist of attorneys who are members of the bar of a State in which the legal assistance is to be provided. Any such attorney, while serving on such board, shall not receive compensation from a recipient.

"(2) The Corporation (A) shall, upon application, grant waivers to permit a legal services program, supported under section 222(a)(3) of the Economic Opportunity Act of 1964, which on July 25, 1974, had a majority of persons who are not attorneys on its policymaking board to continue such a nonattorney majority under the provisions of this title, and (B) may grant, pursuant to regulations issued by the Corporation, such a waiver for recipients which, because of the nature of the population they serve, are unable to comply with such requirement.".

AMENDMENTS TO AUDITS AND RECORDKEEPING PROVISIONS

SEC. 9. (a) Paragraph (3) of section 1009(a) of the Legal Services Corporation Act (42 U.S.C. 2996h(a)(3)) is amended to read as follows:

"(3) The report of the annual audit shall be filed with the General Accounting Office and shall be available for public inspection during business hours at the principal office of the Corporation throughout the period beginning on the date of such filing and ending three years after such date.".

(b) The last sentence of section 1009(b)(2) of the Legal Services Corporation Act (42 U.S.C. 2996h(b)(2)) is amended to read as follows: "All such books, accounts, financial records, reports, files, and other papers or property of the Corporation shall remain in the possession and custody of the Corporation throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the General Accounting Office may require the retention of such books, accounts, financial records, reports, files, papers, or property for a longer period under section 117(b) of the Accounting and Auditing Act of 1950 (31 U.S.C. 67(b)).".

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AUTHORIZATION EXTENSION

SEC. 10. Section 1010 of the Legal Services Corporation Act is amended to read as follows:

"FINANCING

"SEC. 1010. (a) There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation for the fiscal year ending September 30, 1978, for the fiscal year ending September 30, 1979, and for the fiscal year ending September 30, 1980. Appropriations for such purpose shall be for not more than two fiscal years, and shall be paid to the Corporation in annual installments at the beginning of each fiscal year in such amounts as may be specified in Acts of Congress making appropriations.

"(b) Appropriations made under this section shall remain available until expended.

"(c) Non-Federal funds received by the Corporation, and funds received by any recipient from a source other than the Corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

"(d) Not more than 10 per centum of the amounts appropriated pursuant to subsection (a) of this section for any fiscal year shall be available for grants or contracts under section 1006(a)(3) in any such year or period.".

HEARING EXAMINER REQUIREMENT FOR CERTAIN ACTIONS

SEC. 11. Paragraph (2) of section 1011 of the Legal Services Corporation Act is amended to read as follows:

"(2) financial assistance under this title shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the person or entity receiving such assistance has been afforded reasonable notice and opportunity for a timely, full, and fair hearing before an independent hearing examiner who shall perform no duties in the Corporation other than hearing examiner's duties under this paragraph.".

Public Law 93-355
93rd Congress, H. R. 7824
July 25, 1974

An Act

88 STAT. 378

To amend the Economic Opportunity Act of 1964 to provide for the transfer of the legal services program from the Office of Economic Opportunity to a Legal Services Corporation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Legal Services Corporation Act of 1974". Legal Services Corporation Act of 1974. 42 USC 2996 note.

SEC. 2. The Economic Opportunity Act of 1964 is amended by adding at the end thereof the following new title: 78 Stat. 508; 86 Stat. 704. 42 USC 2701 note.

"TITLE X—LEGAL SERVICES CORPORATION ACT

"STATEMENT OF FINDINGS AND DECLARATION OF PURPOSE

"SEC. 1001. The Congress finds and declares that— 42 USC 2996.

"(1) there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances;

"(2) there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program;

"(3) providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice;

"(4) for many of our citizens, the availability of legal services has reaffirmed faith in our government of laws;

"(5) to preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures; and

"(6) 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 high standards of the legal profession.

"DEFINITIONS

"SEC. 1002. As used in this title, the term— 42 USC 2996a.

"(1) 'Board' means the Board of Directors of the Legal Services Corporation;

"(2) 'Corporation' means the Legal Services Corporation established under this title;

"(3) 'eligible client' means any person financially unable to afford legal assistance;

"(4) 'Governor' means the chief executive officer of a State;

"(5) 'legal assistance' means the provision of any legal services consistent with the purposes and provisions of this title;

"(6) 'recipient' means any grantee, contractee, or recipient of financial assistance described in clause (A) of section 1006(a)(1);

"(7) 'staff attorney' means an attorney who receives more than one-half of his annual professional income from a recipient organized solely for the provision of legal assistance to eligible clients under this title; and

"(8) 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

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"ESTABLISHMENT OF CORPORATION

Legal Services Corporation. Establishment. 42 USC 2996b.

"SEC. 1003. (a) There is established in the District of Columbia a private nonmembership nonprofit corporation, which shall be known as the Legal Services Corporation, for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance.

"(b) The Corporation shall maintain its principal office in the District of Columbia and shall maintain therein a designated agent to accept service of process for the Corporation. Notice to or service upon the agent shall be deemed notice to or service upon the Corporation.

Tax exemption.

"(c) The Corporation, and any legal assistance program assisted by the Corporation, shall be eligible to be treated as an organization described in section 170(c)(2)(B) of the Internal Revenue Code of 1954 and as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 which is exempt from taxation under section 501(a) of such Code. If such treatments are conferred in accordance with the provisions of such Code, the Corporation, and legal assistance programs assisted by the Corporation, shall be subject to all provisions of such Code relevant to the conduct of organizations exempt from taxation.

83 Stat. 549. 26 USC 170. 68A Stat. 163. 26 USC 501.

"GOVERNING BODY

Board of Directors, membership. 42 USC 2996c.

"SEC. 1004. (a) The Corporation shall have a Board of Directors consisting of eleven voting members appointed by the President, by and with the advice and consent of the Senate, no more than six of whom shall be of the same political party. A majority shall be members of the bar of the highest court of any State, and none shall be a full-time employee of the United States.

Term of office.

"(b) The term of office of each member of the Board shall be three years, except that five of the members first appointed, as designated by the President at the time of appointment, shall serve for a term of two years. Each member of the Board shall continue to serve until the successor to such member has been appointed and qualified. The term of initial members shall be computed from the date of the first meeting of the Board. The term of each member other than initial members shall be computed from the date of termination of the preceding term. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term. No member shall be reappointed to more than two consecutive terms immediately following such member's initial term.

"(c) The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States.

Chairman.

"(d) The President shall select from among the voting members of the Board a chairman, who shall serve for a term of three years. Thereafter the Board shall annually elect a chairman from among its voting members.

Removal.

"(e) A member of the Board may be removed by a vote of seven members for malfeasance in office or for persistent neglect of or inability to discharge duties, or for offenses involving moral turpitude, and for no other cause.

Nine-member State advisory council, appointment.

"(f) Within six months after the first meeting of the Board, the Board shall request the Governor of each State to appoint a nine-member advisory council for such State. A majority of the members of the advisory council shall be appointed, after recommendations have been received from the State bar association, from among the attorneys admitted to practice in the State, and the membership of the council shall be subject to annual reappointment. If ninety days have elapsed without such an advisory council appointed by the Governor,

88 STAT. 380

the Board is authorized to appoint such a council. The advisory council shall be charged with notifying the Corporation of any apparent violation of the provisions of this title and applicable rules, regulations, and guidelines promulgated pursuant to this title. The advisory council shall, at the same time, furnish a copy of the notification to any recipient affected thereby, and the Corporation shall allow such recipient a reasonable time (but in no case less than thirty days) to reply to any allegation contained in the notification. Violation notification. Copy.

"(g) All meetings of the Board, of any executive committee of the Board, and of any advisory council established in connection with this title shall be open to the public, and any minutes of such public meetings shall be available to the public, unless the membership of such bodies, by two-thirds vote of those eligible to vote, determines that an executive session should be held on a specific occasion. Open meetings.

"(h) The Board shall meet at least four times during each calendar year. Quarterly meetings.

"OFFICERS AND EMPLOYEES

"SEC. 1005. (a) The Board shall appoint the president of the Corporation, who shall be a member of the bar of the highest court of a State and shall be a non-voting ex officio member of the Board, and such other officers as the Board determines to be necessary. No officer of the Corporation may receive any salary or other compensation for services from any source other than the Corporation during his period of employment by the Corporation, except as authorized by the Board. All officers shall serve at the pleasure of the Board. President, appointment by Board. 42 USC 2996d.

"(b) (1) The president of the Corporation, subject to general policies established by the Board, may appoint and remove such employees of the Corporation as he determines necessary to carry out the purposes of the Corporation.

"(2) No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Corporation or of any recipient, or in selecting or monitoring any grantee, contractor, or person or entity receiving financial assistance under this title.

"(c) No member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly benefits such member or pertains specifically to any firm or organization with which such member is then associated or has been associated within a period of two years.

"(d) Officers and employees of the Corporation shall be compensated at rates determined by the Board, but not in excess of the rate of level V of the Executive Schedule specified in section 5316 of title 5, United States Code. Compensation. 83 Stat. 863.

"(e) (1) Except as otherwise specifically provided in this title, officers and employees of the Corporation shall not be considered officers or employees, and the Corporation shall not be considered a department, agency, or instrumentality, of the Federal Government.

"(2) Nothing in this title shall be construed as limiting the authority of the Office of Management and Budget to review and submit comments upon the Corporation's annual budget request at the time it is transmitted to the Congress. Budget, OMB review and comments.

"(f) Officers and employees of the Corporation shall be considered officers and employees of the Federal Government for purposes of the following provisions of title 5, United States Code: subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Corporation shall make contributions at the same rates applicable to agencies of the Federal Government under the provisions referred to in this subsection. 80 Stat. 532. 5 USC 8101, 8301. 5 USC 8701. 5 USC 8901.

88 STAT. 381

"(g) The Corporation and its officers and employees shall be subject to the provisions of section 552 of title 5, United States Code (relating to freedom of information).

81 Stat. 54.

"POWERS, DUTIES, AND LIMITATIONS

"SEC. 1006. (a) To the extent consistent with the provisions of this title, the Corporation shall exercise the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (except for section 1005(o) of title 29 of the District of Columbia Code). In addition, the Corporation is authorized—

42 USC 2996e.

76 Stat. 265. D. C. Code 29-1001.

"(1)(A) to provide financial assistance to qualified programs furnishing legal assistance to eligible clients, and to make grants to and contracts with—

"(i) individuals, partnerships, firms, corporations, and nonprofit organizations, and

"(ii) State and local governments (only upon application by an appropriate State or local agency or institution and upon a special determination by the Board that the arrangements to be made by such agency or institution will provide services which will not be provided adequately through nongovernmental arrangements),

for the purpose of providing legal assistance to eligible clients under this title, and (B) to make such other grants and contracts as are necessary to carry out the purposes and provisions of this title;

"(2) to accept in the name of the Corporation, and employ or dispose of in furtherance of the purposes of this title, any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise; and

"(3) to undertake directly and not by grant or contract, the following activities relating to the delivery of legal assistance—

"(A) research,

"(B) training and technical assistance, and

"(C) to serve as a clearinghouse for information.

"(b)(1) The Corporation shall have authority to insure the compliance of recipients and their employees with the provisions of this title and the rules, regulations, and guidelines promulgated pursuant to this title, and to terminate, after a hearing in accordance with section 1011, financial support to a recipient which fails to comply.

Violations, disciplinary action.

"(2) If a recipient finds that any of its employees has violated or caused the recipient to violate the provisions of this title or the rules, regulations, and guidelines promulgated pursuant to this title, the recipient shall take appropriate remedial or disciplinary action in accordance with the types of procedures prescribed in the provisions of section 1011.

"(3) The Corporation shall not, under any provision of this title, interfere with any attorney in carrying out his professional responsibilities to his client as established in the Canons of Ethics and the Code of Professional Responsibility of the American Bar Association (referred to collectively in this title as 'professional responsibilities') or abrogate as to attorneys in programs assisted under this title the authority of a State or other jurisdiction to enforce the standards of professional responsibility generally applicable to attorneys in such jurisdiction. The Corporation shall ensure that activities under this title are carried out in a manner consistent with attorneys' professional responsibilities.

"(4) No attorney shall receive any compensation, either directly or indirectly, for the provision of legal assistance under this title unless such attorney is admitted or otherwise authorized by law, rule, or regulation to practice law or provide such assistance in the jurisdiction where such assistance is initiated.

"(5) The Corporation shall insure that (A) no employee of the Corporation or of any recipient (except as permitted by law in connection with such employee's own employment situation), while carrying out legal assistance activities under this title, engage in, or encourage others to engage in, any public demonstration or picketing, boycott, or strike; and (B) no such employee shall, at any time, engage in, or encourage others to engage in, any of the following activities: (i) any rioting or civil disturbance, (ii) any activity which is in violation of an outstanding injunction of any court of competent jurisdiction, (iii) any other illegal activity, or (iv) any intentional identification of the Corporation or any recipient with any political activity prohibited by section 1007(a)(6). The Board, within ninety days after its first meeting, shall issue rules and regulations to provide for the enforcement of this paragraph and section 1007(a)(5), which rules shall include, among available remedies, provisions, in accordance with the types of procedures prescribed in the provisions of section 1011, for suspension of legal assistance supported under this title, suspension of an employee of the Corporation or of any employee of any recipient by such recipient, and, after consideration of other remedial measures and after a hearing in accordance with section 1011, the termination of such assistance or employment, as deemed appropriate for the violation in question.

Restrictions.

Rules and regulations.

"(6) In areas where significant numbers of eligible clients speak a language other than English as their principal language, the Corporation shall, to the extent feasible, provide that their principal language is used in the provision of legal assistance to such clients under this title.

"(c) The Corporation shall not itself—

"(1) participate in litigation on behalf of clients other than the Corporation; or

"(2) undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative bodies, except that personnel of the Corporation may testify or make other appropriate communication (A) when formally requested to do so by a legislative body, a committee, or a member thereof, or (B) in connection with legislation or appropriations directly affecting the activities of the Corporation.

"(d)(1) The Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

"(2) No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

"(3) Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office.

"(4) Neither the Corporation nor any recipient shall contribute or make available corporate funds or program personnel or equipment for use in advocating or opposing any ballot measures, initiatives, or referendums. However, an attorney may provide legal advice and representation as an attorney to any eligible client with respect to such client's legal rights.

"(5) No class action suit, class action appeal, or amicus curiae class action may be undertaken, directly or through others, by a staff attor-

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ney, except with the express approval of a project director of a recipient in accordance with policies established by the governing body of such recipient.

"(e)(1) Employees of the Corporation or of recipients shall not at any time intentionally identify the Corporation or the recipient with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office.

"(2) Employees of the Corporation shall be deemed to be State or local employees for purposes of chapter 15 of title 5, United States Code.

80 Stat. 403. 5 USC 1501.

"(f) If an action is commenced by the Corporation or by a recipient and a final order is entered in favor of the defendant and against the Corporation or a recipient's plaintiff, the court may, upon motion by the defendant and upon a finding by the court that the action was commenced or pursued for the sole purpose of harassment of the defendant or that the Corporation or a recipient's plaintiff maliciously abused legal process, enter an order (which shall be appealable before being made final) awarding reasonable costs and legal fees incurred by the defendant in defense of the action, except when in contravention of a State law, a rule of court, or a statute of general applicability. Any such costs and fees shall be directly paid by the Corporation.

"GRANTS AND CONTRACTS

42 USC 2996f.

"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—

"(1) insure the maintenance of the highest quality of service and professional standards, the preservation of attorney-client relationships, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to eligible clients;

Maximum income levels, determination.

"(2)(A) establish, in consultation with the Director of the Office of Management and Budget and with the Governors of the several States, maximum income levels (taking into account family size, urban and rural differences, and substantial cost-of-living variations) for individuals eligible for legal assistance under this title;

Eligibility guidelines.

"(B) establish guidelines to insure that eligibility of clients will be determined by recipients on the basis of factors which include—

"(i) the liquid assets and income level of the client,

"(ii) the fixed debts, medical expenses, and other factors which affect the client's ability to pay,

"(iii) the cost of living in the locality, and

"(iv) such other factors as relate to financial inability to afford legal assistance, which shall include evidence of a prior determination, which shall be a disqualifying factor, that such individual's lack of income results from refusal or unwillingness, without good cause, to seek or accept an employment situation; and

Priorities.

"(C) establish priorities to insure that persons least able to afford legal assistance are given preference in the furnishing of such assistance;

"(3) insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas;

"(4) insure that attorneys employed full time in legal assistance activities supported in major part by the Corporation refrain

from (A) any compensated outside practice of law, and (B) any uncompensated outside practice of law except as authorized in guidelines promulgated by the Corporation;

"(5) insure that no funds made available to recipients by the Corporation shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies, except where—

"(A) representation by an attorney as an attorney for any eligible client is necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities (which shall not be construed to permit a recipient or an attorney to solicit a client for the purpose of making such representation possible, or to solicit a group with respect to matters of general concern to a broad class of persons as distinguished from acting on behalf of any particular client); or

"(B) a governmental agency, a legislative body, a committee, or a member thereof requests personnel of any recipient to make representations thereto;

"(6) insure that all attorneys engaged in legal assistance activities supported in whole or in part by the Corporation refrain, while so engaged, from— Restrictions on legal assistance attorneys.

"(A) any political activity, or

"(B) any activity to provide voters or prospective voters with transportation to the polls or provide similar assistance in connection with an election (other than legal advice and representation), or

"(C) any voter registration activity (other than legal advice and representation);

and insure that staff attorneys refrain at any time during the period for which they receive compensation under this title from the activities described in clauses (B) and (C) of this paragraph and from political activities of the type prohibited by section 1502(a) of title 5, United States Code, whether partisan or nonpartisan; 80 Stat. 404.

"(7) require recipients to establish guidelines, consistent with regulations promulgated by the Corporation, for a system for review of appeals to insure the efficient utilization of resources and to avoid frivolous appeals (except that such guidelines or regulations shall in no way interfere with attorneys' professional responsibilities); Review of appeals, guidelines, establishment.

"(8) insure that recipients solicit the recommendations of the organized bar in the community being served before filling staff attorney positions in any project funded pursuant to this title and give preference in filling such positions to qualified persons who reside in the community to be served;

"(9) insure that every grantee, contractor, or person or entity receiving financial assistance under this title or predecessor authority under this Act which files with the Corporation a timely application for refunding is provided interim funding necessary to maintain its current level of activities until (A) the application for refunding has been approved and funds pursuant thereto received, or (B) the application for refunding has been finally denied in accordance with section 1011 of this Act; and

"(10) insure that all attorneys, while engaged in legal assistance activities supported in whole or in part by the Corporation, refrain from the persistent incitement of litigation and any other

activity prohibited by the Canons of Ethics and Code of Professional Responsibility of the American Bar Association, and insure that such attorneys refrain from personal representation for a private fee in any cases in which they were involved while engaged in such legal assistance activities.

Funds, limitations.

"(b) No funds made available by the Corporation under this title, either by grant or contract, may be used—

"(1) to provide legal assistance with respect to any fee-generating case (except in accordance with guidelines promulgated by the Corporation), to provide legal assistance with respect to any criminal proceeding, or to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought against an officer of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction;

"(2) for any of the political activities prohibited in paragraph (6) of subsection (a) of this section;

"(3) to make grants to or enter into contracts with any private law firm which expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public;

"(4) to provide legal assistance under this title to any unemancipated person of less than eighteen years of age, except (A) with the written request of one of such person's parents or guardians, (B) upon the request of a court of competent jurisdiction, (C) in child abuse cases, custody proceedings, persons in need of supervision (PINS) proceedings, or cases involving the initiation, continuation, or conditions of institutionalization, or (D) where necessary for the protection of such person for the purpose of securing, or preventing the loss of, benefits, or securing, or preventing the loss or imposition of, services under law in cases not involving the child's parent or guardian as a defendant or respondent;

"(5) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients;

"(6) to organize, to assist to organize, or to encourage to organize, or to plan for the creation or 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 guidelines promulgated by the Corporation;

"(7) to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system;

"(8) to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution; or

"(9) to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States.

62 Stat. 604.
50 USC app. 451.

"(c) In making grants or entering into contracts for legal assistance, the Corporation shall insure that any recipient organized solely for the purpose of providing legal assistance to eligible clients is governed by a body at least 60 percent of which consists of attorneys who are members of the bar of a State in which the legal assistance is to be provided (except that the Corporation (1) shall, upon application, grant waivers to permit a legal services program, supported under section 222(a)(3) of the Economic Opportunity Act of 1964, which on the date of enactment of this title has a majority of persons who are not attorneys on its policy-making board to continue such a non-attorney majority under the provisions of this title, and (2) may grant, pursuant to regulations issued by the Corporation, such a waiver for recipients which, because of the nature of the population they serve, are unable to comply with such requirement) and which include at least one individual eligible to receive legal assistance under this title. Any such attorney, while serving on such board, shall not receive compensation from a recipient.

Governing board, membership.

Post, p. 390.

"(d) The Corporation shall monitor and evaluate and provide for independent evaluations of programs supported in whole or in part under this title to insure that the provisions of this title and the bylaws of the Corporation and applicable rules, regulations, and guidelines promulgated pursuant to this title are carried out.

Program evaluation.

"(e) The president of the Corporation is authorized to make grants and enter into contracts under this title.

"(f) At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly, and shall notify the Governor and the State bar association of any State where legal assistance will thereby be initiated, of such grant, contract, or project. Notification shall include a reasonable description of the grant application or proposed contract or project and request comments and recommendations.

Grant approval, public notification.

"(g) The Corporation shall provide for comprehensive, independent study of the existing staff-attorney program under this Act and, through the use of appropriate demonstration projects, of alternative and supplemental methods of delivery of legal services to eligible clients, including judicare, vouchers, prepaid legal insurance, and contracts with law firms; and, based upon the results of such study, shall make recommendations to the President and the Congress, not later than two years after the first meeting of the Board, concerning improvements, changes, or alternative methods for the economical and effective delivery of such services.

Staff-attorney program, study.

"RECORDS AND REPORTS

"SEC. 1008. (a) The Corporation is authorized to require such reports as it deems necessary from any grantee, contractor, or person or entity receiving financial assistance under this title regarding activities carried out pursuant to this title.

42 USC 2996g.

"(b) The Corporation is authorized to prescribe the keeping of records with respect to funds provided by grant or contract and shall have access to such records at all reasonable times for the purpose of insuring compliance with the grant or contract or the terms and conditions upon which financial assistance was provided.

"(c) The Corporation shall publish an annual report which shall be filed by the Corporation with the President and the Congress.

Annual report to President and Congress.

"(d) Copies of all reports pertinent to the evaluation, inspection, or monitoring of any grantee, contractor, or person or entity receiving financial assistance under this title shall be submitted on a timely basis to such grantee, contractor, or person or entity, and shall be maintained

in the principal office of the Corporation for a period of at least five years subsequent to such evaluation, inspection, or monitoring. Such reports shall be available for public inspection during regular business hours, and copies shall be furnished, upon request, to interested parties upon payment of such reasonable fees as the Corporation may establish.

Publication in Federal Register.

"(e) The Corporation shall afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the Federal Register at least 30 days prior to their effective date all its rules, regulations, guidelines, and instructions.

"AUDITS

42 USC 2996h.

"SEC. 1009. (a) (1) The accounts of the Corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

"(2) The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons conducting the audits; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to any such person.

Audit report, submittal to GAO.

"(3) The report of the annual audit shall be filed with the General Accounting Office and shall be available for public inspection during business hours at the principal office of the Corporation.

GAO audit.

"(b) (1) In addition to the annual audit, the financial transactions of the Corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States.

Records, accessibility.

"(2) Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audit; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Corporation shall remain in the possession and custody of the Corporation.

Report to Congress and President.

"(3) A report of such audit shall be made by the Comptroller General to the Congress and to the President, together with such recommendations with respect thereto as he shall deem advisable.

"(c) (1) The Corporation shall conduct, or require each grantee, contractor, or person or entity receiving financial assistance under this title to provide for, an annual financial audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the Corporation.

"(2) The Corporation shall submit to the Comptroller General of the United States copies of such reports, and the Comptroller General may, in addition, inspect the books, accounts, financial records, files, and other papers or property belonging to or in use by such grantee, contractor, or person or entity, which relate to the disposition or use of funds received from the Corporation. Such audit reports shall be available for public inspection, during regular business hours, at the principal office of the Corporation.

Audit reports, public inspection.

"(d) Notwithstanding the provisions of this section or section 1008, neither the Corporation nor the Comptroller General shall have access to any reports or records subject to the attorney-client privilege. Attorney-client privilege.

"FINANCING

"SEC. 1010. (a) There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation, $90,000,000 for fiscal year 1975, $100,000,000 for fiscal year 1976, and such sums as may be necessary for fiscal year 1977. The first appropriation may be made available to the Corporation at any time after six or more members of the Board have been appointed and qualified. Appropriations shall be for not more than two fiscal years, and, if for more than one year, shall be paid to the Corporation in annual installments at the beginning of each fiscal year in such amounts as may be specified in appropriation Acts. Appropriation. 42 USC 2996i.

"(b) Funds appropriated pursuant to this section shall remain available until expended. Funds, availability.

"(c) Non-Federal funds received by the Corporation, and funds received by any recipient from a source other than the Corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds; but any funds so received for the provision of legal assistance shall not be expended by recipients for any purpose prohibited by this title, except that this provision shall not be construed to prevent recipients from receiving other public funds or tribal funds (including foundation funds benefiting Indians or Indian tribes) and expending them in accordance with the purposes for which they are provided, or to prevent contracting or making other arrangements with private attorneys, private law firms, or other State or local entities of attorneys, or with legal aid societies having separate public defender programs, for the provision of legal assistance to eligible clients under this title. Non-Federal funds.

"SPECIAL LIMITATIONS

"SEC. 1011. The Corporation shall prescribe procedures to insure that— 42 USC 2996j.

"(1) financial assistance under this title shall not be suspended unless the grantee, contractor, or person or entity receiving financial assistance under this title has been given reasonable notice and opportunity to show cause why such action should not be taken; and

"(2) financial assistance under this title shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the grantee, contractor, or person or entity receiving financial assistance under this title has been afforded reasonable notice and opportunity for a timely, full, and fair hearing.

"COORDINATION

"SEC. 1012. The President may direct that appropriate support functions of the Federal Government may be made available to the Corporation in carrying out its activities under this title, to the extent not inconsistent with other applicable law. Support functions. 42 USC 2996k.

"RIGHT TO REPEAL, ALTER, OR AMEND

"SEC. 1013. The right to repeal, alter, or amend this title at any time is expressly reserved. 42 USC 2996l.

"SHORT TITLE

Legal Services Corporation Act. 42 USC 2996 note.

"SEC. 1014. This title may be cited as the 'Legal Services Corporation Act'.".

TRANSITION PROVISIONS

42 USC 2996b note.

SEC. 3. (a) Notwithstanding any other provision of law, effective ninety days after the date of the first meeting of the Board of Directors of the Legal Services Corporation established under the Legal Services Corporation Act (title X of the Economic Opportunity Act of 1964, as added by this Act), the Legal Services Corporation shall succeed to all rights of the Federal Government to capital equipment in the possession of legal services programs or activities assisted pursuant to section 222(a)(3), 230, 232, or any other provision of the Economic Opportunity Act of 1964.

81 Stat. 698.

42 USC 2809, 2823, 2825.

(b) Within ninety days after the first meeting of the Board, all assets, liabilities, obligations, property, and records as determined by the Director of the Office of Management and Budget, in consultation with the Director of the Office of Economic Opportunity or the head of any successor authority, to be employed directly or held or used primarily, in connection with any function of the Director of the Office of Economic Opportunity or the head of any successor authority in carrying out legal services activities under the Economic Opportunity Act of 1964, shall be transferred to the Corporation. Personnel transferred to the Corporation from the Office of Economic Opportunity or any successor authority shall be transferred in accordance with applicable laws and regulations, and shall not be reduced in compensation for one year after such transfer, except for cause. The Director of the Office of Economic Opportunity or the head of any successor authority shall take whatever action is necessary and reasonable to seek suitable employment for personnel who do not transfer to the Corporation.

78 Stat. 508. 42 USC 2701 note.

(c) Collective-bargaining agreements in effect on the date of enactment of this Act covering employees transferred to the Corporation shall continue to be recognized by the Corporation until the termination date of such agreements, or until mutually modified by the parties.

OEO Director, assistance.

(d)(1) Notwithstanding any other provision of law, the Director of the Office of Economic Opportunity or the head of any successor authority shall take such action as may be necessary, in cooperation with the president of the Legal Services Corporation, including the provision (by grant or otherwise) of financial assistance to recipients and the Corporation and the furnishing of services and facilities to the Corporation—

(A) to assist the Corporation in preparing to undertake, and in the initial undertaking of, its responsibilities under this title;

(B) out of appropriations available to him, to make funds available to meet the organizational and administrative expenses of the Corporation;

(C) within ninety days after the first meeting of the Board, to transfer to the Corporation all unexpended balances of funds appropriated for the purpose of carrying out legal services programs and activities under the Economic Opportunity Act of 1964 or successor authority; and

(D) to arrange for the orderly continuation by such Corporation of financial assistance to legal services programs and activities assisted pursuant to the Economic Opportunity Act of 1964 or successor authority.

Whenever the Director of the Office of Economic Opportunity or the head of any successor authority determines that an obligation to provide financial assistance pursuant to any contract or grant for such

legal services will extend beyond six months after the date of enactment of this Act, he shall include, in any such contract or grant, provisions to assure that the obligation to provide such financial assistance may be assumed by the Legal Services Corporation, subject to such modifications of the terms and conditions of such contract or grant as the Corporation determines to be necessary.

(2) Section 222(a)(3) of the Economic Opportunity Act of 1964 is repealed, effective ninety days after the first meeting of the Board of Directors of the Legal Services Corporation. Repeal; effective date. 81 Stat. 698; 83 Stat. 828, 829. 42 USC 2809.

(e) There are authorized to be appropriated for the fiscal year ending June 30, 1975, such sums as may be necessary for carrying out this section. Appropriation. 78 Stat. 528; 86 Stat. 697. 42 USC 2941.

(f) Title VI of the Economic Opportunity Act of 1964 is amended by inserting after section 625 thereof the following new section:

"INDEPENDENCE OF LEGAL SERVICES CORPORATION

"SEC. 626. Nothing in this Act, except title X, and no reference to this Act unless such reference refers to title X, shall be construed to affect the powers and activities of the Legal Services Corporation.". 42 USC 2971e. Ante, p. 378.

Approved July 25, 1974.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 93-247 (Comm. on Education and Labor) and No. 93-1039 (Comm. of Conference).
SENATE REPORTS: No. 93-495 (Comm. on Labor and Public Welfare) and No. 93-845 accompanying S. 2686 (Comm. of Conference)
CONGRESSIONAL RECORD:
Vol. 119 (1973): June 21, considered and passed House.
Dec. 10, 12-14, S. 2686 considered in Senate.
Vol. 120 (1974): Jan. 28-30, S. 2686 considered in Senate.
Jan. 31, considered and passed Senate, amended, in lieu of S. 2686.
May 16, House agreed to conference report.
July 16, Senate insisted on its amendments; House receded from its disagreement to Senate amendments with an amendment.
July 18, Senate concurred in the House amendment to the Senate amendment.

This bill was introduced by the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, and was the clean bill ordered reported to the full committee after markup on March 17, 1977.

95TH CONGRESS
1ST SESSION

H. R. 5528

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1977

Mr. KASTENMEIER (for himself, Mr. DANIELSON, Mr. DRINAN, Mr. SANTINI, Mr. ERTEL, Mr. RAILSBACK, and Mr. BUTLER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Legal Services Corporation Amendments Act of 1977".

GOVERNING BODY

SEC. 2. The first sentence of section 1004(a) of the Legal Services Corporation Act (42 U.S.C. 2996c(a)) is amended by striking out ", no more than six of whom shall be of the same political party".

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SUNSHINE PROVISIONS

SEC. 3. Section 1004(g) of the Legal Services Corporation Act (42 U.S.C. 2996c(g)) is amended to read as follows:

"(g) The Corporation and each State advisory council established in connection with this title shall be subject to the requirements and provisions of section 552b of title 5, United States Code (relating to open meetings).".

SUPPORT ASSISTANCE

SEC. 4. (a) Paragraph (3) of section 1006(a) of the Legal Services Corporation Act (42 U.S.C. 2996e(a)(3)) is amended to read as follows:

"(3) to undertake directly or by grant or contract, the following activities relating to the delivery of legal assistance—

"(A) research;

"(B) training and technical assistance; and

"(C) service as a clearinghouse for information.".

(b) Section 1010 of the Legal Services Corporation Act (42 U.S.C. 2996i) is amended by adding at the end thereof the following new subsection:

"(d) Not more than 10 per centum of the amounts appropriated pursuant to subsection (a) of this section for any

fiscal year shall be available for grants or contracts under section 1006(a)(3) in any such year or period.".

POWERS, DUTIES, AND LIMITATIONS OF THE CORPORATION AND RECIPIENTS

SEC. 5. (a) Paragraph (1) of section 1006(b) of the Legal Services Corporation Act (42 U.S.C. 2996e(b)(1)) is amended by adding at the end thereof the following new sentence: "Compliance with the provisions of this title or the rules, regulations, or guidelines promulgated pursuant to this title shall be conclusively presumed in any proceeding in which a person is represented by a recipient or an employee of a recipient.".

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

"(6) No court shall, without providing for reasonable compensation, appoint for the purposes of furnishing legal assistance an attorney employed by a recipient, unless the appointment is made pursuant to a law, rule, or practice applied generally to lawyers practicing in the court where the appointment is made.".

ACTIVITIES OF STAFF ATTORNEYS

SEC. 6. (a) Paragraph (2) of section 1006(e) of the Legal Services Corporation Act (42 U.S.C. 2996e(e)(2))

is amended by inserting "and staff attorneys" immediately after "Corporation".

(b) Paragraph (6) of section 1007(a) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(6)) is amended by striking out "and insure that" and all that follows through "nonpartisan;".

ASSISTANCE CRITERIA

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

"(iv) such other factors as relate to financial inability to afford legal assistance, which may include evidence that such individual's lack of income results from refusal or unwillingness, without good cause, to seek or accept an employment situation; and".

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

"(C) insure that recipients adopt procedures for determining and implementing priorities, consistent with any goals that may be established by the Corporation, for the provision of legal assistance to eligible clients under this title.".

(c) Paragraph (5) of section 1007(a) of the Legal

Services Corporation Act (42 U.S.C. 2996f(a)(5)) is amended to read as follows:

"(5) insure that no funds made available to recipients by the Corporation shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies, except where—

"(A) representation by an employee of a recipient for any eligible client is necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities; or

"(B) a governmental agency, legislative body, a committee, or a member thereof—

"(i) requests personnel of the recipient to testify, draft, or review measures or to make representations to such agency, body, committee, or member,

"(ii) permits the general public to participate (by comment or otherwise) in the consideration of a measure, or

"(iii) is considering a measure directly affecting the activities of the recipient or the Corporation.".

LIMITATIONS ON USE OF FUNDS

SEC. 8. Section 1007(b) of the Legal Services Corporation Act (42 U.S.C. 2996f(b)) is amended to read as follows:

"(b) No funds made available by the Corporation under this title, either by grant or contract, may be used—

"(1) to provide legal assistance with respect to any fee-generating case, matter, or proceeding unless adequate private representation is unavailable, and then as authorized by regulations promulgated by the Corporation;

"(2) to provide legal assistance with respect to any criminal proceeding, except to provide assistance to a person charged with an offense involving hunting, fishing, trapping, or gathering fruits of the land, when the principal defense asserted involves rights arising from a treaty with Indians, or to a person charged with a misdemeanor or lesser offense, or its equivalent, in an Indian tribal court;

"(3) to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures

to act and the action is brought against an officer of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction;

"(4) for any political activities prohibited in paragraph (6) of subsection (a) of this section;

"(5) to make grants to or enter into contracts with any private law firm which expends 50 per centum or more of its resources and time litigating issues in broad interests of a majority of the public;

"(6) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this paragraph shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal service to eligible clients;

"(7) to initiate the formation of or organize directly any association, federation, or similar entity, except that this provision shall not be construed to prohibit legal assistance to eligible clients; or

"(8) to provide legal assistance with respect to any proceeding or litigation which seeks to compel any in-

dividual or private, sectarian institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution.".

AUDITS AND RECORDKEEPING

SEC. 9. (a) Paragraph (3) of section 1009(a) of the Legal Services Corporation Act (42 U.S.C. 2996h(a)(3)) is amended to read as follows:

"(3) The report of the annual audit shall be filed with the General Accounting Office and shall be available for public inspection during business hours at the principal office of the Corporation throughout the period beginning on the date of such filing and ending three years after such date.".

(b) The last sentence of paragraph (2) of section 1009(b) of the Legal Services Corporation Act (42 U.S.C. 2996h(b)(2)) is amended to read as follows: "All such books, accounts, financial records, reports, files, and other papers or property of the Corporation shall remain in the possession and custody of the Corporation throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the General Accounting Office may require the retention of such books, accounts,

financial records, reports, files, papers, or property for a longer period under section 117 (b) of the Accounting and Auditing Act of 1950 (31 U.S.C. 67 (b)).".

FINANCING

SEC. 10. (a) Section 1010 (a) of the Legal Services Corporation Act (42 U.S.C. 2996i (a)) is amended to read as follows:

"SEC. 1010. (a) There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation $238,700,000 for the fiscal year ending September 30, 1978, and $300,000,000 for the fiscal year ending September 30, 1979. Appropriations for such purpose shall be for not more than two fiscal years, and shall be paid to the Corporation in annual installments at the beginning of each fiscal year in such amounts as may be specified in Acts of Congress making appropriations.".

(b) Section 1010 (c) of the Legal Services Corporation Act (42 U.S.C. 2996i (c)) is amended to read as follows:

"(c) Non-Federal funds received by the Corporation, and funds received by any recipient from a source other than the Corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.".

HEARING EXAMINER REQUIREMENT FOR CERTAIN ACTIONS

SEC. 11. Paragraph (2) of section 1011 of the Legal Services Corporation Act (42 U.S.C. 2996j(2)) is amended to read as follows:

"(2) financial assistance under this title shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the person or entity receiving such assistance has been afforded reasonable notice and opportunity for a timely, full, and fair hearing, and, when requested, such hearing shall be before an independent hearing examiner appointed pursuant to section 3105 of title 5 of the United States Code. Such hearing shall be held prior to any final decision by the Corporation to terminate financial assistance or suspend or deny funding.".

95TH CONGRESS
1ST SESSION

H. R. 6666

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 1977

Mr. KASTENMEIER (for himself, Mr. RODINO, Mr. DANIELSON, Mr. DRINAN, Mr. SANTINI, Mr. ERTEL, Mr. RAILSBACK, Mr. BUTLER, Mr. EDWARDS of California, Mr. CONYERS, Miss JORDAN, Mr. MAZZOLI, Mr. HARRIS, Mr. WIGGINS, Mr. FISH, and Mr. SAWYER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Legal Services Corporation Amendments Act of 1977".

SUNSHINE PROVISIONS

SEC. 2. Section 1004(g) of the Legal Services Corporation Act (42 U.S.C. 2996c(g)) is amended to read as follows:

"(g) The Corporation and each State advisory council established in connection with this title shall be subject to the requirements and provisions of section 552b of title 5, United States Code (relating to open meetings).".

SUPPORT ASSISTANCE

SEC. 3. (a) Paragraph (3) of section 1006(a) of the Legal Services Corporation Act (42 U.S.C. 2996e(a)(3)) is amended to read as follows:

"(3) to undertake directly or by grant or contract, the following activities relating to the delivery of legal assistance—

"(A) research,

"(B) training and technical assistance, and

"(C) service as a clearinghouse for information.".

(b) Section 1010 of the Legal Services Corporation Act (42 U.S.C. 2996i) is amended by adding at the end thereof the following new subsection:

"(d) Not more than 10 percent of the amounts appropriated pursuant to subsection (a) of this section for any fiscal year shall be available for grants or contracts under section 1006(a)(3) in any such year or period.".

POWERS, DUTIES, AND LIMITATIONS OF THE CORPORATION AND RECIPIENTS

SEC. 4. (a) Paragraph (1) of section 1006(b) of the Legal Services Corporation Act (42 U.S.C. 2996e(b)(1)) is amended by adding at the end thereof the following new sentence: "Compliance with the provisions of this title or the rules, regulations, or guidelines promulgated pursuant to this title shall be conclusively presumed in any proceeding in which a person is represented by a recipient or an employee of a recipient.".

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

"(6) No court shall, without providing for reasonable compensation, appoint for the purposes of furnishing legal assistance an attorney employed by a recipient, unless the appointment is made pursuant to a law, rule, or practice applied generally to lawyers practicing in the court where the appointment is made.".

ACTIVITIES OF STAFF ATTORNEYS

SEC. 5. (a) Paragraph (2) of section 1006(e) of the Legal Services Corporation Act (42 U.S.C. 2996e(e)(2))

is amended by inserting "and staff attorneys" immediately after "Corporation".

(b) Paragraph (6) of section 1007(a) of the Legal Services Corporation Act (42 U.S.C. 2996f(a)(6)) is amended by striking out "and insure that" and all that follows through "nonpartisan;".

ASSISTANCE CRITERIA

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

"(iv) such other factors as relate to financial inability to afford legal assistance, which may include evidence that such individual's lack of income results from refusal or unwillingness, without good cause, to seek or accept an employment situation; and".

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

"(C) insure that recipients adopt procedures for determining and implementing priorities, consistent with any goals that may be established by the Corporation, for the provision of legal assistance to eligible clients under this title;".

(c) Paragraph (5) of section 1007(a) of the Legal

Services Corporation Act (42 U.S.C. 2996f(a)(5)) is amended to read as follows:

"(5) insure that no funds made available to recipients by the Corporation shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies, or State proposals by initiative petition, except where—

"(A) representation by an employee of a recipient for any eligible client is necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities; or

"(B) a governmental agency, legislative body, a committee, or a member thereof—

"(i) requests personnel of the recipient to testify, draft, or review measures or to make representations to such agency, body, committee, or member, or

"(ii) is considering a measure directly affecting eligible clients or the activities of the recipient or the Corporation;".

LIMITATIONS ON USE OF FUNDS

SEC. 7. Section 1007 (b) of the Legal Services Corporation Act (42 U.S.C. 2996f(b)) is amended to read as follows:

"(b) No funds made available by the Corporation under this title, either by grant or contract, may be used—

"(1) to provide legal assistance with respect to any fee-generating case, matter, or proceeding unless adequate private representation is unavailable, and then as authorized by regulations promulgated by the Corporation;

"(2) to provide legal assistance with respect to any criminal proceeding, except to provide assistance to a person charged with an offense involving hunting, fishing, trapping, or gathering fruits of the land, when the principal defense asserted involves rights arising from a treaty with Indians, or to a person charged with a misdemeanor or lesser offense, or its equivalent, in an Indian tribal court;

"(3) to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the action is brought against an officer of the court or against a law enforcement official for the pur-

pose of challenging the validity of the criminal conviction;

"(4) for any of the political activities prohibited in paragraph (6) of subsection (a) of this section;

"(5) to make grants to or enter into contracts with any private law firm which expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public;

"(6) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients;

"(7) to initiate the formation of or organize directly any association, federation, or similar entity, except that this provision shall not be construed to prohibit legal assistance to eligible clients; or

"(8) to provide legal assistance with respect to any proceeding or litigation which seeks to procure a non-

therapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution.".

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Mr. KASTENMEIER. At this time I would like to welcome representatives of the Corporation: Dean Roger C. Cramton and President Thomas Ehrlich.

Which of you gentlemen would like to begin?

Dean Cramton.

TESTIMONY OF ROGER C. CRAMTON, DEAN, CORNELL LAW SCHOOL, AND CHAIRMAN, BOARD OF DIRECTORS, LEGAL SERVICES CORPORATION, AND THOMAS EHRLICH, PRESIDENT, LEGAL SERVICES CORPORATION, ACCOMPANIED BY ALICE DANIEL, GENERAL COUNSEL, LEGAL SERVICES CORPORATION

Dean CRAMTON. I would like to start with a brief word, Mr. Chairman.

It's a great delight and pleasure to appear before this subcommittee in my new capacity as Chairman of the Board of Legal Services Corporation.

As the Chairman indicated, the Corporation has been in existence only a little over 18 months, and that period, has been filled with steady and encouraging progress. Our experience to date suggests at least three things.

First, that the creation of an independent Legal Services Corporation, which is concerned about high-quality legal services for the poor, was a sound and wise idea. The basic structure was a good one.

Second, that poor people are beginning to get the quality and scope of the legal services they need and deserve.

And third, that the task has been just begun. We have a long way to go until equal access to civil justice in the United States is a reality rather than a promise which is occasionally respected.

One of the major reasons that the Legal Services Corporation has been as successful as it has been in its first 18 months is the quality and the caliber of the staff and officers that the Corporation has been able to recruit.

The Board conducted a very extensive search for the first president, and we were extremely fortunate in hiring the most highly qualified person in the United States to serve in this position. I am referring, of course, to Mr. Thomas Ehrlich, President of the Corporation, who will make the opening statement on behalf of the Corporation.

While I have the floor, I would like to introduce the third person who is here with us: Alice Daniel, the General Counsel of the Legal Services Corporation.

Thank you, Mr. Chairman. It's a great pleasure to return to the subcommittee in this new and extremely pleasant capacity.

Mr. KASTENMEIER. Thank you, Dean Cramton.

Now, then, Mr. Ehrlich.

Mr. EHRLICH. Thank you, Mr. Chairman. We appreciate this opportunity to be with you. We have a prepared statement, along with copies of the Corporation's annual report, the budget request for fiscal year 1978, and its regulations. With your permission, I would like to submit those for the record and simply make a few brief comments at this time. [See app. 1 at p. 189.]

Mr. KASTENMEIER. Without objection, those several papers and documents will be received and made part of the record, and you may proceed as you wish.

[The prepared statement of Mr. Ehrlich follows:]

STATEMENT OF THOMAS EHRLICH, PRESIDENT, LEGAL SERVICES CORPORATION

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 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 here 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. If political liberty means anything, it must mean that.

For approximately 29 million Americans, the promise of equal justice has not been kept. 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 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 have more encounters with that system than do others, and the stakes involved in those encounters are 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. They have breathed new life into the Due Process clause, and have pioneered the development of laws—such as those governing landlord-tenant relations—that had long been insensitive to current conditions. In literally millions of matters over the past decade, legal services lawyers have demonstrated that society's arrangements work properly only if everyone can enforce the rules.

The best efforts of legal services attorneys, however, fall far 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 caseloads that other members of their profession would consider intolerable. Despite these efforts, nearly 16 million poor people do not have access to legal services programs.

These, in my view, are the reasons that this hearing is so important. The report that I am about to make to this Subcommittee, and the legislation that the Subcommittee has before it, concern the individual human costs and the costs to society of having a legal system available only to those able to pay.

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 federally-funded legal services for the poor 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 importance of legal assistance itself, and they support that assistance.

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 goal 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 leaders of the legal profession 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 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 to effectively 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 have the capability to communicate with legal services programs on a regular basis, and to offer management and technical assistance when problems are discovered. 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, and a Research Institute on Legal Assistance that conducts substantive research in undeveloped areas of poverty law. Such activities have never before been undertaken on such a large and coordinated scale, and should go a long way toward attracting and retaining the best lawyers for legal services work.

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, the Corporation has begun a regular monitoring program to ensure compliance with the statutory requirements.

Even before this effort was underway, the Corporation had begun a study to determine the effect of Section 1006(a)(3) of the Act. That section authorizes the Corporation to undertake directly—but not by grant or contract—research, technical assistance, training, and clearinghouse activities. Some had argued that this provision prohibited the Corporation from continuing funding for any

of the seventeen specialized support centers that existed in various parts of the country to assist field programs.

This argument obviously had substantial implications for the structure of the legal services program. The Board of Directors commissioned an extensive factual analysis of the activities of the support centers as a first step in considering the matter. On the basis of that study, the Corporation staff and counsel analyzed the relevant provisions of the Act and its legislative history, and made recommendations to the Board.

We concluded that Section 1006(a)(3) restricts the enumerated activities only if they are 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. This analysis was adopted by the Board of Directors. As a result, funding was discontinued for four of the support centers. To the extent that their activities are continued, they are conducted by the Corporation itself. Funding was continued for the remaining thirteen 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 Corporation has issued regulations to implement the Act, copies of which are submitted for the record. 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. We have also advised this Subcommittee as each regulation was developed.

Perhaps 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 11.2 attorneys per 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 these 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 and the resources currently available. 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 Judiciary 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 general 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 judicare, 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.

On September 30, 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, the private bar, 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 should be actually serving clients by mid-February.

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 difficulties in implementing various types of

delivery systems, and some preliminary performance data. We will not have sufficient data to draw meaningful comparisons, but 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 except to identify the 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 of providing legal services efficiently and effectively.

The Corporation is also designing and implementing a project reporting system to obtain information on each matter handled by each program funded by the Corporation. This system will tell us a good deal 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 of the last several years due to the crisis atmosphere surrounding the program.

The project reporting system is being designed carefully and put into place slowly to ensure that the information it generates will be accurate and useful to both the Corporation and the programs that it funds. Following a field test in the Spring of 1977, the system will be installed in both the first and second rounds of demonstration projects for the delivery system study, and a sample of 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 each Corporation-funded program by late 1977. By early 1978, we will have determined what information is needed on a regular basis for management purposes, and the project reporting system will be simplified to collect only that essential data.

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 reflect the progress that has been made, and recognize 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 of us 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 critically important that Congress continue to recognize the 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 is 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 of 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 the most 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 only be achieved 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.

Our second recommendation to the Subcommittee is that the Legal Services Corporation Act be extended for at least three years. It is important that the Corporation, the program it supports, and the clients of those programs be assured of stability. Otherwise, sound planning is 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 some of the issues to be addressed in 1980. Such planning would be impossible if we were required to request authorization on an annual basis. That requirement would return the program to the continuing uncertainty that it has just escaped.

The Corporation and its Board of Directors recognize the need for accountability to the Congress and regular review by the Congress. We believe that need can be met, however, without annual authorization proceedings. We urge the Subcommittee to adopt the request we submitted last April to extend the Act for a minimum of three years.

The April, 1976, request—which was submitted pursuant to the Budget Act—also requested authorization for "such sums as may be necessary to carry out the purposes of the Legal Services Corporation Act." We still support that approach. We are now in a position, however, to discuss our budget plans with the Subcommittee. 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 any 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, the need to make legal services salaries comparable with those in the public sector, and other issues such as the problems of delivering service to groups of poor people who have been particularly hard to reach. Our plans for 1980 will also focus upon moving from minimum access to legal services—a plan that still means many people will be denied or wait considerable periods of time for help—to an adequate level of service nationwide. We recommend, therefore, that the Act specify "such sums as may be necessary" for Fiscal Year 1980.

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.

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 Corporaton's regulations that are irrelevant to the legal issues in a lawsuit.

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. We believe it is important to ensure that Corporaton funds are not used to support political activities of any kind. Restrictions on the personal activities of staff attorneys that go beyond those on federal, state and local employees, however, appear to be 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 defense asserted involves rights secured by a treaty with Native Americans. The amendment 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 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 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 of 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 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 proposed changes in the Legal Services Corporation Act. The Board of Directors has not considered each of the proposals. 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 an amendment of Section 1006(a)(3) to permit grants or contracts to perform training, research, technical assistance, or clearinghouse activities. We do not anticipate that such an amendment would result in altering the basic structure of our Office of Program Support and Research Institute on Legal Assistance. The bulk of the activities described in Section 1006(a)(3) would continue to be performed by the Corporation directly through those offices. The amendment would, however, provide greater flexibility and would enable the Corporation to ensure that every activity it performs 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 in 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 would repeal the restrictions in Section 1007(b)(7), (8), and (9) on the types of cases that legal services programs may take. Those restrictions do not significantly impair the functioning of legal sevices programs. They are inconsistent, however, 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 up 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 Corporation favors repeal of the restriction on the use of private funds contained in Section 1010(c) of the Act. 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.

It is appropriate to end this presentation as it began, by stressing that the issue before this Subcommittee is the right to 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 provided support for 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.

Mr. EHRLICH. Thank you.

I would like to consider with you the current state and future needs of legal services for the poor. Those services are essential. And as all of us at Legal Services Corporation have come to see very vividly and in very human terms, they are essential to the basic necessities of survival for 29 million women and men who live below subsistence levels. They are the necessary means to insure that the laws which Congress and other lawmakers adopted are implemented as Congress and the other legislative bodies intend them to be.

Many of the substantive rules and the institutions that apply those rules affect the poor unfairly. Legal services for the poor also are needed to assure equal justice under the law. They are required because access to the legal system is an inherent right of every single individual in our society. If political liberty in our country means anything at all, it must mean that. Individuals can hardly be asked to live under the law and to respect the law unless they have a real opportunity to use it.

Those are the principles Congress affirmed in the Legal Services Corporation Act of 1974. We hope the Congress will reaffirm them in extending the act this year.

Before turning to the authorization extension, let me review with you briefly our activities under the act and our plans for the future.

The Corporation began operations just 16 months ago in October 1975, and I'm pleased to be able to report that after years of controversy, the program of legal services for the poor is now on a sound footing. Independence from partisan politics, a principal goal of the Congress in establishing the Corporation, has been firmly established.

One of the most important signs of that atmosphere is the fact that for the first time in more than 5 years we are now extending legal services to areas of the country that have been totally without those services, where the poor have never had them before, and we are providing additional resources for programs that were so severely underfunded that poor people who lived in those areas had no effective services.

That's only the first step in the Corporation's short-term plan, as you indicated, to provide minimum legal assistance to all poor people. We define that short-term goal, as you said, Mr. Chairman, as the equivalent of two lawyers per 10,000 poor people, and it is underscored by the fact that even in 1970 there were 11.2 lawyers per 10,000 persons. Today, quite certainly, the number of lawyers for the population generally in the private sector is much higher.

To meet the minimum objective for fiscal year 1978, we have submitted a request to the Congress of $217.1 million. It will enable us to take major strides toward our immediate goal, the goal that will be

realized in fiscal year 1979, assuming adequate funding. We do hope very much that the Judiciary Committee will urge both the Appropriations and the Budget Committees to support this request.

Over the course of the past year we have also developed the first-rate staff that has been needed to administer the Corporation, to provide the necessary supervision and assistance for legal services programs. We have worked to develop an experienced staff, not only in Washington, but also in the Corporation's nine regional offices. Their central role is to help local programs improve service and also to monitor the programs' performance.

We have begun a major series of projects to strengthen legal services throughout the country. One of them which may be of particular interest. It is mandated by the act: a study of existing staff attorney programs and, through demonstration projects, of alternative and supplemental means to deliver legal services. We have recently funded 19 demonstration projects around the country involving judicare, contracts with private lawyers, vouchers, and prepaid plans that will provide some very much needed information on these different delivery methods.

We are also developing a project reporting system that will, for the first time, provide information on every single matter handled by every one of the 315 legal services programs around the country.

A good many other activities of great importance have gone on over the past year and are planned for the future, and they are reviewed in some detail in the Corporation's annual report which I have submitted for the record.

Let me, if I may, now turn to the authorization legislation.

As you know, the Board of Directors of the Corporation unanimously supported five clarifying amendments to the statute. [See app. 1 at p. 268, letter of February 1, 1977, from Mr. Ehrlich to Mr. Kastenmeier.] Over the past year we have found that the act works well, far better than some might have expected. But these are important improvements that, in our judgment, should be made. And we're pleased that four of the five clarifying amendments have been included in the legislation proposed by you, Mr. Chairman. The fifth of those would amend section 1006(b)(1) to provide that the Corporation would have primary authority to insure compliance of recipients and their employees with the provision of the act and the regulations. The purpose of that provision is very simple. It is to prevent opposing parties from making, and courts from considering, challenges to the eligibility of a poor client for free legal services or other kinds of challenges that are essentially irrelevant to the legal issues involving the client's case. We believe that under the act the Corporation now has primary jurisdiction, but explicit language would eliminate a good deal of very repetitive litigation of the issues. It would also avoid the possibility of having different courts adopt conflicting interpretations of the act in cases in which, of course, the Corporation is not a party.

Mr. Chairman, you have also asked for our comments on a number of other possible changes in the act. The Board of Directors considered three of those in its January meeting. A majority of the Board author-

ized the Corporation to support these three in response to questions from subcommittee members.

The first of these three is an amendment to section 1006(a)(3) to permit the Corporation to fund by grant or contract, as well as to undertake directly, research, training, technical assistance, and clearinghouse activities. This amendment would give the Corporation the opportunity to fund some activities by grant or contract when that would be a more efficient means than simply adding more staff to carry out the activities within the Corporation.

A number of legal services programs, for example, in the same State have previously carried on excellent training efforts regarding local law and procedure. The Corporation cannot duplicate those efforts in over 50 different jurisdictions. We would like to be able to provide the needed funds for the programs to do so.

The second of the three amendments is to section 1010(c). It would eliminate the restrictions on the use of private funds donated to recipients of Corporation funds. Private donations would, with this amendment, be treated exactly the same way as are donations from public sources. Persons who can't afford a lawyer ought to have the same right to full representation in civil matters that fee-paying clients have. In our own judgment, restrictions ought not to be imposed on the manner in which private funds, any more than public funds, are used to increase access to justice.

The third change would delete sections 1007(b)(7) through 1007(b)(9) in order to eliminate several prohibitions against representation of eligible clients in proceedings or litigation. There is no greater justification, in our view, for imposing restrictions on representation in these areas than in any other matter that affects low-income people. These restrictions, in other words, are inconsistent with the basic purpose of the act, to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances but are financially unable to afford counsel.

The bill before the subcommittee includes one other provision, Mr. Chairman, that seems to the staff of the Corporation to require some comment. That provision would amend section 1011 to require that before denying refunding to a program the Corporation should provide that program a timely, full, and fair hearing "before an independent hearing examiner who shall perform no duties in the Corporation other than the hearing examiner's duties under this paragraph."

The Corporation's proposed regulations do now insure that the hearing officer in these matters will be completely impartial. It seems to the Corporation staff both unnecessary and unwise to add a requirement that the hearing officer also be a person not otherwise involved in the Corporation's activities. The Corporation's General Counsel has prepared a memorandum on the point, and I would like, with your permission, Mr. Chairman, to submit that memorandum for the record.

Mr. KASTENMEIER. Without objection, that memorandum will be accepted in the record.

[The memorandum referred to follows:]

LEGAL SERVICES CORPORATION

MEMORANDUM

Date: February 21, 1977.
To: T. Ehrlich.
From: Alice Daniel.
Subject: Proposals to Require an "Independent" Hearing Examiner in All Section 1011 Hearings.

An amendment to the Legal Services Corporation Act of 1974 has been proposed that would require hearings under Section 1011(2) to be before "an independent hearing examiner who shall perform no duties in the Corporation other than hearing examiner's under this paragraph." As we have discussed, this proposal is—in my view—both unnecessary and unwise. This memorandum reviews the reasons.

The Corporation's current and proposed regulations implementing Section 1011(2) of the Act insure that the hearing officer will be impartial. It is unnecessary that the hearing officer always be a person who is not employed or has no other duties at the Corporation in order to insure that the hearing will be fair.

The temporary regulation now in effect authorizes appointment of a Corporation employee as presiding officer, but requires that the presiding officer "Shall not be any person directly involved in the preliminary determination. . ." On August 12, 1976, the United States District Court for the District of Columbia ruled that this provision satisfies both the Legal Services Corporation Act and the Constitutional requirements of Impartiality by hearing examiners. *The National Paralegal Institute* v. *The Legal Services Corporation*, Civ. No. 7-6-1260 (August 12, 1976).

The District Court's ruling was clearly supported by decisions of the Supreme Court and other federal courts defining the requirements for an impartial tribunal. A parole revocation hearing, for example, or one for the revocation of probation, may be conducted before an in-house presiding officer so long as the officer was not directly involved in the antecedent investigation. *Morrissey* v. *Brewer*, 408 U.S. 471 (1972); *Gagnon* v. *Scarpelli*, 413 U.S. 788 (1973). A board of physicians may first investigate, and then itself preside over a license suspension hearing. *Withrow* v. *Larkin*, 421 U.S. 35 (1975). A board composed of senior prison officials may decide a disciplinary case. *Wolff* v. *McDonnell*, 418 U.S. 539 (1974). A school may be denied eligibility for educating nonimmigrant alien students if the due process eligibility hearing is conducted before an official who did not participate in the investigation. *Blackwell College of Business* v. *Attorney*, 454 F.2d 928 (D.C. Cir. 1971).

The Corporation's proposed regulations, published for comment in the Federal Register on January 26, 1977, further refine the requirement of impartiality in Section 1011(2). Section 1606.8(a) of that regulation states that: the presiding officer may be an officer or employee of the Corporation who has not previously been concerned with the investigation or consideration of the application for refunding, or may be a person who is not an employee of the Corporation who is familiar with the provision of legal services to the poor and supportive of the purposes of the Act.

Section 1606.8(b) of the proposed regulation provides that: after designation, the presiding officer shall not consult with or receive communications from the employee who made the preliminary determination or from those representing the Corporation on any of the factual issues in the hearing, except in the presence of, or with copies to, the recipient.

The latter provision closely parallels 4 U.S.C. 554(d)(1) which states that a hearing officer may not "consult a person or party on fact in issue, unless on notice and opportunity for all parties to participate."

It would, moreover, be unwise to require that an "independent" hearing officer be appointed in all instances. Most refunding decisions require the exercise of discretion and policy judgments, matters that are better settled by discussion than adversarial confrontation. The hearings required by Section 1011(2) are not to be likened to appellate review of an administrative decision. The Section requires the hearing to assure that the legal services program will have a full and fair opportunity to state its case and hear the reasons advanced by the Corporation before a final decision is made by the President of the Corporation to diminish substantially or discontinue the grant of funds. The nature of the

hearing process is "deliberative" and "consultative" rather than "adjudicative" and "adversarial." The comment that precedes the temporary regulation makes this clear.

Section 1007(a)(1) of the Act requires the Corporation to "ensure the maintenance of the highest quality of service and professional standards, the preservation of attorney-client relationships, and the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to eligible clients." Section 1007(a)(3) requires the Corporation to "ensure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas." If the Corporation determines that a structural or administrative change is necessary to achieve these goals, the only mechanism the Act provides for requiring that the change occur is by denying refunding.

The requirements of Sections 1007(a)(1) and 1007(a)(3) are constantly kept in mind by Corporation employees as they review applications for funding and monitor operating programs. The staff has been carefully chosen and we have hired only people who have the background and ability to carry out the congressional mandates. Our staff is swiftly acquiring expertise in assessing the effectiveness of legal services programs. This expertise is brought to bear on the question whether refunding should be granted or denied. We would be severely handicapped in our ability to fulfill the mandates of the Act if decisions on refunding applications were referred to persons who lacked the expertise and the knowledge of overall Corporation policy that is essential for wise decisionmaking.

There are instances when an outside hearing examiner may be appropriate. If the denial of refunding is proposed on the ground that a program has substantially violated the Act or failed to meet minimally adequate standards of legal assistance, the Corporation's proposed regulation imposes the burden upon the Corporation of proving the facts charged by a preponderance of the evidence. We contemplate appointing a person who is not employed by the Corporation to preside as hearing officer in such hearings. But when the issues presented require judgments about the effective use of the Corporation resources, the hearing should be conducted by a person familiar with the overall development of Corporation policy.

In sum, the Corporation's present and proposed regulation satisfies both Section 1011(2) of the Act and the Constitutional requirement of fairness. It is unnecessary and unwise to impose the further requirement of an "independent" hearing examiner in all cases.

Mr. EHRLICH. At this point let me simply underscore my own view that we would be severely handicapped in our ability to fulfill the mandates of the act, the mandates that the Congress established, if a decision on a funding application had to be referred to persons who lack expertise, who lack knowledge of overall Corporation policies and purposes. The hearing that is required by section 1011(2) is not like appellate review of an administrative decision. The section requires a hearing to assure the legal services program will have a full and a fair opportunity to state its case and to hear the reasons advanced by the preliminary decisionmaker in the Corporation, before a final decision is made by the President of the Corporation to diminish or discontinue a grant of funds.

The nature of the hearing process, in other words, is a deliberative and a consultative one rather than an adjudicative and adversarial one.

In considering the reauthorization and extension of the Legal Services Corporation Act, we do urge that it come with a reaffirmation by the Congress of the fundamental principles that I referred to at the outset in my statement.

We also urge that the act be extended for at least 3 years. That is important for the Corporation and for local legal services programs in order to have some assurance of stability and sound planning.

One final word, Mr. Chairman, if I may. Over the past year I have been exhilarated by my job and by the challenge that it presents, but most of all, by the people with whom I work, legal services clients, legal services lawyers, legal services staff. We have worked with clients and client groups throughout the country. It has been a wonderful experience. Legal services lawyers and staff members are overworked, and they are underpaid, but they provide assistance competently and in a highly professional manner, often under the most difficult of circumstances. They are the pride of our profession, and I am proud to be working with them.

Now, Dean Cramton as well as Alice Daniel and I and other members of the Corporation staff will be pleased to answer any questions.

Thank you very much.

Mr. KASTENMEIER. Thank you very much, Mr. Ehrlich, for your statement.

I have a number of questions. I will ask several of them, and then I will yield to my colleagues, particularly the gentleman from Virginia who will not be able to remain here past 11 o'clock. But I do have several questions with which I would like to open the meeting.

On what basis was $217 million recommended by you? That is to say, if indeed it is the case that $265 million would achieve in 1 year the goal the Corporation suggests it has, of two attorneys per 10,000 poor, why not ask for that? Why have you not tried to attempt to achieve that goal in a single year instead of 2 years?

Mr. EHRLICH. Mr. Chairman, the goal of minimum access to legal services is a goal to which the Corporation is dedicated, and which we shall achieve. In fact, our best estimate is that it will take about $275 million. Originally we had a plan by which that would be achieved over the course of 4 years, this year and 3 additional years. Over the course of the past year it became clear to the staff of the Corporation and to the Board that we could in fact compact that 4-year plan into 3 years and achieve by early 1979, with adequate funding, the goal of minimum access: two lawyers per 10,000 poor people.

To do it faster than that, to do it, in other words, in a single year, 1978, did seem to us to run some risk of moving faster than we could be absolutely sure we could do particularly regarding middle-level management for each of the programs. We are mandated by the Congress to provide legal services as efficiently and effectively as we possibly can. It seems to us and, I know, to the Board of Directors of the Corporation, our obligation is to move as fast as we possibly can to provide that minimum access, but not to do so in a way that runs the risk of not being sure we have the quality legal services to which poor people are entitled. We did have a sense that if we tried in a single year to hire the several thousand attorneys and paralegals, particularly, as I said, for the middle-level management, that there would be some risk. But, instead, we decided to adopt a plan whereby we would be set to finish that goal in the first few months of 1979, with adequate funding to do it over the space of that time.

Mr. KASTENMEIER. In terms of the requested funding, you are requesting $217 million for fiscal year 1978.

Mr. EHRLICH. Yes, sir.

Mr. KASTENMEIER. What are your plans for the last to fiscal year, 1978 and 1980, at this time? I think you may have indicated that the

third year you suggest ought to be open-ended because you find it very difficult to predict, but at least in terms of present projections, what would it run to the second and third years?

Mr. EHRLICH. We've worked out in some detail the preliminary projections for fiscal year 1979, which we estimate will be approximately $274.5 million. That would provide the additional support necessary to reach all poor people at least that the minimum level, together with the necessary support activities. After that we will be able to focus particularly on issues of improving the quality of service and providing service to some of the groups, such as the elderly, and other groups that may not have been served as well as we would have liked under that minimum formula, which we all agree is not adequate. It's just a beginning. What the figure would be for 1980, however, is very difficult to project, because part of that would depend on the kind of special needs we see over the course of this year, and the next year, and the beginning of the following year.

Mr. KASTENMEIER. Yes.

Let us return to the term "minimum access" or "minimal access", as to what it really means, as far as individuals are concerned. You know statistically what it means, or at least what its equivalent is. But what does it mean in real terms, as far as individuals, poor people, who may want access?

Mr. EHRLICH. You're quite right. The statistics are very arid and abstract and bloodless. In real, human terms what we are talking about is a chance for a woman or man who is poor and lives where any kind of problem that involves the law is often a crisis of survival—where the automobile that breaks down means unemployment, or the lack of social security benefits may mean starvation unless the benefits are restored. For those people, the chance to talk to a legal services lawyer or staff member, to learn what her or his rights are, may well be the difference between survival at even subsistance levels and dying. That is the level of activity about which we are talking.

Even at that level, it works out to far more cases, far more individual women and men, than a legal services lawyer can possibly handle adequately. But at least, as we said, it is a minimal chance. And I should emphasize that it's only minimal even with the very active involvement by private lawyers giving their time *pro bono*, without charge. One of the major efforts of the Corporation is to encourage private lawyers to donate their time without fees in order to supplement the effort of the staff attorneys.

Mr. KASTENMEIER. Is it anticipated that the legal services offices, the offices in the local programs, would have the services solicited to an extent that the programs could not deliver? That is to say, that more poor people come in with problems than can be physically handled by the staff? Is that the case now, or would that be the case in 2 years hence? Do you predict a time ever when someone with such a problem might not be turned away?

Mr. EHRLICH. Certainly, that is the situation today in most programs, sadly, even though few of them are able to engage in outreach efforts to explain what legal services is really about. Even though, it's true today that many hundreds of thousands of poor men and women have to be turned away. We do envision a day, though, when that will not be true. Programs will always have to set some priorities.

in terms of caseload management. I am reasonably sure of that as far into the future as we can see. Most programs will not, for example, be able to take cases involving changes of names which require a lawyer, but which nonetheless, the board of directors of a program, in light of the community needs of poor people, might decide is less important than legal problems involving housing policy, et cetera. But still, for problems in the areas of some priority, we do envisage the day—not with our minimum access program, but sometime in the future—when poor people are not turned away because there are just too many problems and too little help.

Mr. KASTENMEIER. In terms of your own oversight and management of the many programs, what criteria or guidelines exist with reference to the urging or imposing of priorities upon such programs. Who determines what type of cases will or will not be handled?

You mentioned urgent problems; for someone who has urgent problems, what are the chances that his or her case might be aided by such a program? But if a problem is tangential in terms of real urgency, then is it likely not to be handled?

Mr. EHRLICH. The corporation requires that every local program that it funds to establish priorities for caseload management and to articulate the process by which it has established those priorities, including the scope of the client involvement, to be sure that the community of poor people are much involved in setting those priorities.

In one part of the country, South Boston, for example, it might be that housing is the No. 1 priority, as poor people in that community see the middle class slowly pushing them out of the housing in which they have lived. Now, in Hawaii it might be native land claims. In various parts of the country, the priorities are different, depending on the needs of people. It is done on a local level. Up to now it has been the judgment of the corporation's board and staff that priority-setting ought to be done on the local level. It ought not simply be that first person in the door is always the first served without thinking about priorities.

Mr. KASTENMEIER. Thank you.

At this point I have some other questions, but I want to yield to the gentleman from Virginia, Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

And I thank you for your testimony, and I congratulate you on your success to date. It seems that you have done quite a remarkable job. I can see that you are not home free yet. But we are looking forward to working with you.

I have not been privileged to serve on this subcommittee in the past, but I do have some concerns about several other things that have come up. You mentioned several times during the course of your testimony references to partisan politics. To begin with, do you make a distinction between partisan politics and any other kind of politics?

Mr. EHRLICH. Yes, Congressman, I did and do. I think we are responsible to the Congress, directly to the Congress. In that sense, we are part of the political process and should be. We are not, I hope at least, subject to partisan political pressures that would be involved if we were a part of the executive branch. In other words, a change in administration ought not to make a difference in terms of the operations of an independent corporation. We have an independent board of directors which is responsible to the Congress.

Mr. BUTLER. All right. Well, I'm glad to find out that you're concerned about the policy changes which may be effected in your organization as a result of the change in administration—may or may not have been—and—well, of course, I think we're over that hurdle.

But then my question is, in terms of the involvement of your individual employees at the local and field level, the insulation from partisan politics and from politics generally is pretty substantial in terms of this act, as I view it. Is that your view also?

Mr. EHRLICH. Yes.

Mr. BUTLER. Well, now, if you remove that insulation, would we not be inviting involvement in partisan politics?

Mr. EHRLICH. Well, we would not propose to remove the insulation but simply make the staff attorneys subject to the same kinds of Hatch Act insulation that also applies to State and local employees. It does seem to us that it has a valuable set of insulators, and it ought to apply equally in the legal services programs, but not more extensively than that.

Mr. BUTLER. Well, exactly—so in other words, you feel, free that on their own time they ought to be free to do whatever they want to with reference to—as any other Federal employee.

Mr. EHRLICH. To the same extent as other State and local employees. And, obviously, they should not ever involve the program in partisan politics or imply an involvement by the program.

Mr. BUTLER. Do you think you can really put that over? I mean, here is a man whose contact is primarily in the area of impoverished areas of the community, and he starts taking an active part in the improvements of that area. Isn't he almost automatically going to be identified with the Legal Services Corporation in anything he undertakes to do of a political nature in the eyes of the beholder, in the eyes of the media and, I suspect, in the eyes of the Congress?

Mr. EHRLICH. We certainly agree that it's important to insure the corporation funds are not used to support political activities. It does seem to us, though, that restrictions on the personal activities of staff attorneys that go beyond those restrictions on the State and local employees are no more necessary than they would be for those employees.

I think—talking to a good many attorneys in programs, I have become convinced that they can on their own time engage in the kind of activities which are permitted by the Hatch Act without in any way jeopardizing the program. Now, of course, the program could establish its own rules——

Mr. BUTLER. You mean the local program?

Mr. EHRLICH. The local program. We are talking about employees in the local programs. The programs could establish their own rules that might go beyond the act. But it does seem to us, at least on the national level, in terms of the statute, that the Hatch Act restrictions would be ample to insulate programs from involvement or the appearance of involvement in a way that might jeopardize legal services, something that none of us want to do.

Mr. BUTLER. Is it your feeling that repeal of this limitation of the statute would still not inhibit a local corporation from placing that same restriction locally on its employees?

Mr. EHRLICH. I think a local program could establish a variety of kinds of restrictions on its own employees, depending on the particular needs of the locality.

Dean CRAMTON. If I may add a word, I think the board wants to extend and rationalize the restrictions on political activities in order to accommodate the same trade-off between individual freedom, first amendment rights, and participation in political life on the one hand, and a legitimate fear, on the other hand, about use of Government funds for political purposes. I wonder why the questions you ask are not as appropriately asked of the HEW employee who works with poor people, or the State social worker, and the like.

It is our view that the same restrictions that are placed on those people ought to be placed on the lawyers who are hired by nonprofit organizations but receive their support through the Federal legal services office. These lawyers should not lose all of their freedoms merely because they seek to practice law in this form.

Mr. BUTLER. No; I certainly don't suggest that. I feel they are being aware of that restriction when they undertake to practice law in this form, but certainly we haven't given them a bad deal.

Dean CRAMTON. Well, we do not see why they should be picked out for special restrictions.

Take the question of participation in a nonpartisan local school board. We do not see why an attorney who practices law for a local legal services program practicing law should not help out his community by serving on a nonpartisan school board. The State or local employee can. We think the same restrictions that are placed on State and local employees ought to be placed on staff attorneys; no more, no less.

Mr. BUTLER. Well, my inquiry was along the line, assuming that there is a local judgment that varies even with yours, is the Board free to place that type of restriction on its employees even if we make this change in the enabling legislation?

Dean CRAMTON. I think the local board would be in a position to impose stricter terms of hiring and conditions of employment, but I am not sure that the corporation would.

Mr. BUTLER. Well, you don't think—we were referring to the Legal Services Corporation. You don't think you could place a more narrow restriction on——

Dean CRAMTON. We could on our own employees, but I wonder about doing it in terms of the employees of the local legal services programs who are delivering legal services.

Mr. BUTLER. All right.

Turning to another point, on page 17 of your testimony, we first recommended section 1006(b) be amended to make explicit what we believe is now implied, that the corporation has primary authority to insure that its programs and their employees comply with the act and regulations.

Now, I judge from what this says, what your next sentence says is that you have run into questions being raised in the litigation about whether the client has got any business being there with this particular lawyer—is that what it amounts to?

Mr. EHRLICH. Yes, Congressman.

Mr. BUTLER. Is that a real problem?

I agree with you that——

Mr. EHRLICH. Unfortunately, it's too often a harassing tactic when that question is raised in litigation.

Our General Counsel can probably indicate how often it is raised.

Ms. DANIEL. I would say about once a week I get a request for assistance with that particular problem from some legal services program somewhere in the country.

I should say that when that legal question is litigated, almost unanimously the courts have agreed that they lack the authority to determine such a question and that it's entirely irrelevant to the legal case before them.

But we have found that it has been a needless draining of resources.

Mr. BUTLER. Now, how do you propose to cure this, specifically?

Ms. DANIEL. Well, we had proposed a particular provision that was not adopted because it did raise questions about whether we were attempting to cut off judicial review of other kinds that would be appropriate; and we have now thought of other language that we will propose to the subcommittee which would deal more specifically with this question. What we would like to see would be language roughly like the following:

> In any proceeding in a Federal or a State court in which a person is represented by a recipient, the opposing party may not present, nor the court consider, a question relating to the recipients' compliance with the act or regulations or policies of the Corporation.

Those questions, of course, could be considered in other forums, but not in the context of the case in which a client is being represented by a legal services program.

Mr. BUTLER. All right. Now, let's consider another forum. Suppose that it gets to the point that it's generally recognized that this one particular guy who is going out and representing people who don't really need him or who really don't have problems. There's a legitimate complaint. Now, of course, we don't want to tie up litigation on that question. But how is that complaint resolved? How would that complaint be resolved under this proposed change?

Ms. DANIEL. The act has a number of provisions now dealing with questions of compliance with the provisions of the act and our regulations. The first responsibility is with the local board of directors itself. As you know, each program, separately incorporated, has its own board of directors. In addition, the act establishes State advisory councils, and that provides a convenient opportunity for people with problems, with a complaint about a program, to insure that that question will be brought to the attention of the corporation.

So it could come to our attention in various ways: it could be brought to us directly or through a State advisory council. We would then inquire first of the program and its board, perhaps through the regional director who would make an inquiry. As part of our monitoring process we examine the intake sheets for every client, in a way that protects the identity of the client, of course. Our monitoring insures that our regulations are being followed. If a program found that a particular lawyer in that program was failing to follow the regulations, the program would have the obligation to censure that attorney.

Mr. BUTLER. Well, I guess basically what my question is, I'm sure that once the local organization, or the Corporation came to the con-

clusion that this abuse was present, then they would take some action. Are we, by the suggested amendment, foreclosing the adverse litigant, if that's the term, from raising that question with the local board as to the propriety of this representations?

Ms. DANIEL. Not at all. The provision that I just read is very narrow. It would apply only to the situation in which a court is asked to stop proceedings and to consider the question of whether this client is entitled to a lawyer, for example, or similar kinds of questions.

Mr. BUTLER. Thank you.

Mr. Chairman, thank you, I yield back to you.

Mr. KASTENMEIER. All right.

Next I'd like to yield to the gentleman from Pennsylvania, Mr. Ertel.

Mr. ERTEL. Thank you, Mr. Chairman.

I was curious about a couple of comments. You said you had other forums; following up Mr. Butler. Would somebody go to the trouble, after he has been in the litigation? Would he raise the issue of whether or not it is appropriate that that lawyer represent that person by following up after the litigation is over, or would he just let it drop?

Have you any experience on that level?

Ms. DANIEL. Yes, we do. The experience is that there is rather close observation of the practice of legal services programs generally. We find that persons who feel aggrieved by the practices of a program seem to regard the Corporation as being open and responsive, and that we receive letters from them at both the regional offices and the Washtion headquarters.

Dean CRAMTON. Members of the local bar usually have an incentive, particularly if they think fee-generating cases are involved, to raise the question and to pursue it. And sometimes they feel quite strongly about these issues, and they do often watchdog the local legal services program.

Mr. ERTEL. Well, there is a minimal fee-generating situation. Do you have that much of a watchdog?

Dean CRAMTON. Our judgment would be yes, that there is a great deal of concern. Sometimes, from our point of view, there is undue concern on the part of some members of the bar about this representation by legal services officers in cases of marginal dollar value.

Ms. DANIEL. But, of course, the principal protection is the monitoring by the Corporation itself. We do not wait for a complaint that there has been a violation. We have the obligation under the statute to carry on monitoring all of the activities of the programs.

Mr. ERTEL. Turning to another area, how do you curb the excessive use of your Corporation by one or a numerous group of clients? For instance, the repetitiveness of the calls. I had that complaint from my local director. He brought it to my attention yesterday that a client may just continually call in and utilize the services, and there is no way he feels he can cut off that person generating all that activity.

Mr. EHRLICH. By the policy the Corporation has established of requiring each program to set its own priorities. In the process, it insures client involvement in setting those priorities. It may well be that the program would have to say one of those priorities is not to treat an individual's problems who has been here so many times before that even though the particular substantive problem involved might be relatively high on the priority list, there is a sufficient indication of his having come and cried wolf a dozen times, and that other people have

to be treated before at least this one can be again. That is the surest protection.

Mr. ERTEL. Is that being done? Because it's my experience it is not.

Mr. EHRLICH. I do know I have talked to directors of programs who have indicated how carefully they are working to set the priorities, and I have not heard that they are unable to deal with that kind of problem.

Dean CRAMTON. I can tell you that in some cases it is being done by local legal service programs, because I get calls sometimes in the middle of the night, collect, from a citizen somewhere who says that the local legal services program will not take his or her case. And at least from that person's point of view, they are being turned away. And usually, from the nature of the person's complaint, I can understand why. [Laughter.]

Mr. ERTEL. Turning to another area, you have made a statement that there are 11.2 attorneys per 10,000 people in the population generally. You compare that to two lawyers for each 10,000 poor persons. That 11.2 attorneys, is that just a figure, taking all the attorneys in the United States, dividing it into the population?

Mr. EHRLICH. It was based on the 1970 lawyer population, because the statistics we used were based on the 1970 census.

In fact, one thing that was very clear is that the lawyer population since 1970 has increased enormously.

Mr. ERTEL. Have you deleted from that government attorneys?

Mr. EHRLICH. We have not deleted from that government attorneys or attorneys who are working solely for corporations, which would, of course, bring it down.

Mr. ERTEL. Or nonpracticing attorneys who are strictly in the business field?

Mr. EHRLICH. Right. We have not discounted for that.

I have heard estimates I think would bring it down somewhat. On the other hand, it would not bring it down nearly as much as would be offset by the enormous increase in the number of lawyers in the private practice, generally, since 1970.

Mr. ERTEL. Wouldn't it be fair to compare the number of lawyers per poor person as to the number of persons practicing in general practice in law?

Mr. EHRLICH. Yes.

Mr. ERTEL. Not patent attorneys, not copyright attorneys, not specialized attorneys.

Mr. EHRLICH. Yes; that would be a good comparison.

Mr. ERTEL. Is there a figure available to make the comparison?

Mr. EHRLICH. I will do our best to provide as close an estimate of the current private lawyer population in practice as we can for the record.

[The following material was submitted for the record:]

The Corporation has stated that there are 11.2 attorneys for every 10,000 persons in the general population. This figure was computed by the Bureau of Social Science Research, using 1970 census data.

An analysis of 1973 information available from the Bureau of Statistics of the Department of Labor indicates that this figure is now approximately 14 attorneys for 10,000 persons in the general population. This excludes attorneys employed by federal, state and local government, those working in various industries, judges, law professors, and retired persons.

Mr. ERTEL. Thank you.

Thank you, Mr. Chairman.

Mr. KASTENMEIER. Next I would like to yield to the gentleman from Massachusetts, who himself has been deeply involved in legal services.

Mr. DRINAN. Thank you very much, Mr. Chairman. I'm glad to welcome all these deans and former deans here: Dean Ehrlich and my friend Dean Bamberger, and Dean Cramton. Having been in that business I am reminded of the old adage that old deans never die, they just lose their faculties. [Laughter.] I am very pleased particularly to see the addendum to Dean Ehrlich's—once a dean, always a dean—to Dean Ehrlich's statement where the Corporation recommends the repeal of at lease three of the restrictions in the bill filed by the chairman. I note that three or four of the restrictions are still retained, and that I lament. On voter registration activities there is a restriction that is retained in Mr. Kastenmeier's bill. The limitation on fee-generating cases is also retained. Likewise, the language, the restriction on organizing marches and boycotts, the very ambiguous language is retained. The 10-percent limitation on the backup centers is imposed.

I wonder if Dean Ehrlich or Dean Cramton, if you'd want to speak to any discussion that you people have had on the lobbying restriction. I'm happy to say that Mr. Kastenmeier's bill, as I read it, virtually repeals that, or nullifies it, but doesn't repeal it altogether. As you may know or may recall, Mr. Ehrlich, we've had correspondence about this in the Massachusetts situation.

I wonder if you'd want to talk to that.

That's section 1007.

Mr. EHRLICH. Yes, Congressman. The statute, as you know, currently enables legal services lawyers to appear before administrative or legislative bodies when they are representing clients or when they have been requested to appear. In the particular case which you referred to, in Boston, the group involved, the legal services group, was representing a group of eligible clients, as you know. It seems to us at least, that in the cases of which I am aware, legal services lawyers have been able competently, aggressively, and effectively to represent their clients before legislative bodies and before administrative bodies, when the need has arisen for them to do so.

Mr. DRINAN. Mr. Chairman, if I may, I'd like to have permission to insert at this point in the record the material about the Massachusetts Law Reform Institute and correspondence thereto, because I think it is illustrative of the problems related to section 1007.

Mr. KASTENMEIER. Without objection, those materials will be accepted.

[The material referred to follows:]

OCTOBER 27, 1976.

Mr. NAT GOLD,
Framingham, Mass.

DEAR MR. GOLD: Thank you for your call regarding the article in the Boston Herald reporting the use of Federal funds in the effort to enact a State graduated income tax. Since it appears that the Legal Services Corporation provided such funds, at least in part, I have asked Mr. Thomas Ehrlich, president of the Corporation, to inquire into the propriety of those expenditures. I will advise you of his response.

I appreciate your taking the time to bring this matter to my attention. With every best wish, I am

Cordially,

ROBERT F. DRINAN,
Member of Congress.

OCTOBER 27, 1976.

MR. THOMAS EHRLICH,
President, Legal Services Corporation,
Washington, D.C.

DEAR TOM: Several of my constituents have inquired into the propriety of Federal legal services funds being spent in the effort to enact a graduated income tax in Massachusetts. Those inquiries were based on the enclosed article published in the *Boston Herald American* on October 8, 1976.

I would appreciate your advising me whether such funds have in fact been used in that manner and whether such expenditures violate Federal law. I appreciate your attention to this matter.

Cordially,

ROBERT F. DRINAN,
Member of Congress.

LEGAL SERVICES CORPORATION,
Washington, D.C., November 2, 1976.

HON. ROBERT F. DRINAN,
U.S. House of Representatives,
Cannon House Office Building,
Washington, D.C.

DEAR BOB: This is in response to your letter of October 27 regarding the alleged involvement of the Massachusetts Law Reform Institute in the effort to institute a graduated income tax in Massachusetts.

The general counsel for the Corporation, Alice Daniel, has examined the facts in the matter and has determined that the Institute has not violated the Legal Services Corporation Act or the regulations issued pursuant thereto.

Last spring the First National Bank of Boston brought suit against the Attorney General of Massachusetts challenging the constitutionality of Chapter 55, Section 8 of the Massachusetts Statutes, that prohibits corporations from contributing funds to political campaigns, or to referendums that do not materially affect their property, business, or assets. Questions involving only personal taxation are not deemed to be within the exception permitting contributions. The court upheld the validity of the statute.

Massachusetts Law Reform Institute represented United Peoples, Inc., a group conceded by all to be financially eligible for legal services, in its petition to intervene in the lawsuit. Critics of the Institute's participation with respect to the graduated tax issue have rested their opposition on the claim that poor people pay no tax, and therefore have insufficient interest in the issue to be entitled to representation. Their argument is refuted by the court order permitting intervention, which necessarily found that the plaintiffs did have a legally-recognizable interest in the case.

The only other activity by the Massachusetts Law Reform Institute in connection with the question of graduated tax was its work, on behalf of the same group, in preparing a graduated tax bill for consideration by the legislature if the referendum should pass. The facts justifying the Institute's representation of the group in the lawsuit also supports its representation in connection with the proposed legislation.

The enclosed memorandum from Allan G. Rodgers, director of the Institute, to the program's Board of Directors explains the Institute's involvement in more detail.

I hope this clarifies the matter. Please let me know if you need more information.

Cordially,

THOMAS EHRLICH.

MASSACHUSETTS LAW REFORM INSTITUTE,
Boston, Mass., October 12, 1976.

To: Board of Trustees.
From: Allan G. Rodgers.

In its October 8 edition, the Boston Herald American criticized MLRI, both in a front-page article and in its lead editorial, for allegedly becoming involved in the graduated income tax referendum. Attached is a copy of both the article and the editorial.

The basic contention of the Herald, that MLRI is involved in the referendum campaign, is inaccurate. Attached is a copy of a news release which we circulated on October 8, which explains our activities in these areas. Attached also is a copy of an article in The Boston Globe of October 9, also explaining our position.

MLRI, as an organization, has been involved in representing United Peoples of Framingham in two legal matters which relate to the referendum. The first is a legislative bill to set contingency rates in the event that the graduated tax referendum is approved by the voters this November. Attached is a copy of a letter of November 11, 1975, from United Peoples, to us, requesting our assistance on that legislative bill. It should be noted, despite the Herald's claims to the contrary, that approximately two percent of the families who pay Massachusetts state income tax, or 34,000, are low-income people who are eligible for our services. In addition to this obvious interest, United Peoples has been concerned about the possible lowering of present state income tax exemptions if Massachusetts does not pass a graduated income tax, and the favorable effect on state benefit and service programs if the grad tax amendment is passed.

The second legal matter, upon which we also represented United Peoples, was to intervene in a lawsuit brought by a number of corporations, seeking to declare unconstitutional a state law which prohibits corporations from giving corporate money on referenda which relate to personal income taxation. I understand that our representation of United Peoples was authorized by its Board of Directors, and that this authorization was transmitted orally to Tony Winsor, the responsible attorney. In this lawsuit, we filed a brief in the Supreme Judicial Court, arguing that the state ban on corporate contributions is valid. You will recall that in previous grad tax campaigns, large infusions of corporate money were, in a large part, responsible for a last-minute media blitz which caused a large vote against the referendum. As you may know, the Supreme Judicial Court recently upheld the ban.

Two of our staff members, Tony Winsor and Susan Hamilton, are personally involved with the Coalition for Tax Reform, an umbrella group consisting of many public-interest organizations and individuals which is attempting to coordinate the campaign in favor of the referendum. All of the time that these two staff members have spent on Coalition matters has been their own time and not on MLRI's time.

In summary, we have committed no violation of the Legal Services Corporation Act or regulations, nor have we been guilty of any impropriety or bad judgment. It would be a violation of the Act if we were involved in a referendum campaign in a way other than providing legal representation to eligible clients. We would also be in violation of the Act if we had worked on the grad tax legislative bill without representing eligible clients or without a request to do so by a legislator or by a legislative committee. But, in fact, we have done both specifically on behalf of an eligible client group. Neither the organization nor any of our staff members have spent any MLRI time or resources on the referendum campaign.

FRAMINGHAM, MASS.,
November 20, 1976.

HON. ROBERT F. DRINAN,
U.S. House of Representatives,
Cannon House Office Building,
Washington, D.C.

DEAR CONGRESSMAN DRINAN: Thank you for forwarding Thomas Ehrlich's letter concerning the Legal Services Corporation and Massachusetts Law Reform Institute.

Mr. Ehrlich's statement that the Institute has not violated the Legal Services Act seems puzzling in view of the following:

1. Attorney Ernest Winsor of M.L.R.I. has done extensive campaigning for the graduated tax referendum. This is a flagrant violation of 42USCS§2996f(a)(6) of the Legal Services Corporation Act.

2. 42USCS§2996b(c) and 42USCS§2996f(a)(5) clearly prohibit attempts to influence legislation. In view of this it would seem difficult to explain Susan Hamilton's title of "lobbyist".

3. M.L.R.I. attempts to justify their use of federal funds to influence graduated tax legislation by stating that they were representing United Peoples, Inc. 42USCS§2996f(a)(5) prohibits them from soliciting a group with respect to matters of general concern to a broad class of persons as distinguished from acting on behalf of any particular client. 42USCS§2996f(a)(2) makes it obvious that eligible clients are individuals, not corporations. Furthermore, the articles of orga-

nization of United Peoples, Inc. (enclosed) also prohibits United Peoples from any attempt to influence legislation!

In view of your reputation for relentlessly exposing any corruption in government, I am certain you will not permit this matter to be closed by Mr. Ehrlich's crude attempt at a cover-up,

Sincerely,

NATHAN GOLD.

DECEMBER 1, 1976.

Mr. THOMAS EHRLICH,
President, Legal Services Corporation,
Washington, D.C.

DEAR TOM: After receiving your response regarding the Massachusetts Law Reform Institute, I forwarded copies of it to constituents who had inquired about the matter. Mr. Nathan Gold, whose letter is enclosed, has written me again with respect to M.L.R.I., raising some additional points. I would appreciate your further examination of this question.

With every best wish, I am

Cordially,

ROBERT F. DRINAN,
Member of Congress.

LEGAL SERVICES CORPORATION,
Washington, D.C., December 14, 1976.

Hon. ROBERT F. DRINAN,
U.S. House of Representatives, Cannon House Office Building, Washington, D.C.

DEAR BOB: I regret that my absence from Washington prevented me from responding earlier to your letter of December 1, 1976, asking for our comments on issues raised by a constituent, Nathan Gold, concerning the Massachusetts Law Reform Institute's representation of the United People Inc. in connection with a referendum of a graduated income tax in Massachusetts. Responding to Mr. Gold's questions in the order presented:

1. Ernest Winsor's campaign activity on behalf of the graduated tax referendum did not violate the Legal Services Corporation Act, 42 U.S.C. 2996f(a)(6), because they were done on his own time, for which he did not receive compensation from the Massachusetts Law Reform Institute. The statute, implemented by Corporation Regulation 1608.6, prohibits attorneys from engaging in political activity "while engaged in legal assistance activities supported under the Act." It does not prevent private activity. A copy of Part 1608 is enclosed.

2. We have been informed by the MLRI that Susan Hamilton devotes approximately 40 percent of her time to lobbying activities while the Massachusetts legislature is in session. Her activities are specifically authorized by 42 U.S.C. 2996f(a)(5), because they are done either on behalf of eligible clients or upon request of a legislator, and do not violate the restriction of Section 501(c)(3) of the Internal Revenue Code, referred to in 42 U.S.C. 2996(c).

3. The Massachusetts Law Reform Institute did not "solicit" United Peoples, Inc.; that group requested legal assistance from the Institute. The legislative history of the Legal Services Corporation Act indicates that Congress intended legal services programs to provide assistance to eligible groups as well as individuals. See, e.g., Cong. Rec. H5085, June 21, 1973; Cong. Rec. H3951, 3964, May 16, 1974. Corporation Regulation 1611.5(d) authorizes representation of groups that satisfy stringent eligibility criteria. A copy of Part 1611 is enclosed.

The articles of Organization of United Peoples, Inc. state that the group will not attempt to influence legislation. I understand that the Massachusetts Law Reform Institute was unaware of that restriction until informed of it by this office after receipt of your letter. I have been advised, however, that it is neither a criminal nor civil offense for a Massachusetts corporation to exceed its charter, and a lawyer properly may respond to a request for representation by a corporation without examining its Articles of Organization to determine whether the corporation is acting *ultra vires*. The Attorney General of Massachusetts, of course, has the authority to monitor the activities of public charities, such as United Peoples, Inc.

I hope this clarifies the matter. Please let me know if you need more information.

Cordially,

THOMAS EHRLICH.

Mr. DRINAN. Mr. Ehrlich, has the Corporation discussed some modification of that lobbying restriction?

Mr. EHRLICH. The Board certainly has discussed the provisions concerning lobbying at some length, and the staff has, too. It did consider on the staff level the suggested change in section 1007(a)(5), for example, to permit personnel of a recipient to testify, draft, or review measures before a legislative committee in addition to making representations. In our own judgment, the staff's at least, it is a restatement of the current law. We believe that the current provision to make representations is broad enough to include all the specific activities referred to in the amendment.

I think the same is true, for example, of the permission of legal services lawyers to respond to requests for public comment on proposed regulations, such as those published in the Federal Register, that directly affect the lawyers, their programs, or, of course, their clients. As I understand the provision, I believe it is declaratory of existing law that legal services lawyers, like other members of the public, ought to be able to comment on such proposed rulemaking, and the statute does not restrict them from doing so.

Mr. DRINAN. All right.

Now, on a broader basis, you state on page 19 that the Board of Directors has not considered each of the proposals to modify the Legal Services Corporation Act. I am particularly pleased that the American Bar Association is testifying tomorrow. The A.B.A. will say very sweepingly and recommend that the Congress should now remove the shackles that it placed on program attorneys in 1974 and permit them to exercise fully their independent professional judgment. I'm pleased that the American Bar Association has looked at all these restrictions, and has recommended the elimination of, as I read it, virtually every one.

How is it that the Legal Services Corporation has not looked at these restrictions?

Dean CRAMTON. I think that our position is identical with that of the American Bar Association. Perhaps we differ on some of the details.

Mr. DRINAN. On that, Dean, if I may, if that is so, then why are only three recommendations made? Is that what you mean by "identical," and is that consistent?

Dean CRAMTON. I was saying we agree with the statement that you just made, that the attorney who represents legal services attorneys should be free to carry out the full range of lawyerlike activities that are essential to representation. It doesn't mean that he can be an unguided missile on his own in terms of his own ideas about what is appropriate legislative or social policy.

Mr. DRINAN. No one is recommending that, sir. That's a red herring. But you, however, are authorized only to promote three changes, and in the ABA report, at least 10 or 15 changes are recommended. But you're saying your position is identical with the ABA. But you are only recommending three changes.

Dean CRAMTON. I would be willing to talk about the specific changes.

Mr. EHRLICH. The Board and staff have considered on various occasions, I think, all the provisions or almost all of the provisions of the act and how they are operating. We have developed regulations

about most of the key ones that involved a need for interpretation, and have spent a good deal of time with local programs and with client groups, gaining some insight into how they work and how well they work. So I think it is fair to say that the Board has considered most of the kinds of provisions that are in the act and how they're working.

Mr. DRINAN. Well, tell me, would you agree with Dean Cramton that your position is identical with the ABA? If so, why don't you just embrace in principle this? I understand that you can't. The Board has given you permission to request only three changes, and you are saying that other changes are desirable, as I heard you, but you are not authorized to recommend them.

Mr. EHRLICH. No. I referred specifically to the suggested changes in the realm of legislative advocacy, administrative advocacy, and suggested, I thought, that the existing statute would really allow just the kinds of activities that were being suggested in the amendment. That's why I think it's possible to say we are wholly supportive of legal services lawyers being able to do those kinds of activities. Indeed, we think they can do them right now.

Mr. DRINAN. Do you approve of the Sunshine Act being applied to the Corporation, as the ABA recommends?

Dean CRAMTON. You see, sir—if you will pardon me—your trouble is that you're switching context. Your initial statement was a paragraph from the ABA report which the Board accepts and the Corporation advances, that legal services attorneys ought to be free to engage in a full range of legal services that are necessary to represent an indigent client.

Mr. DRINAN. How have I shifted? I haven't shifted, Dean.

Dean CRAMTON. Well, I don't think that the application of the Sunshine Act relates to that proposition. It is a separate question of the governance of State advisory councils and of the Board, and it may or may not be a good thing. We have not considered that question. We'd be happy to. My own personal feeling is that it won't make much difference in how we operate. It will waste some money in terms of the State advisory councils and it's really unnecessary with respect to them because of the nature of their functions. It will cause us a little extra expense and inconvenience, and we will have to amend our bylaws. But it really doesn't make very much difference at all. It would be just a little extra inconvenience, but not a great one. We will not achieve any public purposes of import, in my view.

Mr. DRINAN. Let's go back to shackles. What other shackles do you recommend that we eliminate? Only the three? We know about those. But there are other shackles on which you are silent.

Dean CRAMTON. There are a number of clarifying amendments that we also suggest. I don't view many of these things as shackles. In part, it's a question of what you think the original statute means and of the regulations that we have promulgated to carry it out. On legislative representation we have marked out a very broad sphere in which attorneys can do what they ought to do to advance in the legislative/administrative arena the interests of their clients. And if you want to embody that in the statute, fine. However, you don't need to take the regulations that every agency promulgates and necessarily codify them in legislation. If you want to do it, if you think it's important to do it, that's fine. But you don't need to.

Our view is that the statute, as we have interpreted it, deals adequately with the legislative representation question. There's no difference of position between the Board and the ABA on that question.

Mr. DRINAN. Except in reality, if I may.

My time has expired, probably. Let me just conclude by saying that there is no one more enthusiastic for the Legal Services Corporation than I am. I understand the political situation of your Board, which I lament, and I hope that it will change. At the same time, I am not prepared, Dean Cramton, to say that your regulations, however generous or amorphous and ambiguous, are the same thing as giving the freedom and the independence that should be in the Legal Services Corporation Act. The American Bar Association, perhaps surprisingly, but very categorically comes out for the independence of the bar and states in effect that no lawyer working in the legal services program should be restricted from doing anything that a lawyer for DuPont or General Motors would be permitted to do. As I read it, and as I know lawyers in the field, they do not have that independence, and they don't feel that they have that independence.

One last question, Mr. Chairman.

This is probably too big to go into now, but regarding the authorization level, I wonder if we'll have an opportunity to go into the amount because the client representatives have asked for $264 million and the Corporation has asked for $217 million.

I was wondering, Mr. Chairman, whether there will be some time when we can get down into the nuts and bolts, so to speak, and ask them why they recommended such and such an amount for the services of various kinds.

Mr. KASTENMEIER. Well, if the gentleman will yield, we've already in part discussed that. I have asked the question of witnesses, why have they postponed requests for $265 million, say, for 2 years rather than presenting it for the next fiscal year, 1978. They suggested really that $275 million would be the necessary amount in terms of reaching minimal access in fiscal year 1979, but Mr. Ehrlich expressed his concern that middle management could not be developed sufficiently in a single year of expansion. They originally envisioned a 3- or 4-year program, and they have telescoped this to 2 years. They think, in terms of management, of expanding these services, that these funds would be best staggered in at least 2 more years for them to achieve , and it may be a plausible answer.

Mr. DRINAN. All right.

I would like to predict a great victory for either of those figures, but I'm afraid there are going to be difficulties ahead. Let me just say that the more specific we get, the better we'll be able to justify the figure that is ultimately requested by this committee.

Thank you.

Mr. KASTENMEIER. The gentleman from Illinois, Mr. Railsback.

Mr. RAILSBACK. Thank you, Mr. Chairman. I apologize for being a little bit late.

Specifically, what are the reasons for you to want to get into the desegregation, nontherapeutic abortion? Can you give us some reasons?

Mr. EHRLICH. The majority of the Board agreed, in response to questions, Mr. Congressman, it's not that we want or they want to get

into those areas or indeed any other areas but rather that every program ought to be able to establish its own priorities by its own Board in light of the needs of the poor people in that community, and that there oughtn't to be restrictions by the Corporation or by the statute on the areas in which each program can set those priorities.

Those might or might not include any one or more of the three areas you mentioned, but that ought to be a local program decision based upon needs and resources. There ought not to be any restrictions in terms of subject areas on the civil side that programs could undertake.

Mr. RAILSBACK. Have there in fact been requests for services in those areas, that you know of, or that people working within Legal Services have mentioned to you?

Father Drinan would say this if he were here. In fact I'm sure I will say it when he comes back. The Members, as I see it, of the House of Representatives, when this comes up, if we should try to specifically expand the Legal Services programs to include those areas, you are going to have a very vocal debate, a very vocal controversy. I think it would make a difference to some of us if there were really some good reasons why you feel it imperative to get into these areas. If we don't have those reasons, it does not, in my judgment, make good sense for us to even bring it up because we are going to get our ears pinned back.

Mr. EHRLICH. It's a fair point, Congressman, absolutely. But we don't know a precise number of clients who have requested help in terms of nontherapeutic abortions, educational desegregation, or selective service. We do know that at least in the first two of those three areas there have been requests. I'm not sure, at least until recently, of course, that there haven't over the past year been problems in the selective service area—there well may be more in the future than there have been.

We do know that some groups who have worked in the first two of those three areas have indicated that there are many more people who need help or who have requested service than are being helped throughout the country. We don't know exactly how many. We would not say that this is high on the priority list of any local program that I know of, because I don't believe it is. I would say that as a matter of principle, I believe, that any poor person ought to have complete access on the full range of civil issues that she or he faces without regard to the particular subject matter.

Mr. RAILSBACK. Well, you know, I understand exactly what you are saying. I understand your general philosophy—but I just suggest to you that these are very specific controversial requests, and if we don't have better backup than that. I don't want to jeopardize Legal Services over expansion that may be in line with some kind of a general philosophy but where there isn't good empirical evidence that there really is a need.

Mr. EHRLICH. We don't want to jeopardize Legal Services, either, and we do say, the first priority is seeing to it that all poor people in this country have the service that they don't now have. That is the priority. And I know all programs and client groups would agree with that. There is not now available the kind of empirical evidence you referred to because the programs and people have known that

the service couldn't be given. So to find the number of people who might have requested but didn't do it is quite a problem.

[The following material has been submitted by the corporation to supplement Mr. Ehrlich's response on February 22.]

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 Service 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.

Dean CRAMTON. I'm not sure that empirical evidence concerning the need for the prohibited types of service would make us feel more comfortable in asking for a change of these prohibitions. The Board struggled with this a great deal because it was worried that there might be political fallout of an ideological sort on this issue that would have some adverse affects on the program and might make the change not worth it. But on the other hand, the more we thought about the restrictions, it did seem to us that they should be eliminated. Although the prohibitions are not a severe practical problem—large resources in large are not going to be devoted to these areas, the selective service problems are a matter of the past, and the other two are not going to involve an enormous amount of time and energy—nevertheless, there are two important aspects of principle involved. One of them is whether Congress should insert restrictions on the kinds of cases that Legal Services lawyers can undertake. Should we be acquiescent in terms of restrictions being asserted?

Second, the nature of the restrictions themselves raise serious constitutional questions, and once you get to the merits of them, once you are pushed to take a position by the fact that this legislation is being considered, you have to conclude that this type of restriction should not be imposed.

Fee-generating cases, yes, because that limitation demarcates publicly funded services from private services. Noncriminal, yes, because that marks us off from the Criminal Justice Act and public defenders. But other restrictions which go to the character of the plaintiff's claim we thought ought to be made by local programs, ought to be made by the attorney who is representing a client. They shouldn't be made on a political basis.

So we say that we think that the restrictions ought to be eliminated. We are very conscious and very worried about precisely the question you raised and trust your political judgment. Essentially, we're saying, if you ask us what our position is, we think the restrictions ought to be removed. Whether it's politic to remove them, we leave it to you.

Mr. RAILSBACK. May I ask what efforts and what has been the trend in respect to helping children?

In other words, I recently attended a conference dealing with the problems of children, everything from status offens[illegible] to truancy, children that have been institutionalized for various and sundry reasons that really did not sound like very good reasons to me.

What kind of efforts are being made by Legal Services representing children?

Mr. EHRLICH. Children of poor families?

Mr. RAILSBACK. Yes.

Mr. EHRLICH. Like all other poor people, with the exception of the statutory restriction on some kinds of representation where the parents are involved, juveniles are represented just like all other poor people.

There is, as I think you are indicating, there is a special need for outreach to help children of poor families. Faced with frozen funding for the previous 5 years, most programs haven't been able to do that nearly as aggressively as we would have liked. In really much the same way, they haven't adequately been able to help elderly people. The result has been less representation than they would have liked.

But now, with the prospect of increased funding, there is, I know, in a number of programs, a good deal more work going on with juveniles than has been. And we also do fund two support centers—the Youth Law Center and the Juvenile Law Center—that do provide specialized research for programs that face particular kinds of problems involving juveniles.

Mr. RAILSBACK. Let me be even more specific, and maybe—you know, maybe because of the restrictions and your lack of resources, maybe you have not been able to do this. I guess that I am very much concerned about either neglected or delinquents that have been institutionalized. Their parents really do not care for them. There have been some examples that these institutions have been very, very bad.

And I am just wondering if there's any way that Legal Services has of reaching those institutionalized children, and trying to help them.

Mr. EHRLICH. Yes, I think there are a number of ways. And I know that a number of the 315 programs that we fund do pay special heed to the problems of institutionalized juveniles, as well as do the two support centers, the Youth Law Center and the Juvenile Law Center.

And also, we now have within the Corporation the Research Institute on Legal Assistance. Juvenile needs is one of the areas that it has been looking at as well.

Again, not enough has been done for any group of poor people.

Mr. RAILSBACK. Just one closing, gratuitous comment. I see that you want a 3-year extension, which I can understand. I see that you want the third-year kind of open-ended, and again, that is certain, in my opinion, to raise a red flag, even though you have to go through the appropriation process.

Is there any kind of rationale to your requested increases, $217 million to $274 million? Is that a built-in cost-of-living factor, or does that represent also your change from going to minimum access to better service?

Mr. EHRLICH. The projection for fiscal year 1979 is an amount sufficient to cover the minimum access, as we've defined it, for all poor people in this country; in other words, the projection of the completion of the plan of minimum access reaching those areas of the country that are totally without service, and areas that are only theoretically served. That's why we're able to give a quite reasonable estimate of the figure for 1979, while for 1980 it's more difficult, because a number of things will be happening then that depend on our activities in 1979.

Mr. RAILSBACK. Thank you.

Dean CRAMTON. If I might add a brief comment on that. The figure for fiscal year 1979 is just a bare-bones extension of the existing plan, and it doesn't take into account the possibility of new initiatives and improvement of the program that the staff may recommend and the

Board may think desirable. If Congress does want to put in dollar figures for all 3 years, I would urge you to think seriously about authorization language that talks about $250 million for fiscal 1978, $300 million for fiscal 1979, and $400 million for 1980.

We would prefer that it be left open-ended. But we understand the desire of Congress to impose a realistic ceiling. But it is a ceiling, I would add, not a floor. We have to make our case before the Appropriations Committee, but it's a ceiling, not a floor.

Mr. RAILSBACK. Thank you, Mr. Chairman.

Mr. KASTENMEIER. Would the gentleman from Illinois yield?

Mr. RAILSBACK. Yes.

Mr. KASTENMEIER. On the preceding question with respect to juveniles and young people, there is in the present law a restriction which has been removed in the discussion bill, H.R. 3719, which I introduced yesterday. In the existing act, section 1007(b)(4) states that no funds may be used to provide legal assistance under this title to any unemancipated person of less than 18 years of age, except at the written request of one of the person's parents or guardians, or with a few other exceptions. We have simply removed that restriction. I commend it to the gentleman, inasmuch as he is particularly interested in the rights and status of such persons, particularly the examples that he referred to of those whose parents or guardians would not be disposed to assist them in some respects.

Mr. RAILSBACK. Well, I thank the chairman. I will just say that you're going to have a supporter on the minority side for sure.

I just think it is an area of serious concern, and this is one area where I am not sure there is really any structured help for people that otherwise are not in a position to get help from any source.

Mr. KASTENMEIER. I thank the gentleman, and I have a few questions left before we adjourn the hearing this morning.

We had been talking earlier about funding and minimal access, and the hopes and aspirations of the Corporation in that regard in terms of a definition of minimal access. In fact, of course, there will be some underserved or underfunded areas, as with any new program. And the outreach motion, of course, is not a new one; we have seen that, actually, with a number of others.

But practically, here, you also have, in a sense, a geographic program; how do you reach people where there are no lawyers in remote rural areas? There are probably many poor persons needing services in these areas. What thinking has the Corporation done with respect to at least extending, if possible, sort of equal minimal access to these remote areas, as contrasted to some urban areas where there are lawyers, where there are programs, and where judgments are made as to what cases ought or ought not to be taken, as contrasted to those areas where, indeed, there is no physical access whatsoever?

Mr. EHRLICH. It's quite true that, for a variety of historical reasons, most of the programs that the Legal Services Corporation inherited when it began operations were in relatively urban areas. Over the past year, our focus in expansion has been to the areas of the country that are least well served, within those areas to the States least well served; and most of the expansion has been in rural areas, or relatively rural areas.

As we move through 1978. and finish the minimum access effort in 1979, again, most of the effort will be in those areas in the country which do not have service. And those are primarily, as you're indicating, the areas that have rural populations. There are some areas, even with this expansion, that particular kinds of techniques will have to be used. In rural Alaska, for example, in the bush country, it is very difficult to provide service using traditional kinds of techniques. And we've been working with Alaskan Legal Services to try to develop new kinds of techniques.

Further, a series of demonstration projects that we're expecting to fund for the second round of the delivery study will focus particularly on those most difficult to reach areas. The poor in those areas are entitled to service, just like other poor people, and in many ways their needs are going to be even more significant, because they are relatively isolated.

We have also, within the Research Institute on Legal Assistance that I mentioned earlier, commissioned a study of legal problems in rural areas. This indicates the range of the kinds of things that are now going on—and some of the things that might go on. All these are, in other words, activities focused around the problem of trying to provide better services, through our Office of Field Services, in rural areas than we have been doing.

Mr. KASTENMEIER. Thank you.

I'd like to talk, or inquire a bit about, staff attorneys. I wonder if you could give us a differential profile; that is to say, about the 11.2 attorneys that serve 10,000 people in general practice throughout the country. How would the two attorneys who would serve 10,000 poor people differ from, or what would be their profile in terms of age, earning capacity, and either actual time spent with the legal services, or expected to be spent with the legal services, turnover, problems of competence, and the like?

Mr. EHRLICH. Let's start with what, to me at least, is the most important characteristic, from the year I have spent with a great many legal services lawyers throughout the country. They are the most extraordinarily dedicated, hard-working group I have ever had the privilege to work with, in terms of caring and sound, competent, professional efforts.

I know Dean Cramton and the General Counsel would join in agreeing that they're a most extraordinary group. I can give you some statistics, but I hope those statistics won't hide what is there in human terms.

Mr. KASTENMEIER. I'm interested really in, say, a ball park characterization, rather than that you be too specific.

Mr. EHRLICH. Seventeen percent are women, 83 percent are men, according to the most recent survey that was done in 1974. Nine percent were black, 7 percent were Spanish American. Last June, we did another survey and it included approximately half of all legal services lawyers; we found that about 10 percent had been there more than 6 years; about 4 percent for 5 to 6 years; 6 percent for 4 to 5 years; 10 percent from 3 to 4; 17 percent from 2 to 3 years; 25 percent from 1 to 2 years; and just about 25 percent, less than a year.

We found a 33-percent turnover among legal services lawyers funded with Corporation funds during 1976; a 36-percent turnover among attorneys in all legal services programs without regard to funding.

Mr. KASTENMEIER. Is this anticipated or is it too great, or how do you react to those figures?

Mr. EHRLICH. We're worried about the problem of turnover, not that it is anyone's view that legal services ought to be a career for all who are in it; but it certainly is clear, I think, that some of the best and most able should remain in legal services programs. Like private law firms, their operations need some experience and some training.

We are now doing a study to consider a variety of kind of incentives, to try and keep some of the best and most able in legal services. We know one problem is salary; starting salaries in 1975 were about $10,500 for legal services lawyers. That competes with salaries that may be 50, 60, or 75 percent higher in other public lawyer occupations, quite apart from what could be gained in private operations. We know that for a supervisor, $14,390 was the average.

It is most difficult for somebody with 4 or 5 years experience and a family to live on that. We do think that the average salary has probably increased by about 15 percent over the last 2 years since the Corporation began. Nonetheless, it's very clear that salaries are too low. And one of our major efforts is to try and find some supplements to help that.

But it's also true that there are other techniques, shifting gears is often very valuable: Moving from program to support centers, to a law school, to a law firm, we are trying to find ways to do that. Our executive vice president, Clinton Bamberger, is heading a project designed to try to find a variety of techniques to keep in legal services some of those most able.

Mr. KASTENMEIER. I take it that you have a dilemma, but at least in arriving at an equation of the $7 per person sort of legal services, you have the difficulty of balancing the equation with respect to more money for each staff attorney insuring more experience, less turnover, possibly more competence, but then possibly reaching fewer persons per attorney. And you're really forced into a relatively low level of compensation for the purpose of having nationwide enough staff attorneys in your program to reach enough people, enough of the 29 million. Is that not part of the dilemma you're facing?

Mr. EHRLICH. That's precisely the dilemma faced by every single program. The Corporation does not set the salaries of legal services lawyers. The local programs do. They're faced with just exactly the same dilemma. We do require, through the Office of Field Services, a comparability study by each program to try to see where their salaries are in comparison to the public defender, prosecutorial offices, and so forth. That is, each program that sets its salaries in the face of just the dilemma you mentioned.

Mr. KASTENMEIER. The salaries you mentioned, $10,500 to $14,390 refer to lawyers and not paralegals, I take it? So you hopefully will have to rely for all your programs on paralegals if you don't get enough money to pay the present attorneys.

Mr. EHRLICH. Now those programs have some paralegals. As of last August there were some 1,100 paralegals employed by legal services programs. Their salaries averaged, according to our own survey, about $7,300, and that's $2,000 less than the entry level of Government paralegals.

Again, we face the same kind of problem, they are lower. One of the major efforts of the corporation is training more paralegals, and the utilization of more paralegals in the program.

Mr. KASTENMEIER. If they renew the draft or selective service system, draft some attorneys for this program. Get loaded up with some compensation. [Laughter.]

I say that facetiously. [Laughter.]

And I oppose the draft, because it will create another series of problems for the services to be rendered, national selective service. Every Member of Congress who has been here any number of years knows that the wars, small and large, and the selective service problems constitute an enormous legal and personal difficulty, whether strictly within the legal system, or with the Congress. But nonetheless, I do have this question which is somewhat related, and concerns the prohibition in the act of using the Corporation funds for legal assistance with respect to fee-generating cases, except in accordance with guidelines promulgated by the Corporation. Would this not mean that a legal services lawyer must refer a case in which a poor person is seeking SSI or social security benefits, even though the amount of the fee would be taken from the retroactive benefits otherwise available to the client?

Mr. EHRLICH. Yes, it does, Mr. Chairman. Whether to require a referral of such cases is a matter to which I know the regulations committee of the board gave very careful consideration on two occasions. It is true that the fees are subtracted from the retroactive benefits owed to the clients, and it's also true that the amount of the attorney's fees is determined by the amount of benefits owed to the claimant. And that may have the effect of encouraging the attorney to delay the handling of the case.

The regulations committee recognized those facts and suggested some strong policy reasons why SSI cases ought not to be treated as fee-generating cases, but it did conclude that since Congress had provided for a fee in those cases, the Corporation was bound to treat those cases as fee-generating, and to require an attempt at referral of those cases.

Mr. CRAMTON. Since I participated in discussions of the regulations, let me add a further word. I view it involving a tradeoff in a situation where the resources for publicly funded legal services are so limited.

When you have to choose between a group of clients whose claims are meritorious, many of whom can't be served at all, who get zero, and the question of encouraging the SSI claimant, who can go to a private attorney if the expertise exists in the community and get three-quarters of his recovery through the use of private attorneys, it is my view that our resources would be better utilized, at least until public funding is more ample, by providing a three-quarter recovery to the SSI claimant through a private attorney and using our lawyer time to handle a much larger number of cases.

In other words, it might be preferable if Congress just said to HEW that public funding is supposed to pay for the 25 percent attorney fee, in addition to 100 percent SSI recovery. But that's a policy that you make and we view ourselves as being stuck with the current policy.

Mr. EHRLICH. I'm sure if the committee indicates that it's not the intention of Congress to require legal services programs to attempt

referral of SSI cases, then, of course, the regulations committee and the whole board would review the matter.

Mr. KASTENMEIER. Well, it's a difficult case which could be, I think, handled by, let's say a legal services program, quite easily, adjusted by them without very much effort, possibly saving the individual some money which he or she needs for survival in the process. Very often the individual is just not able to cope with the problem by himself, and as a result, the individual may seek a private attorney when often an agency such as legal services could handle it more or at least as expeditiously, perhaps with more competence than the average, casual, general practitioner, I would think.

However, you're right, it is a problem for the Congress generally.

Quickly, two other questions. Do you support removal of the restrictions on organizing as does the ABA, incidentally, as unnecessarily vague and in violation of first amendment rights? This is the sixth one of 1007(b) (6). I don't know if you've given it any thought as to whether that ought to be retained or whether it is necessary, or menacing to the Corporation not to have that restriction in it.

Mr. CRAMTON. Well, as we've interpreted the act in our regulations, in connection with court litigation, we think that they clearly are constitutional and do not infringe upon the permissible area of attorney-client representation.

Mr. EHRLICH. Currently legal services programs are permitted to provide a full range of legal assistance to groups that are in the process of becoming organized. My own view, very strongly, is that that kind of legal assistance is fully proper and ought to continue. I do understand that there has been some objection to the current provision on the ground that it is overbroad and vague and may have a chilling effect, that legal services programs are reluctant to give the kind of legal assistance authorized by the act for fear that they may violate a prohibition, or that somebody might think they may violate a prohibition.

I don't have any information now that would permit any comment on the accuracy of that, because I really haven't seen it. And actually I do think it's important for the Corporation to make clear that legal services programs are permitted to provide the legal assistance to groups that are in the process of being organized.

Mr. KASTENMEIER. Insofar as we assume that some of our witnesses will at least refer to this particular area, we will probably want to get back to the Corporation more specifically, with reference to that subsection, what it means and whether its deletion or modification is indicated. [See app. 1 at p. 189.]

Lastly, since you have a regulation requiring that client representation on local boards be one-third of the membership, is it not logical, as we suggested, that the same standard apply on the national board? Do you have any comment?

Mr. EHRLICH. For myself, Mr. Chairman, I believe the principle of client participation in the formulation of policy is fundamental, and you are quite right, the Act and regulations require that clients be represented on the boards of local programs. It is quite true that the Board discussed this issue in its January meeting and concluded that it would not be appropriate for the Corporation to comment. I think Dean Cramton may well want to comment for himself. But for my

own self I do think it is entirely appropriate to adopt a similar kind of requirement with respect to the Board of the Corporation.

I don't have any views on the proper number of clients on the board, but it does seem to me that that representation is an important ingredient.

Mr. KASTENMEIER. Dean Cramton?

Mr. CRAMTON. The Board did consider this question and I think several other members of the Board share my view, that the constitutional process of Presidential nomination and Senatorial confirmation is a good policy. In general, an independent board like this, an independent corporation should be composed of persons who do not owe a corporate allegiance as representatives of the American Bar Association or of the client group, or this group, or that group. In other words, the initial Senate position, which was to essentially have a corporative kind of Board composed of representatives of groups and organizations, rather than people that were independent and expressed their own judgment, seems to us to be desirable.

It is said that generals are always preparing to fight the last war. Similarly, I think that many people are too much impressed by recent history and the initial appointments of President Ford to the Board: that all were males, all were lawyers, and that there didn't seem to be a sufficiently representative group. And that was an appropriate concern. I think those things will take care of themselves over time. Presidents can be expected to use good sense in putting people on the Board who are knowledgeable and interested in legal services. I would not restrict the President's judgment and discretion. And I would expect the Senate, which has had strong views on some of these questions, to scrutinize very carefully the appointees, and if they don't think the people are interested and knowledgeable about legal services, not to confirm them.

In my view that is the appropriate judgment, and I don't think the act needs to be amended. I think there should be clients on the Board, and I think the appointment process will produce people who are interested and knowledgeable about client problems. I do not think the act should require that there be people on the Board who may view themselves as owing their allegiance to a particular organization, or to a particular group, rather than exercising independent judgment.

Mr. KASTENMEIER. I think that's a good statement. And I don't care to argue or be contentious about the point, although I agree with the suggestion that if local boards must so be comprised, so should the national Board.

Really, I think of the things the Congress put in, the less necessary one is the party affiliation. I keep thinking we tend to have six Democrats and five Republicans or vice versa. I come from a State in which there is no party registration, and hopefully look forward to people who might be hard to identify in terms of party affiliation, but rather because of many other reasons would be proposed to the Board.

Indeed, if six were identified on party and five the other, I would question what sort of Board you'd have. If you just had people so clearly characterized by party, that that's the way it ends up, I'd rather support the implication that these people are qualified, and we care very little whether they're Socialists, or never joined any party.

But I do think clients and the people who have a point of view of client representation should be on the national Board, although a mathematical requirement can be argued. I put it in my bill because I wanted it argued and debated within the committee itself how best to achieve it. My problem is that when one says that the Senate will look out after these things, we have essentially the same Senate we had several years ago, and granted there were difficulties with respect to one or two nominations, nonetheless, this is essentially the same Senate, which approved a board with no client representatives as far as I know. And I don't know why this Senate could be depended on to do any differently.

Mr. CRAMTON. Except that last summer the Senate chose not to confirm a male lawyer nominee; a nomination of President Ford lapsed. The Senate committee stated their very strong position that other types of individuals should be represented on the Board. So the case would support my position, I think.

Mr. KASTENMEIER. Well, I would argue on that point. But the fact is that the Senate confirmed every member now serving on the Board. And as I say, there are no client representatives on the Board. And I am not criticizing the present Board; I'm talking about an abstraction in terms of representation.

So I do not think it is enough to say that we will rely on the Senate, or somebody else to do the right thing, although maybe they will. In any event, that is a problem.

At this point, I'd like to yield to my friend from Illinois.

Mr. RAILSBACK. I just have a couple of comments. As I read that section dealing with work organizing, it would seem to me that we might be in trouble if we try to delete the prohibition from organizing, or attempting to organize or planning, and there is an exception that says they can render legal service, again to me, it's another red flag that could jeopardize—let me ask you, either one of you, in the light of the legislation that's now been enacted that provides for attorney's fees for a prevailing plaintiff concerning certain types of cases, like civil rights cases, how does that fit in with legal services, where in other words, there have been some actions—or I think there recently was awarded a $200,000 attorney's fee involving a kind of pro bono——

Mr. CRAMTON. That hasn't happened with the legal services program yet.

Mr. RAILSBACK. Yes, how would that work?

Mr. EHRLICH. The basic requirement of the act and the regulations and the efforts of the corporation and the programs is to see to it that any case that can generate a fee is handled by a private attorney. But there are many cases across the country in which it wasn't possible to obtain a private attorney, in which a legal services program does have a case, and in fact it does result in a fee.

In that case, the fee is used by the program to provide more legal services to poor people. It doesn't go to the lawyer; it goes to the program and provides more service to more poor people in need.

Mr. RAILSBACK. I see. And that is a policy?

Mr. EHRLICH. That's right.

Mr. RAILSBACK. Thank you.

Mr. KASTENMEIER. I want to express the appreciation of the subcommittee for your appearance this morning. We've always had an

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excellent working relationship and with respect to appointments, including Mr. Bamberger as well, as well as those who testified here this morning, the corporation has been superb with respect to the undertaking of this new operation, and we would like to be in touch with you during the weeks.

We know that you have appearances before the Appropriations Subcommittee dealing with your corporation, and we will have further questions we would like to be able to pose, perhaps in writing to you, and indeed it might even be possible that we would like to have you come in again, as we get into the nuts and bolts of the markup of our authorization.

But in any event, I do want to express our appreciation for your appearance this morning and your comments, and to the enlightenment of the committee.

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

Mr. KASTENMEIER. That concludes this morning's hearing and the subcommittee will adjourn until 10 o'clock tomorrow morning. We will continue our hearings on the subject of the legal services committee for the authorization. The subcommittee stands adjourned.

[Whereupon, at 12:05 p.m., the hearing was adjourned, to reconvene at 10 a.m. on Wednesday, February 23, 1977.]

LEGAL SERVICES CORPORATION ACT

WEDNESDAY, FEBRUARY 23, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met at 10:10 a.m. in room 2226, Rayburn House Office Building, Hon. Robert W. Kastenmeier [chairman of the subcommittee], presiding.

Present: Representatives Kastenmeier, Danielson, Drinan, Ertel, and Butler.

Also present: Representative Joel Pritchard.

Staff present: Gail P. Higgins, counsel; and Thomas E. Mooney, associate counsel.

Mr. KASTENMEIER. The meeting will come to order.

Today the subcommittee will hear from several organizations and individuals who are interested in the implementation of the Legal Services Appropriation Act of 1974. Their testimony will focus on the oversight and the new authorization of the Legal Services Corporation.

I encourage any specific comments on H.R. 3719—the bill which I introduced on Monday—to serve as a vehicle for discussion and debate.

The witnesses today include representatives of the American Bar Association; the National Legal Aid and Defender Association; the National Clients' Council; the Project Advisory Group, and organization of legal services project directors; the Legal Research and Services for the Elderly Project of the National Council of Senior Citizens; and the California Rural Legal Assistance program

Our first witness today is a representative of the American Bar Association, and we're honored and pleased to have our colleague from the State of Washington, who will introduce him—who bears the same name, I understand, quite accidentally—that is, Congressman Pritchard of Washington.

Mr. JOEL PRITCHARD. Thank you, Mr. Chairman.

The chairman of the ABA standing committee on legal aid and indigent defendants happens to have the same name as I do, and comes from my area. Llewelyn Pritchard is one of the outstanding citizens of the Northwest; has had a very distinguished record in all fields in our community, but particularly working with the legal services. And I deem it a very high privilege to come in and introduce him.

I have been telling people—when we first met—in the community that I wasn't related, but because of his sterling character, lately, I've just let it go by the boards. I find he still does, very carefully, tell everybody in my community that he's not related to me——

[Laughter.]

Mr. JOEL PRITCHARD [continuing]. And I can understand that, being a Member of Congress.

Actually, he has had a very fine background in this area, and I'm very pleased to introduce him to the committee. And I have read his testimony and I think the thrust of the Bar Association's request are very reasonable, and I think an absolute necessity if we're going to bring full legal services to the poor.

Mr. KASTENMEIER. I thank our colleague for his courtesy not only to the witness, but to the committee. And we also commend his interest in the bill, which a variation thereof will probably reach the floor.

Mr. DRINAN. Mr. Chairman, may I thank our colleague, Congressman Pritchard, and ask if he's related ideologically to the witness? [Laughter.]

Mr. JOEL PRITCHARD. Well, he's almost perfect. I don't want to say he's completely perfect. [Laughter.]

Mr. KASTENMEIER. Thank you, very much.

And so the committee is pleased, then, to greet Mr. Llewelyn Pritchard. And, Mr. Pritchard, we have your statement from which you may proceed, if you wish; or, if you prefer to offer it for the record and give a more abbreviated statement, that is entirely up to you. The statement actually is not very long; it's about 9 or 10 pages.

[The prepared statement of Mr. Llewelyn Pritchard follows:]

STATEMENT OF LLEWELYN G. PRITCHARD ON BEHALF OF THE AMERICAN BAR ASSOCIATION

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 any 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 lawyer 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 views of the general public are invited on an issue, 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.

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. These restrictions on the independent judgment of the legal services attorney should be removed.

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 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.

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). Our Association has previously testified before your Subcommittee on this provision in October, 1975, in connection with your Subcommittee's consideration of H.R. 7005. At that time, F. William McCalpin, my predecessor as Chairman of the ABA Standing Committee, expressed the Association's concern about the confusion and conflicting interpretations resulting from this provision, and our support for the enactment of H.R. 7005. I will not discuss this provision further, other than to reiterate our view that this restriction hampers the efficient delivery of legal services and should not be retained.

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 these restrictions are retained in the Act, we would urge that funds received from private sources not be encumbered by these limitations.

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 and would recommend that a provision to this effect be included in the Corporation Act.

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 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 indepeudent professional judgment. Integrity and competence, not artificial restrictions, should be the standards by which these attorneys are judged.

AMERICAN BAR ASSOCIATION POLICY POSITIONS ON 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 Association 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 deplores 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 H.R. 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, nonprofit 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. 18.)

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 insitutions, 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 Februray 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 pro-

gram, 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.

TESTIMONY OF LLEWELYN G. PRITCHARD, CHAIRMAN, STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS

Mr. LLEWELYN PRITCHARD. Thank you very much, Mr. Chairman, members of the subcommittee.

As Congressman Pritchard has indicated, it is my privilege to serve the American Bar Association as chairman of its Standing Committee on Legal Aid and Indigent Defendants.

Mr. Justin Stanley, the president of the association, has asked that I appear before you today to express our views on this important subject, the reauthorization of the Legal Services Corporation, and I am pleased to do so.

We have previously delivered to you, as the chairman indicates, our written position on the subject.

I would, however, like to make a few brief comments:

Since 1965, the ABA has frequently voiced, through resolutions, testimony before Congress, and other means, its vital concern for the Federal legal services program, not only that it be sustained and improved, but also that it be insulated from political pressures affecting attorneys in delivering legal services.

Attorneys working for the poor, we believe, must be free to represent their clients as fully, and I would emphasize "zealously," as can private attorneys with respect to paying clients.

Appended to my testimony—and a part, I would hope, of our submission here today—is a list of the resolutions adopted by the ABA over the last 12 years supporting Federal legal services efforts.

I would also call your attention to the latest resolution, which supports the corporation's budget request of approximately $217 million for fiscal year 1978.

In our written testimony, we have cited these ABA resolutions because they demonstrate not only our historic commitment to the Federal legal services program, but more importantly for today's discussion, the philosophic underpinnings of our view of the role of the legal services attorney. And that is: To provide competent, professional, and zealous representation, consistent with the ethical mandates of the profession for the client whom he represents.

Your subcommittee is undertaking a review of the act by which the Legal Services Corporation was created. Although 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 our past actions and policy positions together with the ethical standards provided by the code of professional responsibility, give us a clear framework in which we may analyze the act.

We all recognize that the long-awaited Legal Services Corporation was created by Congress in a highly charged political atmosphere,

after a great deal of debate. Now let's examine the act after 1½ years of the Corporation's existence:

In the preamble to the code of professional responsibility, it is recognized that the continued existence of a free society depends upon recognition of the concept that justice is based on the rule of law, grounded in the respect for the dignity of the individual.

I would submit that this eloquent articulation of the role of the organized bar, and the American justice system, is equally applicable to lawyers who serve the poor. Lawyers, whether they practice on Wall Street or in county seats, whether they're trial lawyers or office lawyers, military lawyers, or poverty lawyers, all share a common concern: the need to independent representation of their clients' interests without any restrictions on those representations except for those contained in the code of professional responsibility.

It is our view, Mr. Chairman, that several of the provisions of this act violate the independence of the Legal Services attorney and his ability to exercise sound professional judgment on behalf of his client.

For that reason, we would support the provisions—many of the provisions contained in H.R. 3718, which the chairman has introduced in the House.

Our concern, essentially, Mr. Chairman, is threefold. We object to (a) restrictions on full service; (b) limitations upon access; and (c) barriers to efficient delivery.

In the first category, we have several suggestions as to areas which should be either modified or removed from the act. First of all, section 1007(a)(5), dealing with "legislative advocacy." We believe the present language may prevent the Legal Services attorney from providing relevant information to a governmental agency or legislative body unless he receives a personal request to do so.

Second, section 1007(b)(4), with respect to the representation of juveniles: It was mentioned yesterday, by Congressman Railsback that the issue of the rights and responsibilities of juveniles is a terribly important one. We believe that the current language of the act restricts the ability of Legal Services attorneys to make appropriate professional judgments as to when juveniles should be represented.

Third, there are certain areas of the act pertaining to organization activities—in particular section 1007(b)(6). We would submit that the language of this section is terribly fuzzy and unclear, and it is difficult for us to understand what "organizational assistance," legitimate organizational assistance provided for under the code of professional responsibility, a Legal Service attorney could deliver, under the current provisions of the act. We believe an attorney should operate within the standards of professional conduct, and that the restriction, as currently contained in the act, should be removed.

The third area, Mr. Chairman, which we think bears consideration are sections 1007(b) (7), (8), and (9), which contain proscriptions on the handling of cases arising out of specific and narrow areas of law and which we feel demonstrate patently an example of the imposition of political considerations on the practice of law by Legal Services attorneys.

We specifically would mention the prohibition against handling desegregation cases, nontherapeutic abortion cases, and military and selective service cases.

These restrictions on the independent judgment of the Legal Services attorney should be removed. We are aware these are important political areas; however, we feel that because they are so controversial and so highly charged that it would be better to have clients have access to the courts to solve these problems and to seek vindication of their constitutional rights in these areas, rather than to be precluded access.

There are some other provisions in the present charter which we believe unduly limit access of the poor to legal services. Among these are section 1007(a)(2)(B)(iv), which prevents a person from receiving legal assistance if a prior determination is made that that individual is within the income guidelines solely because of his refusal or unwillingness, without good cause, to accept an employment situation.

We don't quarrel with the motive of that particular provision, but we are bothered by it for two reasons: First, what constitutes a "prior determination"? And second, if the prior determination is incorrect, the potential client is denied assistance of counsel to seek a reversal of that determination.

Second, section 1007(a)(2)(C), the "poorest of the poor" provision, requires in the establishment of priorities, giving preference to those persons "least able" to afford legal assistance.

We think that this is a matter which should be worked out by the individual boards of the legal services organizations on the basis of income criteria, but also on numerous other factors within the professional judgment of an attorney.

The third group of restrictions which we quarrel with relate to "efficient delivery of legal services." Foremost among these is the so-called Green amendment.

My predecessor as chairman of the standing committee, Mr. McCalpin of St. Louis, testified before this committee in its consideration of H.R. 7005, with regard to the "backup center" amendment. I would reiterate his view to you, and indicate that this restriction hampers the efficient delivery of legal services and should not be retained.

Again, section 1010(c), which imposes limitations on the use of funds received from non-Federal sources, should be removed. We favor the removal of many of the restrictions and limitations contained in the present act, but whether or not they are removed we would urge that funds received from private sources not be encumbered by these limitations.

There are several other matters which I would like to briefly mention to the committee: First of all, the committee should be aware of the ABA's position in support of the Government in the Sunshine Act. We do not mean to indicate any quarrel with the current operations of the Board of Directors of the Legal Services Corporation; however it does seem to be a fuzzy area and we would suggest that it be cleared up by making patently clear that the Corporation and its activities are subject to the Sunshine Act.

Second, we would ask that the charter continue the present requirement that the Corporation—and I would refer you to section 1007(g)—continue to undertake a comprehensive, independent study of alternative and supplemental methods of delivering legal services to eligible clients.

We have been following the Corporation's study with great interest thus far and intend to continue to monitor it closely. We think that this experimentation will not be a one-time affair but should be continued on an ongoing basis.

We hope that Congress will now remove what we characterize in our statement as "the shackles" that it placed on program attorneys in 1974, and permit them to exercise "fully" their independent professional judgment. We have been most pleased with the leadership of the Legal Services Corporation—as we believe you should be—both at the Board of Directors and staff levels. Dean Cramton and President Ehrlich and their colleagues have done a marvelous job with the Corporation. We think that they have demonstrated to the Congress the fact that integrity and competence, not artificial restrictions, should be the standards by which legal services attorneys are judged.

Mr. KASTENMEIER. Thank you very much, Mr. Pritchard, for your statement. And, without objection, the statement which you submitted for the record, together with its attachments in terms of the American Bar Association's policy position, will be received and made a part of the record.

I take it that since you've prepared your original statement you've had an opportunity to look at the bill recently introduced earlier this week—H.R. 3719.

I would like your comments about the bill in terms of areas where you might particularly disagree with it as a vehicle.

Mr. LLEWELYN PRITCHARD. Well I have not had an opportunity of fully studying the proposed legislation, Representative Kastenmeier, but I would be happy to do so and then make a further submission to the subcommittee on the subject.

My cursory review of the legislation indicates that most, if not all, of the provisions that I have discussed have been incorporated into your legislation. There are some matters that you have included in the legislation on which the American Bar Association has no position, but would generally—as an individual, I would share some of your suggestions.

I think it's time to make some changes; to remove some restrictions which were the result of a great deal of rhetoric on the floor of Congress, and which related to some past activities of legal services' attorneys which were felt detrimental.

I think that the operation of the Corporation during the past several years has demonstrated that those restrictions should be removed, and I support the legislation as it removes those restrictions about which I earlier spoke.

Mr. KASTENMEIER. Yes, and indeed we would appreciate your supplemental views on the legislation; and I appreciate that you indeed might not have had time to analyze it fully.

[The information referred to follows:]

AMERICAN BAR ASSOCIATION,
Chicago, Ill., March 2, 1977.

Reply to: 1800 M Street, N.W., Washington, D.C.

Hon. ROBERT KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: At your February 23, 1977 Subcommittee hearing, you requested that I submit comments on behalf of the American Bar

Association with respect to H.R. 3719, the "Legal Services Corporation Amendments Act of 1977."

Section 2. Client representation on Board

As we indicated in our testimony, the American Bar Association has adopted no policy resolution on this issue. As a personal matter, my own experience with lay representation on state and local bar committees and on the board of the Seattle public defender program leads me to the view that such representation is not only very workable but extremely useful.

Section 3. Government in the sunshine amendment

As stated in our written testimony, we favor such a position.

Section 4. Powers, duties and limitations

(*a*) The American Bar Association favors removal of the "Green amendment," as more fully stated in the testimony of F. William McCalpin, my predecessor as chairman of the standing committee on Legal Aid and Indigent Defendants, in his October 29, 1975 testimony before your subcommittee on H.R. 7005.

(*b*) and (*c*) The American Bar Association has no policy resolutions on these issues.

Section 5. Assistance criteria amendments

(*a*) As we stated in our testimony, we believe local programs should not be forced to set priorities in providing legal services on the basis of those who are least able to afford services, since all eligible clients are unable to afford such services. We also indicated our concern about the "prior determination" language in section 1007(a)(2)(B)(iv). This amendment satisfies our objections concerning limitations on access to legal services.

(*b*) We indicated in our testimony the position of the association that the range of services which an attorney must provide for his clients should be limited only by the code of professional responsibility. It would appear that your amendment satisfies our objection to the existing provision.

Section 6. Political activities of staff attorneys

The American Bar Association has no policy resolution on this subject.

Section 7. Limitations on use of funds

As we indicated in our oral testimony, the restriction on fee-generating cases 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 favor the removal from section 1007 of the restrictions in subsection (b)(4) on representing juveniles, in subsection (b)(6) on providing organizational assistance, and in subsections (b)(7), (8), adn (9) on handling cases involving specific legal issues.

Section 8. Governing bodies of recipients

Our Association has taken no position on this issue.

Section 9. Audits and recordkeeping

We have no comments on this section.

Section 10. Authorization extension

The Board of Governors of the American Bar Association, at its Midyear Meeting sessions in Seattle last month, unanimously supported the Corporation's request for appropriations of $17.1 million for Fiscal Year 1978. Obviously, the authorization level should therefore be at least as great.

H.R. 3719 calls for a 3-year extension of the authorization. While we have no Association position on this issue, a 3-year extension would appear to provide

a good balance between the need for periodic Congressional review and the Corporation's need to plan for future activity. We note, however, that a 3-year extension would result in a review of the Corporation's authorization in 1980, an election year. In light of our continuing concern arising out of the past political problems of the federal legal services program, this may not be a desirable result.

As indicated in our testimony, we support the removal of restrictions on the use of non-federal funds. Amended § 1010(c) would appear to accomplish that objective.

Section 11. Hearing examiner

We have no comment on this section.

We would again indicate our strong support for a continuing study of alternative and supplemental methods of delivering legal services to eligible clients, including the use of members of the private bar to provide these services.

I appreciate the opportunity to comment on the provisions of H.R. 3719 and I hope these comments are helpful to the Subcommittee in its drafting process. Please let us know if we can be of any further assistance.

Sincerely,

LLEWELYN G. PRITCHARD,
Chairman, Standing Committee on Legal Aid and Indigent Defendants.

Mr. KASTENMEIER. One area where the ABA is silent: We've made a suggestion that goes to the general notion of the principle of client involvement in the determination of Legal Services policy; and, of course, in that connection it is understood that you represent an entirely attorney-member organization.

Should the membership of the Legal Services Corporation's Board of Directors include clients of the Legal Services program?

Mr. LLEWELYN PRITCHARD. You are correct, Mr. Chairman, that the association, the American Bar Association, has not adopted a position on that subject, at the present time. However, I would like to share with the subcommittee the fact that the standing committee on legal aid of which I serve as chairman has generally considered the matter and I believe would look favorably upon the inclusion of client representation and lay persons on the Board of the Corporation.

The ABA, as the ABA, has no position on the subject. I would, however, point out to the subcommittee that throughout the United States, the organized bar has begun to include lay persons at many levels of its governance. In my own State, while I was on the board of governors of the bar, we arranged for two lay persons to be appointed to the disciplinary board of the bar association. Lay persons are now on fee panels as well.

There are several areas of the ABA itself where this has occurred, particularly in the area of legal education. The accreditation committee of the section of legal education now has public members. So I can tell the subcommittee about efforts that are going on within the American Bar Association to have more public and more lay involvement.

In addition, I served as an organizer for the Defender Association which is presently in operation in Seattle, and it includes client representatives, lay persons on the board, and has worked very effectively and serves to supply some much-needed input to the lawyer-members of the board in their deliberations.

I would urge that the majority of the members of the board continue to be attorneys, but those would be my observations about the subject in spite of the fact that the ABA has no position on it.

Mr. KASTENMEIER. I thank you for your views on it.

The gentleman from California, Mr. Danielson, is not here this morning but he expressed concern that—at least last week in the Legal

Services operational briefing—that part of the effect of the Corporation is to displace pro bono work by private attorneys.

In other words, has that sort of legal work for disadvantaged poor in our country in a sense been replaced by paid staff—legal work by the Legal Services Corporation's attorneys? Obviously, we all understand that pro bono work would not conceivably, even if the premise is in part true, have the reach that this Corporation has or might have. But I would, nontheless, invite your comments as to whether you think that that is taking place, in part or in whole?

Mr. LLEWELYN PRITCHARD. To be candid, Mr. Chairman, I don't think that is taking place. As you will see from some of the testimony you will hear later today, and as you heard yesterday, there have been certain goals adopted by the Corporation in terms of numbers of attorneys per poor persons: 2 for every 10,000. That is a goal that has not been recognized at the present time, and there are many areas of the country where the poor are unrepresented.

There is a wealth of opportunity for lawyers who are interested in pro bono programs to participate in that way; and a number of problems and areas which require pro bono participation. I do not view the advent of the Legal Services Corp. on the scene as discouraging pro bono participation, but I view it rather as an encouraging factor legal services lawyers have helped develop a degree of expertise, a body of law which has been of assistance to the whole movement, and a dedication in the bar for work of this character which I would submit did not exist in a great degree a decade ago.

Mr. KASTENMEIER. One other question: Do I understand that you have reviewed and agree fully with the Corporation's application for funding for the next 2 or 3 fiscal years in terms of the programs and the reasons for certain levels of funding?

Mr. LLEWELYN PRITCHARD. Yes. I testified before the board of governors of our association 2 weeks ago in Seattle and presented the Corporation's 1978 budget request to the board; and the board did endorse, in principle, the request and has supported that endorsement with communications to the executive branch of the Government, and I am now communicating that support to your subcommittee.

We do support the Corporation's budget request. We feel it is reasonable and necessary if equal access to the justice system is going to be afforded to the citizens who require it.

Mr. KASTENMEIER. You are aware that there are some organizations affected by the Legal Services Corporation's directives who are endorsing $265 million in the first year as a desirable target in the first year, but not in the second. Now, in order to achieve a minimum in terms of what was termed "minimal access," what is the position of the ABA that this should be deferred to the second year?

Mr. LLEWELYN PRITCHARD. The position of the American Bar Association on that subject is in fact that the viewpoint adopted by the Corporation is the one that should be followed.

Mr. KASTENMEIER. I thank you very much for your comments, and I'd like now to yield to the gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman, and thank you Mr. Pritchard and Congressman Pritchard.

When I find myself so much in agreement with the American Bar Association, I begin to wonder whether I am a part of the problem. I commend you for the good things that you have said; but I wonder about some of the other things that you have not addressed.

In the bill filed by Congressman Kastenmeier, H.R. 3719, there is retained this particular language: "No funds made available to the Corporation may be used to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, or demonstrations; as distinguished from the dissemination of information about such policies or activities, except that this paragraph shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal service to eligible clients."

However, in a section of the act that will be removed by Mr. Kastenmeier's bill, it states that no funds may be used to organize, and so forth, "except for the provision of legal assistance to eligible clients in accordance with guidelines promulgated by the Corporation."

Now it has been contended, in testimony that we've received, that these restrictions effectively deny the poor their first amendment right to associate. As a result of the retention of one of these limitations in the new bill, it renders nugatory the right to provide adequate legal assistance to eligible clients.

Mr. BUTLER. If the gentleman will yield, what page of the new bill are you referring to?

Mr. DRINAN. Page 7, No. 6, line 11.

Mr. BUTLER. No. 6, line 11? Thank you, sir.

Mr. DRINAN. Mr. Pritchard, how does the ABA reconcile this particular apparent contradiction?

Mr. LLEWELYN PRITCHARD. Well, Congressman Drinan, we do feel that section 1007(b)(6), which relates to organizing by legal services attorneys, should be removed from the act.

It is our feeling that the phrase "legal assistance" must not be narrowly construed. And organizing poor people, within the provisions of the Code of Professional Responsibility, we would view as a legitimate purpose, just as organizing shareholders who might consult a private attorney about a stockholder's derivative action——

Mr. DRINAN. Did you say that in your statement?

Mr. LLEWELYN PRITCHARD. Well——

Mr. DRINAN. No. I'm happy——

Mr. KASTENMEIER. Will the gentleman yield? I think there's some confusion here. Yes, the witness did say that, but the witness is referring to another subsection (6). It is the subsection (6) in the act.

Mr. LLEWELYN PRITCHARD. That's right.

Mr. KASTENMEIER. What the gentleman from Massachusetts refers to is H.R. 3719, a new subsection (6) under (b)(6), which I think is——

Mr. DRINAN. Mr. Chairman, if I may? Mr. Pritchard, you don't say that in your statement, do you?

Mr. LLEWELYN PRITCHARD. Congressman Drinan, I believe I indicated earlier that, in the written submission that we made to the committee——

Mr. DRINAN. Yes, yes.

Mr. LLEWELLYN PRITCHARD [continuing]. There was inadvertently omitted from the section containing our views on areas of the act restricting full service, our views on section 1007(b)(6) relating to organizing activity.

Mr. DRINAN. All right.

Mr. LLEWELYN PRITCHARD. And we pointed that out to counsel for the committee and indicated that the record should show that we did favor removal or repeal of this section because of our concerns, as I just articulated them, that the phrase "legal assistance" should be broadly construed, and the organizing of poor people, within the Code and the Code limitations, we would view as a legitimate purpose, just as we view shareholder derivative actions.

Mr. KASTENMEIER. Would the gentleman yield? Because there is confusion. The question of the gentleman from Massachusetts goes to section 1007(b)(5) which is in the act, and which has not been deleted from the act by the bill which I have introduced. However, H.R. 3719 does delete section 1007(b)(6), the organizing restriction, which is in the present act. The question of the gentleman from Massachusetts does not go to section 1007(b)(6) of the present act, in my opinion.

Mr. DRINAN. Well, Mr. Chairman, it did. It did. I may not have said it, but it did.

Mr. KASTENMEIER. Well, the language you read is from section 1007(b)(5) of the present act.

Mr. DRINAN. I know, Mr. Chairman, but the question that I asked was: Is not this inclusion in your bill inconsistent with the provision of (6)?

Now, he recommends—the ABA recommends—the (6) be dropped. All right, Mr. Pritchard, what do you want to do about existing (5)?

Mr. LLEWELYN PRITCHARD. Well, I would think that existing (5), as I read it, relating to particular political views—if you consider them in a partisan sense—should remain in the act.

Mr. BUTLER. Would you yield a moment?

Mr. DRINAN. Yes.

Mr. BUTLER. Now let's get back to the question of (6). Is it somewhere in your statement today, did you tell us that you wanted to delete (b)(6), to which——

Mr. DRINAN. If the gentleman would yield: No, I asked him about it. He added that the ABA wants to drop the existing (6). Am I right, Mr. Pritchard?

Mr. LLEWELYN PRITCHARD. That is correct.

It was inadvertently omitted from our presentation.

Mr. DRINAN. Any other good things inadvertently omitted?

[Laughter.]

Mr. KASTENMEIER. For the record, if the gentleman would yield, you did mention it in your opening statement, but it is not in the prepared statement.

Mr. LLEWELYN PRITCHARD. Yes, I did.

Mr. KASTENMEIER. So that you made it clear, at that point, that you favored the deletion of (b)(6).

Mr. DRINAN. Mr. Pritchard, I agree that part of No. (5) in the existing law should be retained, obviously, so that these lawyers cannot encourage particular political activities. However, that's merged with "particular public policies," and it goes on to say that legal services

lawyers may not encourage or support or advocate "particular public policies."

Well, that's entirely different from "political activities." No. (5) here, it seems to me at best, has to be clarified and rewritten. But right now, it seems to me, it's a sweeping ban on any lawyer advocating "particular public policies," which I think is wrong.

Mr. LLEWELYN PRITCHARD. Well, Congressman Drinan, if there is any lack of clarity in the section, I think it should be looked at by the subcommittee.

Our position on the legislation, and particularly as it relates to "organizing," is the position that I articulated in our opening statement. And we would feel that any restriction which was not a proper code restriction should be removed from the act.

Mr. DRINAN. All right, thank you.

Now, on another point in the bill introduced by Mr. Kastenmeier, it retains the section that says: "No funds made available by the Corporation may be used to provide legal assistance with respect to any fee-generating case," and so on.

Now it has been suggested by a critic that it be changed to "any contingency-fee case"; that if a poor client can in fact get a lawyer on a contingency basis, then Federal lawyers financed by the Corporation should not handle the matter.

Is that what originally was meant in this particular section? I don't know what it means, really, because it goes and authorizes the Corporation to promulgate regulations.

How would you feel about altering that language to read: "No funds may be made to provide legal assistance with respect to any contingency-fee case."

Mr. LLEWELYN PRITCHARD. Well, Congressman Drinan, the legal services program, as we understand it, is designed to serve those who can't afford an attorney. And it's a question of priority of resources, and availability of counsel for hire.

This provision was intended to insure that Legal Services resources would not be used where there were alternate means. I understand that there have been certain cases—particularly, I believe, under social security, under SSI——

Mr. DRINAN. SSI, that's right.

Mr. LLEWELYN PRITCHARD [continuing]. Where matters are technically "fee-generated," but due to the statutory fee limitations, or the small amount in controversy and the fact that the attorneys' fees must come out of the award, private counsel in many jurisdictions is simply not available.

Now, in such cases, I believe it would be undesirable to deny eligible clients recourses to Legal Services attorneys. If that is the case—and I believe it is in some jurisdictions, particularly as it pertains to SSI—then I think the language should be changed, in some way. I'm not sure that the "contingent case" language is the best language. But I think there's a problem there, and while keeping with the general position of the association that if it is fee-generating it's a poor allocation of resources to give it to Legal Services attorneys, I think there should be a change.

Mr. DRINAN. Mr. Pritchard, you're doing very well; you're batting 1,000.

[Laughter.]

Mr. DRINAN. Now I'll throw an easy one up: Give us some other restrictions in the bill that perhaps could be removed.

Mr. LLEWELYN PRITCHARD. Well, other than the position that I articulated earlier and subject to our more careful review of the legislation—I received it yesterday and I haven't had an opportunity to make an analysis of it—we think that it's a good piece of legislation, which reflects in most ways the position of the American Bar Association, and we would like to make a further submission on other areas on which we would have comments.

Mr. DRINAN. All right. I do hope that you will send in any provisions or statements that were "inadvertently" omitted.

One last thing: In the Kastenmeier bill a 10-percent funding limitation on the so-called backup centers is imposed. That was a happenstance that occurred last Congress in this particular subcommittee to make the backup center bill fly. Do you have any thoughts on that?

Mr. LLEWELYN PRITCHARD. We feel that the whole issue of backup centers should be reexamined by the committee, in terms of the——

Mr. DRINAN. Well, it was, and the House eliminated the restrictions on them.

Mr. LLEWELYN PRITCHARD. Yes, I understand that. We would hope that now your colleagues on the other side of the Congress would follow that position, and take out the restrictions on backup centers and repeal, effectively, the Green amendment. We think that Mrs. Green, if she were in Congress today would, as a matter of fact, support that—having seen the operations of the Corporation over the past year and a half, perhaps she would have had a conversion——

Mr. DRINAN. Don't go too far, now——

[Laughter.]

Mr. DRINAN [continuing]. You're doing very well.

Mr. LLEWELYN PRITCHARD [continuing]. And been able to comprehend the need for the removal of any restrictions in terms of efficient delivery of legal services.

Mr. DRINAN. Mr. Pritchard, I think we ought to quit while we're ahead.

Thank you, and thank you Congressman Pritchard.

Mr. KASTENMEIER. I'd like to now yield to the gentleman from Virginia, Mr. Butler.

Mr. BUTLER. Thank you, Mr. Chairman.

Mr. Pritchard, I appreciate very much your testifying here. I understand that you bear a very distinguished name here, but that you're not related to the Congressman. It seems to me that you've got the best of both worlds there, and I do want to congratulate you.

[Laughter.]

Mr. LLEWELYN PRITCHARD. I think we share a common Welsh ancestor.

Mr. BUTLER. Well, I would boast of it in certain quarters, but it may turn out to be a problem in others.

When was the last time you talked to Mrs. Green?

[Laughter.]

Mr. LLEWELYN PRITCHARD. I've not had that pleasure.

Mr. DRINAN. Mr. Chairman, I object.

[Laughter.]

Mr. BUTLER. Well, I think the gentleman's testimony should be restricted on the grounds that he's not a psychologist or a psychoanalyst——

[Laughter.]

Mr. BUTLER [continuing]. And therefore what you said about Mrs. Green is pure speculation. And, if you have not discussed it with her, then I do think your suppositions may be a little bit advanced.

Mr. LLEWELYN PRITCHARD. They perhaps might be, Congressman.

Mr. BUTLER. Indeed, much of what you say here is a little bit advanced. Are you speaking for a committee or the whole American Bar Association?

Mr. LLEWELYN PRITCHARD. Yes, it is——

Mr. BUTLER. Well how does this work? Because I "think" I'm a member of the American Bar Association, and I'm not sure we're in total agreement.

How does this work, for the record?

Mr. LLEWELYN PRITCHARD. We have submitted with our testimony today, Congressman, copies of resolutions which have been passed by the association since 1965 discussing the Legal Services Corporation, the need for the corporation, our reactions to what was termed the "Murphy amendment," our continuing call for independent professional judgment by attorneys in Legal Services operations.

I have been asked here today to testify in response to an invitation from the subcommittee, directed to the American Bar Association, by the president of the association, Mr. Justin Stanley, who was unable to be here. The presidents of the association have testified before Congress in support of not only the Corporation, but its independence from political pressures and the independence of its attorneys, for more than a decade. And I am here today to reiterate that support in those two areas.

Mr. BUTLER. Well essentially, when we depart from the resolutions of the association then, we are relying on your individual judgment which is very valuable and I'm not critical at all of that. I appreciate your judgment. But I want to be sure that the position of the A.B.A. is clear.

Mr. LLEWELYN PRITCHARD. Congressman Butler, we have clearly stated in our written testimony that neither the house of delegates nor the board of governors has made a section-by-section analysis of the current act.

However, we have continually—and you will see the long string of resolutions appended to our testimony——

Mr. BUTLER. Yes, sir.

Mr. LLEWELYN PRITCHARD [continuing]. We have continually pointed out the need for independence, both from political considerations of the Corporation, and the independence of the attorneys who practice as lawyers for the poor.

Those resolutions, taken with the code of professional responsibility—the ethical standards made applicable to lawyers in this country—give us, we believe, a clear framework under which to analyze the act.

And it is on the basis of those resolutions and the code of professional responsibility that I have made the submissions here today.

Where I have departed from that general feeling, and specifically in response to the inclusion of lay persons and client personnel on the Board of the Corporation, I made clear in pointing out to the chairman that the association had no position on that subject and that I was merely speaking as an individual.

Mr. BUTLER. Thank you. I thought that was clear to me.

Now, while we're on that point, tell me: Does your Defenders' Association have lay representatives on the Board? Is that correct?

Mr. LLEWELYN PRITCHARD. That is correct.

Mr. BUTLER. Now you didn't have "client" representation on the Board, did you?

Mr. LLEWELYN PRITCHARD. I do not believe that any of our clients were on the Board. They were persons selected from the poverty community in the city of Seattle, by means of an elective process; and, quite candidly Congressman, they brought a different perspective to the deliberations of that board than would have existed if it had just been composed of a majority of lawyers.

In addition, the legal services organization in Seattle, which is a corporation founded by the bar association of our city, also includes lay persons who are from, in that instance, the client community.

Mr. BUTLER. I think you're exactly right; that certainly if we're going to undertake to serve a certain segment of the community, we've got to give them an opportunity to participate in the process or else we find ourselves rendering legal services they don't really need, and ignoring the areas which need service. And I'm sympathetic to that.

But I draw a distinction in my own mind, with reference to these, as "lay representation" as opposed to "client representation." And that's why I want to find out what experiences you've had with the so-called "impoverished area" representation, or for any board.

Because my experiences with it, in CDC's had not been very successful, simply because the people who are having the problems, economic and financial problems, are not really aware of the possible solutions, they're not in a position to address themselves to the problems which must necessarily come before the Board.

Mr. LLEWELYN PRITCHARD. Yes, well——

Mr. BUTLER. If you've had a different experience, I want to know.

Mr. LLEWELYN PRITCHARD. My experience, quite candidly Congressman, has been different.

On any board on which I serve, different members of the board bring different areas of expertise, different skills, to the deliberations. And the amalgamation of those skills and the discussion which occurs in a board meeting, I think is very helpful at reaching a legitimate consensus. I am convinced in my own personal experience in serving with lay persons and/or clients of the legal services community, that I have been very impressed with the quality of their participation and the quality of their product, in terms of the end result: the delivery of legal services to the poor.

Mr. KASTENMEIER. Will the gentleman from Virginia yield? The witness is aware that the Legal Services Corporation, which has been so commended here, requires by regulation that each of the 315 local projects throughout the country be comprised of at least one-third client-representation, presumably even in Roanoke?

Mr. BUTLER. Particularly in Roanoke, yes.

Mr. LLEWELYN PRITCHARD. I might also observe, Congressman Butler—and I think this goes to part of what you're saying—that it's not always terribly easy, or efficient, to have client representation, or lay representation on the board. Sometimes some of us, as lawyers, tend to sort of roll along and speak at our own sort-of "language," and not take the time, with some human issues, that need articulation, every once in awhile.

And, sometimes, meetings get a little bit stormy as we're called to task for some of our assumptions, and presumptions, and that's healthy, I think.

Mr. BUTLER. Well are you dissatisfied with composition, the present composition, of the Legal Services Corporation Board?

Mr. LLEWELYN PRITCHARD. I do not mean to be critical, at all, with regard to the members of the current board. I think they're all——

Mr. BUTLER. Well I'm not asking you to criticize them as individuals. Do you think members of the Board have been receptive to the problems they ought to be addressing?

Mr. LLEWELYN PRITCHARD. I think that they have done a marvelous job in organizing and administering the Corporation to date. I think it would add to their deliberations and to the quality of their product, over the coming years, if clients and/or lay persons were included in their deliberations.

All of the current members of the Board are lawyers.

Mr. BUTLER. Well, I'm sorry; I was blind to that fact, and I recognize the shortcomings of that since I used to work for a living myself.

[Laughter.]

Mr. BUTLER. Mr. Chairman, I have many more questions, but I feel like I've used up my time.

Mr. KASTENMEIER. Well, you have 5 minutes——

Mr. BUTLER. I'm trying to set an example for some other members of the subcommittee.

[Laughter.]

Mr. KASTENMEIER. The gentleman may pursue further questions, if he wishes.

Mr. BUTLER. I think we'll go to the other witnesses, thank you.

Mr. KASTENMEIER. I will forego any other questions I might have, as well, because we have a long list of witnesses before us.

But, on behalf of the subcommittee, I wish to commend you for your statement and your assistance to us this morning, Mr. Pritchard. We will be undoubtedly in further touch with you on this and other issues, and we invite your further submissions on this question.

Mr. LLEWELYN PRITCHARD. Thank you. I appreciate the opportunity.

Mr. KASTENMEIER. Next the Chair would like to call a representative of the National Legal Aid and Defender Association, its Executive Director, Mr. Frank Jones. You are most welcome.

Mr. JONES. Could you identify your colleague? We have your statement.

Mr. JONES. Yes, you do, Mr. Chairman.

Mr. KASTENMEIER. You may proceed from the statement, or if you prefer, you may submit it for the record and proceed in any other fashion.

[The prepared statement of Mr. Jones follows:]

STATEMENT BY FRANK N. JONES, EXECUTIVE DIRECTOR OF THE NATIONAL LEGAL AID AND 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 at least three 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 pressed from 1971 through 1974 for the enactment of legislation establishing a politically independent corporation. Labor unions, national religious organizations, and other national civic groups joined in the effort. The American Bar Association, and state and local bar associations figured prominently in the coalition. In fact, the presidents of over 80 local bar associations and 25 state bar associations sent telegrams to the Congress endorsing the concept of an independent and professional legal services corporation. Dozens of law school deans, the governors of over half the states, and 135 mayors sent similar telegrams. Despite the concern of NLADA, members of the bar, governors, mayors, and law school deans 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.

Despite these difficulties with the Legal Services Corporation Act—difficulties that Congress now has an opportunity to remedy, as we will demonstrate—the national program as administered by the Legal Services Corporation continues to receive the support of local, state, and national bar organizations. In preparation for fiscal year 1977, the new Corporation staff prepared its first complete budget request to Congress. The resulting appropriation permitted, for the first time since the imposition of a freeze on legal services funding in 1971, the creation of new programs to serve areas in which previously no legal services programs had existed. Millions of poor Americans began to see a hope of access to effective legal assistance. In response to this new funding, scores of local bar

associations and their members, supportive of the provision of legal assistance to the poor, joined efforts to seek funding for the creation of new legal services programs. The private bar has similarly applied for funding under the Corporation's study of alternative and supplemental delivery systems mandated by section 1007g of the act.

Thus a year and a half since the inception of the Legal Services Corporation, the national legal services program continues to receive the warm endorsement of the private bar. The support of the clients themselves, and the commitment of the attorneys in the programs to the effective provision of legal assistance is evidenced by the other witnesses before you today. 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 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. It is these matters that we ask the Subcommittee to consider in the course of the fulfillment of oversight functions.

I. THE AMENDMENT OF THE ACT

Early drafts of a legal services corporation bill required the inclusion of clients on the Board of Directors in which is vested the authority to set policy for the Corporation. To the ultimate detriment of the program, this requirement does not appear in the act. While nothing in the current section 1004(a) regarding composition of the Corporation Board of Directors prevents the appointment by the President of clients to the Board, President Ford in fact failed to nominate a single client to the Board. Believing that the decisions of the Corporation Board should be informed by the perspective of clients serving as directors, the Senate Labor and Public Welfare Committee resolved in July, 1975, in the course of reluctantly confirming the initial eleven Board members (all attorneys) in order to give birth to the Corporation, that "future nominations should take account of the need for inclusion on the Board of . . . members of the client community." When in December, 1975, President Ford nominated yet another attorney to fill a vacancy, the only course available to the Senate was to refuse to confirm the nominee, leaving the Board at less than full strength for over a year.

We conclude that section 1004(a) must be amended to require that at least one-third of the members of the Legal Services Corporation Board of Directors must be, when selected, eligible clients who are representatives of associations, groups, or organizations of eligible clients. We would point out that not only should the clients appointed to the Board be accountable to groups and organizations of eligible clients, but that they should themselves be financially eligible for legal assistance. (Note that the act defines "eligible client" as "any person financially unable to afford legal assistance" without regard to whether the person is then receiving legal assistance from a program). NLADA strongly believes that poor people have too long had non-poor persons designated to speak for them, when in fact poor people are perfectly capable of expressing their interests themselvs. One-third of the Board of a national program designed to serve the poor should be composed of poor persons who are representatives of groups of poor people.

In keeping with this principle, section 1007(c) of the act, concerning the governing bodies of local legal services programs, should be similarly amended to require one-third client composition. While the Corporation's current regulation implementing 1007(c) contains such a provision, this amendment is essential so that future staffs and Boards of the LSC understand that it is the intent of Congress to insure the effective participation of poor people in the determination of the policies of local programs.

Were there already clients on the national Board, we feel certain that the Board would not have established a practice of resorting to executive sessions at virtually every Board meeting since the July, 1975 establishment of the LSC. Our clients have insisted that the local boards, councils, and authorities, whose decisions so dramatically affect their lives, should hold their discussions in the open. They expect no less of the Board of Directors of the Legal Services Corporation. The act should be amended to add a provision clarifying the intent of Congress to apply the provision of 5 U.S.C. 522b, the Government in the Sunshine Act, to the LSC. Many members of Congress understand the Government in

the Sunshine Act to apply to the LSC, but the LSC takes the position that it is not so covered by the definition of "agency" in the act. This clarification is urgently needed.

Section 1011(2) of the act concerning the due process rights to be afforded to programs whose funding the Corporation seeks to terminate, needs a clarifying amendment, especially in light of the failure of the all-attorney Board to adequately consider the client viewpoint. A basic premise in the national legal services program, as witnessed by the LSC's regulations on local governing bodies and priorities, has always been that local programs must be accountable to local client communities, and more particularly, that the priorities set by local programs must be responsive to local client needs. At the same time, the LSC, in the avowed interest of creating "more effective and efficient" programs, has sought to merge local programs into larger regional or statewide programs. The difficult questions are: Who is to determine what is most "effective" and according to what criteria; what steps are to be taken to secure the views of the local client communities to be affected by the mergers; and, what happens if local client communities resist mergers?

Once a corporation official has determined that a program's application for refunding should be denied, for whatever reason including an intended merger, a full adversial hearing is the only setting in which the articulation and protection of the interests of all concerned, including the client community, 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 section 1011(2) of the act, requiring, in light of previous efforts by OEO administrators to defund programs, requiring a "timely, full and fair hearing" before the LSC can terminate or suspend financial assistance or deny refunding."

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 or six hearings that have been held have occurred prior to the final decision by the President of the LSC. What is more, the hearings have been presided over by LSC employees who are peers of the LSC employees who had made the original defunding decision, and the findings of such hearing officers are then reviewed by the President of the LSC to whom both the person making the initial defunding determination and the hearing officer are accountable for the implementation of LSC policy.

It is our view that in this context the phrase "timely, full and fair hearing" is given meaning only if an independent hearing officer not employed by the LSC presides. Further, such hearing should be held subsequent to any final determination by the LSC, including its President, to terminate or suspend financial assistance or deny refunding. In many federal agencies such hearings are presided over by hearing officers who are employees of the agencies, but such agencies are sufficiently large to sustain a body of employees who serve exclusively as hearing officers and are never involved in the setting or implementations of agency policy. The LSC's size, and the infrequency of this type of hearing, is such that the maintenance of a division of hearing officers whose duties are not inconsistent with the duties of independent hearing officers is highly unrealistic.

In the tradeoffs that were made to insure survival of legal assistance for the poor in the politically troubling years of 1973–74, many restrictions on the scope of legal representation that poor people can secure from legal services programs were written into the Act. These restrictions pose an illegitimate barrier to the vindication of the rights of Americans unable to afford legal assistance from private attorneys who can provide legal assistance with respect to these matters, and should be removed. Sections 1007(b)(7), prohibiting legal services attorneys from providing legal assistance in school desegregation cases; 1007(b)(8) proscribing legal assistance in most abortion cases; 1007(b)(4), prohibiting the representation of indigent juveniles in many circumstances; 1007(b)(9), proscribing legal assistance in selective service cases; and 1010(c) proscribing even the use of nonpublic funds which a program might have secured to provide legal assistance to poor people in these areas—all of these restrictions yield the consequence that despite the commitment evinced in the enactment of the LSC Act, poor people nonetheless will not be afforded equal justice.

The desegregation and abortion provisions create a legislative classification in which the sole identifying characteristic of the class excluded from these government services is a desire to enforce a Constitutional right. The only ap-

parent purpose of the desegregation provision is to inhibit the desegregation of schools or to discriminate against those wishing to exercise their Fourteenth Amendment rights by withholding government aid. The sole apparent purpose of the abortion provision is to inhibit the exercise of the Constitutional right recognized by the Supreme Court in its 1972 decision in *Roe* v. *Wade*, or more precisely, to discriminate against those who seek to exercise such right.

Section 1007(b)(4) denies legal assistance to juveniles in situations in which parental consent is unobtainable either because the juvenile has been separated from the parents (emancipated child or runaway) or because the parents refuse consent despite the wishes of the child. In *Application of Gault*, (1967), the Supreme Court recognized that juveniles are entitled to the guarantees of due process in delinquency, and other noncriminal proceedings. This legislation offers such services to those over 18 but denies them to persons under 18, absent a request of parents, guardians, or a court of competent jurisdiction. However, both classes of persons are equally entitled to various Constitutional rights, including due process, and both classes are equally in need of the assistance of an attorney in assuring that their Constitutional rights are respected; age is not relevant to either rights or needs. Further, the provision for parental consent conditions the Constitutional rights of a juvenile on the consent of another. The exceptions listed in section 1007(b)(4) do not cover all possible situations in which the interests of parents and child may diverge.

Section 1007(b)(9) proscribing the provision of legal assistance in selective service cases countervails the purposes of the legal services program in that dishonorable discharges and charges of desertion act as persistent bars to the employment of poor persons so affected. The provision further inhibits challenges to these classifications in cases involving, for example, veterans benefits. The prohibition should be removed.

In order to maximize the funding available for legal assistance to the poor, there should be no restrictions on the use to which programs can put non-Corporation funds. Yet part of section 1010c prohibits the use of non-public funds for the provision of legal representation in matters in which the Act proscribes the use of LSC funds. This prohibition should be removed, though the clause in section 1010(c) requiring separate accounting on non-LSC funds is valid.

The prohibition against fee-generating cases in section 1007(b)(1) raises troubling questions not because we object to this assurance to the private bar; indeed we do not. The problem lies in the fact that the Corporation, in interpreting this provision in its regulations, has not considered itself authorized to except from the definition of "fee-generating" a range of cases involving statutory rights and benefits particularly affecting our clients. This category includes Truth-in-Lending Act cases, and Supplemental Security Income cases. In SSI cases, the attorneys fees are a percentage of the retroactive statutory benefits to which the court has found the poor person is entitled. Because delay in pursuing these cases serves to maximize the recovery, and hence the attorneys fees, the potential for an intolerable conflict of interest exists when a private attorney represents a poor person with this type of grievance. It would be helpful if the subcommittee and full committee signalled that these types of cases, as distinct from personal injury and workmen's compensation cases, for example, are not intended to fall under the rubric of "fee-generating" cases.

The National Legal Aid and Defender Association endeavors to promote legal assistance for the poor in criminal as well as civil cases. Nevertheless, it is the view of NLADA that the prohibition in section 1007(b)(1) against legal assistance in criminal proceedings is appropriate. While availability of federal monies for the legal representation of indigent defendants in state court proceedings would ultimately be beneficial, any such eventuality must be carefully planned so that incentives are not created for the states and localities to shirk their responsibilities in this area. Even with such planning, it is not at all clear to us that the representation of poor people in civil and criminal matters should occur under one roof.

There are further restrictions in the Act which create severe difficulties for legal services programs attempting to fulfill the mandate to provide effective legal assistance to poor people. Section 1007(a)(2)(B)(iv) and (C) force programs to try to weed out certain types of poor persons from those eligible for legal assistance. Section 1007(a)(2)(B)(iv) disqualifies poor persons whose lack of income an unemployment compensation board has determined to have resulted from refusal or unwillingness without good cause to seek or accept

employment. This provision ties eligibility for legal assistance into the acknowledged abuses of the employment compensation system, including ex parte proceedings in which only the employer is present. Nor is there a time limit set on these prior determinations, beyond which they are to be considered stale; consequently a poor person who was found, say, three years earlier to have been unwilling to seek employment, though he or she had been seeking work incessantly for the intervening three years would still be disqualified from receiving legal assistance. The only issue must be whether a poor person has a legal problem and the resources to deal with it; retrospective moral judgements are inappropriate to that inquiry.

The language in section 1007(a)(2)(C) requiring the establishment of "priorities to insure that persons least able to afford legal assistance are given preference in the furnishing of such assistance; in the current context of inadequate funding for legal services, works immense hardships on programs which feel compelled to make meaningless distinctions among persons all of whom are poor. Furthermore, programs must have the flexibility to be responsive to the needs of local poor people. The "least able to afford" language is amenable to an interpretation that precludes the provision of legal assistance to persons having an annual income of $3,500 who are faced with eviction orders before all requests for legal representation in divorce matters are met on behalf of persons having annual incomes of $2,500. The eligibility section should make clear that local programs are to set priorities for the provision of legal assistance and the Act as a whole should make clear that poor people are the intended beneficiaries of the national program. Nonetheless, the phrase "least able to afford" poses difficulties that demand its removal from the act.

Section 1007(a)(5), concerning legislative and administrative representation, should be clarified. The section permits such representation in two situations: (A) where necessary to the provision of legal assistance to a client or (B) at the request of a governmental agency, a legislative body, a committee, or a member thereof. Four small changes are essential. First, the language in section 1007(a)(5)(A) prohibiting the solicitation of clients for the purpose of providing legislative and administrative representation should be deleted. ABA Ethical Opinions, most particularly Ethical Opinion 334, have recognized that because poor people tend to be ignorant of their rights and peculiarly victimized because of that ignorance, legal services programs have an obligation to inform poor people of their rights and remedies. The language in (A) regarding solicitation inhibits this appropriate activity. The language in (A) making reference to attorneys providing legislative and administrative representation should be amended to read "employees of recipients" to acknowledge the effective and economical use to which programs have put non-attorney personnel in these matters. Subsection (B) should be amended to make clear that programs can respond to requests for public comment and continue to respond to the full range of requests for assistance.

Section 1006f, which contemplates the awarding of costs and fees to a successful defendant in a case brought by a legal services program upon a finding that the action was commenced "for the sole purpose of harassment" or in a malicious abuse of legal process. The supporters of legal services successfully attached the requirement of this finding to § 1006f, but legal services programs have found that that requirement has not worked to moderate the intent of § 1006f. Instead, the provision has been read by opposing parties as an invitation to harass legal services programs by filing time-consuming motions for costs and fees.

Section 1007(a)(8) should also be reassessed. This section, requiring that legal services programs solicit the recommendations of the local bar and give preference in attorney hiring to qualified local residents, while not requiring the solicitation of input from the client community and minority bar associations, has proved to be yet another source of harassment. While it is the programs themselves that set the qualifications for attorney hiring, taking into consideration factors including prior experience in the provision of legal assistance to the poor, this provision offers implicit incentive for persons unsupportive of legal assistance for the poor to challenge the attorney hiring decisions of local programs.

Section 1007(a)(6) should be amended to remove the prohibition on political activities by staff attorneys in their off-duty hours. There are sound reasons for prohibiting legal services attorneys from engaging in political activity

while providing legal assistance to clients. But there are no legitimate reasons for imposing any restrictions on what legal services attorneys do in their private lives. As a matter of principle, and out of a reasonable concern about the recruitment and retention of capable attorneys committed to serving the poor, this restriction must be deleted.

With respect to many of the problemsome provisions of the Act outlined above, the Corporation has issued regulations interpreting statutory ambiguity in a manner favorable to the provision of legal assistance to the poor in a manner consistent with the professional responsibilities of attorneys to their clients. It would be extremely helpful to the thousands of legal services attorneys in the field were the imprimatur of the Congress to be put on those provisions in clarifying amendments. But with respect to many more provisions of the Act, the prohibitions on the scope of legal representation to be provided poor people are stark. Of questionable constitutionality and violative of the spirit of the Code of Professional Responsibility, these restrictions must be removed.

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 attorneys 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 $264.5 million, the figure we support for the fiscal year 1976 authorization level. An appropriation of $264.5 million will permit the LSC to create new programs at the minimally acceptable level of $7 per poor person, but will 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. A good example is the Georgia Legal Services program, the legal services program responsible for serving all of the people in Georgia outside Atlanta who are unable to afford legal assistance. In fiscal year 1977, GLSP has funding of $1,581,251 to serve 759,785 people, or $2.08 per poor person. Even under the LSC's minimal projection of a cost of $35,000 per attorney position, this is enough money to employ only 45 attorneys, who can hardly serve the legal needs of over three-quarters of a million poor people spread out across the state of Georgia.

The figure of $264.5 million includes the following allocations:

(a) $115.6 million to complete the task of providing legal assistance at the level of $7 per poor person for persons previously unserved or inadequately covered;

(b) $108.3 million for previously existing field programs, including a 5% increase to affect the inflationary impact on the $35,000 annual attorney position cost, originally set in 1975–76;

(c) $12.1 million for existing and new programs serving Native Americans and migrants, and programs providing specialized legal assistance;

(d) $6.5 million for programs designed to facilitate the involvement of clients in legal services and recruit new legal services attorneys, with special emphasis on providing opportunities for minority attorneys in legal services;
(e) $2.3 million for field operations—evaluations, monitoring, and management assistance;
(f) $8.2 million for providing training, technical assistance and clearinghouse functions, all of which must be expanded to meet the needs of new and expanding programs;
(g) $6.2 million for demonstration projects, and reporting systems;
(h) $8 million for research, program development, and experimentation; and
(i) $4.4 million for management and administration.

For fiscal year 1979, the National Legal Aid and Defender Association supports an authorization level for the LSC of $375 million. This figure will enable the LSC to reassess the components of $35,000 per attorney position figure and adjust them in light of more realistic costs. It will also permit, for the first time, a consideration of cost variations in different parts of the United States. All of this data will be secured in the course of a cost study stat the LSC has undertaken this year. A $375 million authorization level would further permit the LSC to join local programs and clients in asking the difficult questions concerning the essential components of the delivery of quality legal assistance. All of the questions concerning internal staff training and development, essential local program resources, community education, outreach to serve subgroups of the poor that hitherto have not been served in proportion to their numbers in the poor population, etc. have been largely deferred in the interest of bringing previously unserved poor persons at least within "striking distance" of a legal services program. An authorization level of $375 million would permit the LSC to persist in its efforts to fund legal services programs at levels commensurate with the poor populations they are intended to serve and to begin to address fundamental issues concerning the provision of legal assistance to the poor. In the interest of furthering this inquiry so as not to prejudge its outcome, an open-ended authorization for fiscal year 1980 is supported by NLADA.

TESTIMONY OF FRANK NATHAN JONES, EXECUTIVE DIRECTOR, NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, ACCOMPANIED BY BARI SCHWARTZ, EXECUTIVE DIRECTOR, ACTION FOR LEGAL RIGHTS

Mr. JONES. Thank you very much, Mr. Chairman. Good morning, members of the subcommittee.

As you know, my name is Frank Nathan Jones, and I am the executive director of the National Legal Aid & Defender Association—also known as NLADA.

NLADA is the oldest coordinating and planning agency for legal assistance and defender services in the United States, and it's the only such organization which dedicates all its resources to providing quality legal services for the indigent in both civil and criminal cases.

We're an affiliate of the American Bar Association and we maintain close cooperation with all the organized bar, judiciary, and other organizations interested in legal assistance matters.

I might point out here that Mr. Santini, a member of your committee, was selected as the outstanding defender in the United States in 1968 by the National Legal Aid & Defender Association.

Mr. KASTENMEIER. I'm sorry he's not here to hear that.

Mr. JONES. NLADA was established in 1911. It has grown to an organization of over 1,500 legal aid and defender program members, with some 6,000 participating attorneys, and 3,000 individual members.

It is this broad constituency from which NLADA brings you its perspective this morning on the legal assistance matters before this committee today.

Accompanying me this morning is my colleague, Ms. Bari Schwartz, who is the executive director of Action for Legal Rights, an organization sponsored by the National Legal Aid & Defender Association, the National Clients' Council, and the Project Advisory Group from which you will also hear today.

Action for Legal Rights is the action arm of the legal assistance community, and Ms. Schwartz is particularly versed in those matters regarding the Legal Services Corporation regulations, the Legal Services Corporation Act of 1974, and those amendments which have been proposed by NLADA and the legal assistance community.

If I may, Mr. Chairman, the panels which follow, including the representatives of the National Clients' Council and the Project Advisory Group, are, in my judgment, of particular importance here today, for they represent the views of that segment of the legal services community which is so rarely heard from but which has so very much to say from a perspective of those upon whom the legislation and the regulations—and indeed the legal assistance programs—impact most directly. Indeed, this committee would have done well had it devoted the entire day to engaging in a dialog with these representatives. I commend their testimony to you and I shall keep my remarks appropriately brief in order that they may be fully heard.

I have—as the chairman has indicated—I have submitted a written statement for the record, which contains a detailed accounting of the points which I should like to bring before this committee.

I shall not, therefore, reiterate my statement. Rather, I'd like to highlight some of the more important points on the one hand, and share with the committee my perception of the context in which the proposed changes in the Legal Services Corporation Act and the proposed levels of funding should be viewed.

Ms. Schwartz, of course, will be prepared to speak to the technical aspects of the proposed amendments to the reauthorization legislation.

It is hardly necessary to remind the more tenured members of this committee of the context in which the Legal Services Corporation Act of 1974 was drafted and finally signed by the President.

To be sure, the program had been under seige by opponents who were philosophically and ideologically opposed to the notion of providing legal assistance to the poor at Government expense. These opponents mounted an extraordinarily effective campaign against a vigorous, aggressive legal services program. They attacked local programs representing migrants against business interests; they attacked urban programs representing poor people against powerful landlords, exploitative merchants, and insensitive governmental units and officials; and they attacked backup centers, which were expanding the frontiers of the law on behalf of poor people in such areas as housing, welfare, and other income-maintenance programs; and, for the first time, affording the millions of poor people in this country effective voices before administrative and legislative tribunals in jurisdictions throughout the Nation.

These attacks were not limited to those powerful interests who found themselves, for the first time, on the wrong side of litigation

involving poor people. The attacks came from within the Government, as well.

As a former Deputy Director of the Office of Legal Services in the Office of Economic Opportunity, during the Nixon years, it was appalling to me that the people who were charged with administering the programs were more concerned with politics and using the program for partisan political purposes, than they were for providing the representation and services to the poor mandated under the Economic Opportunity Act.

These ideological and philosophical differences translated into attempts to influence every decision of the Office of Legal Services toward political gain for the party in power. And these attacks from within and without utimately resulted in a coalition of Nixon administration lobbyists on the one hand, and agribusiness lobbists on the other, first opposing the creation of the new Legal Services Corporation and finally resulting in the bill that we now have.

And I might add that the first bill was introduced was primarily drafted by now Vice President Mondale, and Senator Cranston, and sponsored by scores of other Senators.

The efforts of these opponents—the philosophical, ideological opponents—of legal services, ultimately resulted in a veto of the first bill that was introduced by Senator Mondale in 1971.

Finding themselves unable to kill the succeeding bill, the opponents of Legal Services adopted a new tack. That is, they would so circumscribe the activities of Legal Services lawyers of behalf of the poor, as to render the program either unworkable, or so emaciated as to be unable to attract the kind of talented, committed lawyers who had provided such vigorous advocacy on behalf of the poor in the past.

Fortunately, they were not totally successful in either of these efforts. They were, however, partially successful in that the restrictions contained in the Legal Services Corporation Act, taken as a whole, have an enormously chilling effect on the Legal Services Corporation, thus resulting in rules and regulations which in turn effectively inhibit the kind of vigorous representation in certain areas that any client would normally expect of his or her lawyer.

The point here is that the restrictions in the Legal Services Corporation Act were essentially predicated upon a hostile philosophy toward Legal Services, although they were couched in terms reminiscent of those used yesterday by Chairperson Roger Cramton, Chairman of the Legal Services Corporation Board, referring to Legal Services' lawyers as "unguided missiles."

There's simply no basis in fact for the charges that led to the restrictions. And a careful reading of the Congressional Record and the various transcripts of hearings during that time, would reveal that the number of abuses—and I put "abuses"' in quotes—that were cited were absolutely minimal, and in the final analysis were without substantiation.

In short, an enormous injustice has been done to the Legal Services program and the thousands of dedicated lawyers and indeed the millions of clients who are served by these attorneys.

And for the first time now, the political climate may be such that we can begin to look honestly and fairly at the extraordinary contri-

bution of the Legal Services program and its potential for bringing about equal opportunities for access to justice.

Permit me to highlight, for a moment, some of the issues which are of paramount importance to the National Legal Aid and Defender Association—and, indeed, to the entire legal assistance community:

The old Economic Opportunity Act had much that was new and innovative and worth saving. I refer, for example, to the notion of "maximum feasible participation." This referred to the actual participation in decisionmaking by members of the group served—that is, the poor. Historically, local boards of directors of legal services programs have had to include representatives of the group served—the poor—on their boards. And I can attest that this representation has been most effective in the operation of local legal services programs; for, as the witness preceding me indicated, it brings to the deliberations of those bodies, a completely new perspective—one that lawyers now have begun to acknowledge as being valuable and important.

It's unseemly, in my judgment, that the National Legal Services Corporation should take a nonaffirmative position on the question of clients on the Board of Directors, but it's not surprising that they do so.

There is a singular lack of understanding in this area on the part of many of the members of the Board of the Legal Services Corporation.

As to the concept of the philosophical underpinnings of Legal Services, the idea is not to provide legal services ad infinitum for a group of poor people who'll remain poor forever. The idea is to help them to participate in the decisionmaking processes so that they can become effective participants in the society as a whole.

If the Legal Services Corporation Board does not acknowledge that concept, or does not begin to implement that concept, it seems to me that it's very difficult for legal services programs around the country—and indeed the Legal Services Corporation itself—to argue on behalf of poor people that they should be allowed to participate in the decisionmaking processes of other governmental and nongovernmental institutions.

Mr. KASTENMEIER. Mr. Jones, if I may interrupt you? You're making a profound statement. I think the position of the Corporation is not—as expressed by Dean Cranston and President Ehrlich—that they oppose members of the client community on the Board, but merely that they oppose statutory direction that one-third of the Board be so comprised.

Mr. JONES. I appreciate that; but the practical effect, however, is that the poor—members of the group served, or clients, might have been serving on the Board under the statute as it stands now, but that none has served nor has one ever been appointed.

I'm going to come soon, Mr. Chairman, to some specific recommendations with regard to these matters, but I think that I'd like to make the point that it would be useful, if the Legal Services Board—the Corporation's Board, rather—could have taken an affirmative position on behalf of clients participating in these decisionmaking processes.

And I would reiterate that this is a bedrock idea in the whole creation of the Legal Services program, that clients should begin to par-

ticipate in the decisionmaking processes, not just of the Legal Services Corporation but in institutions throughout the Nation. And it's that idea that I'm trying to drive home here; and it's that idea that I think needs to be codified.

Mr. BUTLER. Mr. Chairman, do you want him to finish his statement? Or can he yield, at this point?

Mr. JONES. You may go right ahead; you can do it any way you like.

Mr. KASTENMEIER. I yield to the gentleman from Virginia, at least on this point.

Mr. BUTLER. I'm concerned about participation in the decisionmaking process. That is the function of the Legal Services program?

Mr. JONES. No, that is not the "entire" function, and I was about to go on to talk about some of the other functions of the Legal Services Corporation, which was to try and open up the justice system, and to provide access to the courts, for people who have been effectively denied access.

Mr. BUTLER. Where do you read that in the act, that the purpose of this is to expand participation in the decisionmaking process?

Mr. JONES. I began, Mr. Butler, by suggesting that the old Economic Opportunity Act, under which the Legal Services program was created, and under which other programs to help poor people out of poverty were created, had, as a basic precept, the "maximum feasible participation" of the group served, in order that they could learn and be given an opportunity to participate in institutions.

It is that concept that I'm discussing. I am not suggesting that this concept is in the act, although I'm going to suggest that it be in the proposed act—that is, in the reauthorization legislation.

Mr. BUTLER. Well, you do recognize that that's an alteration of direction?

Mr. JONES. I don't believe it is an "alteration of direction," sir. One of the precepts upon which the program was founded, was that people who are in communities who are isolated from the mainstream of society, should be afforded an opportunity, through all the programs of the old Economic Opportunity Act, to participate in decisionmaking.

And that is consistent with the way in which Legal Services programs are presently run. Indeed, local programs are required to have poor people comprise one-third of the membership of their boards of directors.

So, it's not at variance at all.

Mr. BUTLER. All right, well, I just——

Mr. JONES. But what is——

Mr. BUTLER [continuing]. My interpretation of what you said was that we were setting up a legal aid program that would provide lawyers for people to help them participate in the decisionmaking process.

Mr. JONES. That is part of what we're doing——

Mr. BUTLER. Oh, well——

Mr. JONES. [continuing]. As a Legal Services Corporation. And what I'm suggesting is that if the experience of Legal Services programs that have indeed followed these regulations over the years and included poor people on their boards—if their experience were to be

followed by the Corporation's Board, we would have poor people, eligible clients, on the Board. I think that the positive aspects of that experience would tend to bear out the value of including these people on the Board.

Mr. BUTLER. I thank you for your answer. Excuse me, Mr. Chairman.

Mr. JONES. I think that we will find, later on today for example, that poor people are quite capable of speaking for themselves and quite capable of participating in these kinds of deliberations.

In our judgment, section 1004(a) of the act must be amended to require that at least one-third of the Legal Services Corporation's Board of Directors consist of eligible clients who are representative of associations, groups, or organizations of eligible clients.

In that same context, we believe that section 1007(c) of the act—which deals with local governing bodies of legal services programs—should similarly be amended to require one-third client composition; to be sure the regulations of the Legal Services Corporation do in fact provide that local recipients should have a Board so comprised.

But I think that the Corporation's regulations are subject to change over the years, and that congressional intent would be most useful in codifying and legitimating the regulations that now exist. And indeed, with a bill that specifically speaks to this question, there would be no confusion and no ambiguity as to how boards of directors should be comprised in local programs.

Similarly, local legal services programs have, over time—largely as a result of client participation—come to hold their discussions in the open. I was in a legal services program in Chicago for a number of years. This was not an OEO-funded program, initially. We began with a board of directors comprised of lawyers who had very little experience with poor people, and poor people had very little experience with them.

We began to open up our board to neighborhood people, and it was just amazing, the new perspective, the outlook that these people brought to the deliberations of the board. The executive sessions that we used to hold in that board of directors' meetings were opposed by these people. The whole idea was to open up the process so that people can be involved—people from the community.

We believe that the Legal Services Corporation's Board should therefore learn from this experience, and the experiences of legal services programs around the country, and begin to hold all of their meetings in the open. We believe that the Legal Services Corporation should be under the Sunshine Act. We understand the legal arguments that oppose this notion, but we think that the Legal Services Corporation really is the leader in this effort: and that perhaps it is the single most significant entity with regard to this kind of change in our society.

We think that if it does not take to heart these principles, it's not very likely that we're going to be able to persuade other institutions to do so.

Now I'd like to say here, Mr. Chairman, a word about the relationship that my organization and the legal services assistance community has with the Legal Services Corporation.

We think that it's done an extraordinarily good job. I don't mean to suggest, by my comments, that the Legal Services Corporation has not. We think that both the Board, and particularly the staff, of the Legal Services Corporation are extraordinary human beings; they are outstanding. We work very closely with them.

There are some areas on which we disagree. We characterize it as a sort of "creative tension." And the remarks that I make here are not to be critical of the Legal Services Board; I mean rather, to suggest that they should continue to push to the outer limits on behalf of the client, both as a Corporation and as a funder of recipient organizations.

Now, with that in mind, I'd like to go to another issue on which we disagree with the Legal Services Corporation:

We are referring to section 1011(2) of the act, which requires a timely, full, and fair hearing. And the manner in which a "timely, full, and fair hearing," might be implemented.

Before a legal services program can be suspended without financial assistance, or denied refunding, it's required that a timely, full, and fair hearing be held. The regulations that have been promulgated pursuant to section 1011(2) have, for the most part, in our judgment, undermined the notion of "timely, full, and fair hearing."

There have been six hearings that have been held. They've all had the president of the Legal Services Corporation making the final decision.

The hearings have been presided over by Legal Services Corporation employees who are for the most part "peers" of the Legal Services Corporation employees who are making the initial decision.

As a former administrator in the Office of Legal Services, I understand that every effort is being made within the Legal Services Corporation to avoid conflict. That is to say, the president of the Legal Services Corporation does not, I am sure, discuss these matters with the employees underneath him, and whose decision he has to review. There is just no question in my mind but that that is true.

What we're talking about, though, is not the present personnel of the Legal Services Corporation. We're talking about personnel in the years to come. We're talking about rules and regulations that should apply to the Corporation, whoever the personnel happens to be.

As a former administrator of the Office of Legal Services, I can attest that we tried very hard. We had the same kind of provision, and we tried very hard not to have discussions with employees who were about to conduct hearings for defundings, or mergers.

The fact is that, one way or another, it is difficult to avoid hearing something about issues such as these. And we think that in order to insure that the person making the decision is indeed independent and impartial, that we should have an independent, impartial individual who is not answerable and responsible to the Legal Services Corporation.

There are a number of sections in the legislation on which NLADA and the legal assistance community would disagree with the Corporation—or which we at least would suggest that this committee consider amending—sections 1007(b)(7) prohibiting Legal Services' attorneys from providing legal assistance in school desegregation cases,

for example; section 1007(b) (8) proscribing legal assistance in abortion cases; section 1007(b) (4) prohibiting the representation of indigent juveniles in many circumstances; section 1007(b) (9) proscribing legal assistance in Selective Service cases. I realize that one might say: Well, isn't or shouldn't that be a very low priority?

But we must realize that the people who are most affected by the prohibition on Selective Service cases, for example, are the thousands upon thousands of unemployed veterans in minority, and innercity communities throughout the country. And when we look at the way in which these discharges were summarily given to these people, it becomes clear that it is a priority problem for poor people.

I'd like to make one final point, and it has to do with the appropriations and the authorization levels of the Legal Services Corporation:

The Legal Services Corporation has—or the legal services program, as you know, has been until 1975 at a static posture with regard to the funding. This fiscal year it has $125 million.

This has given the Legal Services Corporation an opportunity to do some expansion work—not nearly enough; it is still providing only 10 to 15 percent of the need here. Clearly the $264 million level, which I have indicated in my prepared remarks, is the minimum that this authorization section of this bill should consider, if we're going to even begin to make any changes with regard to the numbers of people that can be served. And when you look at the inflation that has caused so many people now to slip back into poverty, we're clearly losing ground.

I realize I've gone over my time, Mr. Chairman. There were a great many more things I would have said. I appreciate your patience, and I thank you.

Mr. KASTENMEIER. Thank you very much. Mr. Jones, for your statement, particularly at the outset, of giving us your view of the relationships of the communities served, and the policies of the organization and how they might effectively be achieved.

On this point, as I've said, I think—at least as far as the president and the chairman of the Board was concerned—they do not oppose clients or representatives of the client-community on the National Board; and, indeed, I will go farther and suggest that they seem to imply that it is reasonable to think that the openings, the present one and perhaps the several occurring this summer, might be "filled" by such representatives.

On the other hand, I would observe that the Senate indeed confirmed all the other Board members, none of which were representatives of the client community; and if, indeed, there is consistency, not only consistency with the philosophies you indicated with respect to the agency, but consistency in its own regulations and rules with respect to the programs throughout the country, that perhaps this requirement ought to be admitted in the statute.

I take it one of the problems, of course, is sufficiency of funds. And you are suggesting that rather than wait 2 more years to reach the target of minimal access, that the Corporation should make an effort to achieve this goal in the first year by requesting $264 to $265 million?

Mr. JONES. Yes, I would, Mr. Chairman. And I need not belabor the fact that since 1969 or 1970, we have been saying that we've been

serving something in the neighborhood of from 10 to 15 percent of the poor in this country.

It seems to me that the poor have waited quite long enough, and if we're really going to make a start—and $264 million is hardly a start—if we're really going to make a start, it should be done right now.

I think of LEAA, which came into existence after the legal services program started, and has now spent $8 billion. And we are talking about the Legal Services Corporation at a level of $264 million and we're afraid it is going to upset people when we talk about that kind of money—a piddling amount, really—for the provision of legal services and access to the justice system that our Constitution contemplates for all people.

Mr. KASTENMEIER. I can't really speak for the Board, but I take it that their reservations about seeking this in the first year in part is that they literally have to build up to it.

If they're overfunded, in terms of actually implementing the amount in the first year, it tends to destroy the program. That is to say, if they don't utilize their funds and they come back to the Appropriations Committee and they're not able to fill up the structure fast enough, that it will appear that they have failed.

And so they would rather incrementally propose an increase to meet their minimal access goal, than to try to achieve it in a single year when they might fail and it might bring discredit, from a funding standpoint, otherwise on the program. Do you appreciate this?

Mr. JONES. Yes, I do. I fully appreciate that rationale, and I think it is sound. The question is not whether or not the Legal Services Corporation can, or should, move to provide minimal access to all 29 million or more Americans in 1 year.

The question is: Whether we should move to begin to implement that notion at all; $264 million—I should say that I prepared a paper for an agency that was considering these issues, just before the election; and I was called by them and asked whether or not the Corporation would be able to spend—we were talking at that point about $250 million—whether or not the Corporation would be able to spend that money.

I talked to people at the Corporation specifically on that question, and the indication was that they would be. And I've spoken with knowledgeable experienced people in the regional offices of the Legal Services Office. They explain that the needs, just in terms of technical assistance alone, in providing the Legal Services programs that have existed now for some several years, without any meaningful assistance, with the kind of turnover we have—just the training and technical assistance alone—will take enormous amounts of money.

But, we're not talking about a great deal of more money, really, when you look at the inflationary costs factors. So, as to whether or not the Legal Services Corporation will be able to use, effectively, $264 million, I must say, I have been told by knowledgeable people within the Legal Services Corporation and in the regions, that they would be able to and could develop plans for its effective use.

Beyond that, I would say that, going into 1980, I think there are some real questions about—and real studies that have to be done—in order to be sure that we can effectively use the money.

But, at this stage of the proceedings, it seems to me Mr. Chairman, there really should be no question. If the Legal Services Corporation can use $217 million effectively, it would seem axiomatic that they should be able to use $265 million effectively.

Mr. KASTENMEIER. I've been meaning to ask you this, Mr. Jones, as executive director of the National Legal Aid and Defender Association, what is the effect historically and presently on your organization of the Legal Services Corporation? That is to say, what sense do you have of a symmetrical relationship with them in terms of legal assistance for civil matters? Do you join forces with them? What is and has been the relationship?

Mr. JONES. I must say, I'm glad you asked that question, Mr. Chairman. It is true, I believe, that the advent of the Legal Services Corporation has changed the way in which the National Legal Aid and Defender Association functions. We began, as you know, years ago helping to open legal services programs. We still provide monitoring day-to-day, cooperative, coordinating services with the Legal Services Corporation. But much of what we did in terms of helping to aid and develop legal services programs, the corporation now does.

We are, however, involved with a number of organizations in the legal services program, including the Project Advisory Group, and the National Clients Council, to try and bring about the kinds of changes that we're talking about here today.

We find ourselves in the position of trying to prod and encourage the corporation. I mentioned creative tension. We do not receive financing from the Legal Services Corporation. And also much of our activity now is on the defender side of the organization. As you know, the defender services in this country are abominable, in terms of access, in terms of the number of the lawyers available, independence and the same kinds of isues that have existed over the last 10 years in legal services.

We are now turning our attention more to the provision of legal services on the defender side, and establishing standards for representation in criminal cases.

The independence issue regarding representation of people in criminal cases is very similar to the one that we've had, on the civil side.

So my organization has a good working and coordinating relationship with the Legal Services Corporation. We are in no way connected with it officially. We frequently find ourselves, as you might gather, on the opposite sides of issues.

I must say that it's gratifying, however, that we do have an open, frank relationship. We can speak with members of the board and particularly members of the staff and the president of the corporation. And it makes for a good healthy relationship.

Mr. KASTENMEIER. I appreciate your statement. In a city, say of 100,000 or 200,000 persons where there has historically been an active Legal Aid Society which in recent years has organized an effective legal aid services program, what happens to the legal aid society program? Does it tend to wither away, or in fact does it, assuming the society is working with it on a nearly full time basis, tend to develop into a Legal Services Corporation program?

Mr. JONES. What has happened in the past is that the local legal aid programs, funded for instance by United Charities, and the

United Way, will see an opportunity to expand their services in the communities where they don't have offices, and will apply to the Legal Services Corporation for funds for doing that. So that the Legal Services Corporation then will help to fund those programs.

In Chicago and in New York that has happened. And in other cities across the country it has happened. In some cities, when legal services funded programs were created, many of the so-called "old line legal aid programs," for one reason or another, did not want to accept Federal moneys. There are no longer many of those, I believe. The legal services program, because it was located in communities, existed side by side with the United Way funded legal aid program, and that still exists in some parts of the country. What we do tend to see happening is that the private charitable organizations that fund these legal aid programs either begin to back away or will hold the funding at a constant level so that the programs sometimes atrophy. And it's those programs that our organization tries to help most vigorously.

Mr. KASTENMEIER. Thank you, Mr. Jones.

I yield to my friend from Virginia.

Mr. BUTLER. Mr. Chairman, thank you. I appreciate your brief statement, Mr. Jones.

I'm interested in your experience with legal aid societies generally. For example, how have they dealt with fee-generating cases?

Mr. JONES. Fee-generating cases generated by legal aid societies are referred to private attorneys. They maintain a roll of private attorneys. Some societies do it through the local bar referral; others will maintain a roll of the private attorneys who are willing to accept cases from the legal aid bureau. When the client comes in the client is then referred to these private attorneys and generally some followup mechanism is designed to assure that the clients do get to the private attorneys.

Mr. BUTLER. Well, I'm sure we don't have any problem with the juicy cases. But what about those fee-generating cases where the fee generated just doesn't attract private attorneys? How do you deal with those?

Mr. JONES. Well, the clients are referred to go to two private attorneys generally. If they have a cause of action and they can't get private counsel, they can then come back to a legal aid bureau or legal services program.

Having practiced privately on the west side of Chicago—I can tell you that many of the lawyers—private practitioners in the innercity neighborhoods were afraid when the legal services programs came into the community. And as you may know, many legal services programs were sued by local bar associations. Well, the fact is, the history is that there was no need for that fear.

Mr. BUTLER. That's right. This is a very satisfactory mechanism to assure that you don't skim off the cream, and so you've left the bar happy. But I'm still concerned about those cases—I guess maybe SSI cases may be landlord-tenant cases that might generate a fee in terms of a recovery from the defendant, or contingent fee cases, as were mentioned today. I guess what I'm asking is are you stuck with a hard and fast rule that in effect leaves them without counsel in a contingent fee case? Maybe you've got a bright young fellow in the Legal Aid office

who has enough imagination to take a good plaintiff case. He is prohibited from doing it on a contingent fee basis, I judge, for the association. I doubt if he will just take it on for the heck of it. So what happens to this case?

Mr. JONES. In a situation where a person comes to a legal services program, and the case could conceivably be fee-generating, the client is referred to a local, private attorney. If that first local, private attorney will not take the case, the client's referred to another. If the client cannot find a private attorney after having done that, and the local board is following the regulations of the Corporation, if they cannot find an attorney who will take that case, then the legal services program will take the case.

Mr. BUTLER. All right. Now, what happens if it generates a fee?

Mr. JONES. If a fee is generated by cases taken by the Legal Services Corporation or a legal services program, that money would go into a fund for the use of the entire program.

Mr. BUTLER. Is that the way it works with the Legal Services Corporation?

Mr. JONES. I believe that's the way it works.

Mr. BUTLER. This may be outside your experience, but just for my own understanding, do Legal Services Corporation attorneys undertake contingent fee cases from time to time?

Mr. JONES. Not that I know of. The Legal Services Corporation attorneys, as far as I know, are prohibited from taking contingent fee cases, and to my knowledge, they do not.

Certainly when I was in legal services years ago we did promulgate a regulation that allowed legal services programs, after trying to refer a client who had a meritorious claim to three private attorneys of the community, to then take that case. Because you had then a situation where a person with a meritorious claim who unless legal services lawyers took the case, would not have an attorney.

Mr. BUTLER. I guess you have answered my concern. But there are those areas which in fact would create and generate much of the plaintiff's law in this country because of the desire or willingness of people to take a long shot at a difficult legal proposition. Now, in terms of being a legal services corporation I would have difficulty justifying the expenditure under existing funding anyway of a great deal of time on a long shot of this nature, simply for the reason that it would be difficult to justify a total claim on the funds available. I just wondered if maybe some participation or some use of contingent fee device by Legal Services Corporation might not be indicated.

Mr. JONES. It may very well be indicated. I would simply suggest that the question that you ask, you say the "long shot," I don't know precisely what you have in mind.

Mr. BUTLER. In a case you may not win, because there isn't very much developed law in that area, or the facts may not become apparent to you until you've gone through it and spent a whole lot of time, money, energy and frustration in trying to find out what the facts are. That's what I call a long shot.

Mr. JONES. Well, as you may know, legal services programs have a tremendous caseload. Legal services lawyers have a tremendous caseload. And I have no doubt but that they are not anxious to take contingency fee cases, longshot cases, as you're suggesting, where they've

clients backed up out on the street, waiting for services. And in my experience, they do refer these people to private attorneys. And even after they have gone to see the private attorney, in the experience I referred to earlier, and can't get anyone to handle it, there's still the question of how do they serve the enormous number of people that they have, whether or not the kind of case that they get requires that kind of energy.

Mr. BUTLER [presiding]. Thank you, gentlemen. You don't know what an exciting event this is in my life. I don't think I've ever presided over a hearing in my life, five Democrats and two Republicans, they all are missing, so if I seem to be filibustering, I'll hope you'll understand it's my moment of glory and I'm not going to blow it. [Laughter.]

So I would like to say we do thank you for your kind and generous treatment and all that you have contributed for our information. We will read, mark up, and digest what you have said in your statement in detail. We enjoy and appreciate your contribution and hopefully we can act on it affirmatively in our analysis and markup of the legislation.

Now, I would like to call the next witness, if we may.

Mr. JONES. I appreciate your generous comments.

Mr. BUTLER. Mr. Veney?

Oh, we're going to have the panel now; is that correct? All right, Mr. Veney, Ms. Ruffin, Mr. Windel, if you will—Reverend Windel. Ms. Windel, we appreciate your joining us.

TESTIMONY OF BERNARD A. VENEY, EXECUTIVE DIRECTOR, NATIONAL CLIENTS' COUNCIL; ANNE RUFFIN, CLIENT REPRESENTATIVE AND VICE PRESIDENT, BOARD OF DIRECTORS, MILWAUKEE LEGAL SERVICES; REV. BOBBIE WINDEL, CLIENT REPRESENTATIVE ON THE BOARD OF DIRECTORS, THE LEGAL AID SOCIETY OF OKLAHOMA COUNTY, INC., CLIENT REPRESENTATIVE, STATE ADVISORY COUNCIL

Mr. BUTLER. This is the National Clients' Council Panel. I assume you have given some thought as to how you will proceed.

So, Mr. Veney, I will ask you to introduce your panel and proceed in whatever order you consider appropriate in your presentation.

Mr. VENEY. Thank you, Mr. Chairman. I'm going to address you by that title.

Mr. BUTLER. I can live with that experience. [Laughter.]

Mr. VENEY. I would like to introduce the Reverend Bobbie Windel to my far right, and Mrs. Anne Ruffin in the middle. I would also like to, for the record, thank Ms. Higgins, the majority counsel, for her patience in getting our written testimony before you.

I am convinced that there is a new law that has been made over the last 24 or 48 hours. I think you may know it as Murphy's law, if anything can possibly go wrong, it will. And in the production of that testimony everything that could possibly go wrong, went wrong. So I thank counsel for her patience and you for inviting us to testify.

I wanted to just briefly outline the areas that the written testimony covers. I shall not go into the testimony, but just highlight it for you.

Mr. KASTENMEIER [presiding]. Without objection, your written statement will be accepted for the record.

[The prepared statement of Mr. Veney follows:]

STATEMENT OF BERNARD A. VENEY ON BEHALF OF NATIONAL CLIENTS COUNCIL

Mr. Chairman, members of the subcommittee. The National Clients Council very much appreciates your invitation to comment upon the Legal Services Corporation Act of 1974 and the current feelings of those served by the Corporation's grantees.

It is important that you understand from the outset that we strongly believe that insuring access to civil legal services is an essential function of our federal government and must be continued. We of the National Clients Council are critical of portions of the enabling legislation, we are critical, from time to time, of actions of the Corporation and we are critical of the actions or inaction on the part of some of the grantees. This does not in any sense mean that we think that this program should be curtailed or in any way diminished. Our criticism stems from the fact that we know that the needs of the low income community are far greater and to some extent, different from those which than are currently being addressed.

The client community is frustrated by the continuing promise of access to the civil justice system. Access which is badly needed but is never fully forthcoming. We recognize that there are many competing demands on the monies available from the Congress. We know that you are pressured daily to put one program before another program. We know that, in all good conscience, some may feel that this program has grown too rapidly in the past 2 years. Yet we ask that you keep this program in its proper perspective.

The use of legal services personnel is often the only non-disruptive, non-confrontational way for low income people to protect their rights and property. Very often the legal services programs are the only means we have to obtain benefits from agencies which you, the Congress, establish to provide those in need. The poor are not poor by choice. The poor are poor because their personal options are sharply different and more limited than those who have financial means. The lack of options often produce crisis situation which an individual can not resolve without assistance. The legal services personnel are the vehicles which we must often use to negotiate the civil justice system. Through that system comes a major measure of crisis resolution for low income people.

Yes, the legal services programs have grown in the 2½ years since the act was passed. We have seen the appropriation rise from $75 million, then to $98 million and now to the present $125 million. This seems significant until one realizes that for almost five years the entire program was being strangled by political controversy. Local programs were unable to function with maximum effectiveness because of the continued state of crisis produced by those who wished to destroy them. Funding was frozen during that entire period at a totally inadequate level of $75 million.

The Legal Services Corporation request for fiscal year 1978 is for what may seem to some an all too bold $217 million. Yet, by the Corporation's own estimates, this figure will leave more than ten million poor people without access to a legal services program. This will be true 13 years after the dream of access to civil justice was first held out to low income people. For each of these thirteen years we have had to sit by while the non-poor argued over what low income people would be allowed to have. We have watched as dedicated attorneys, para-legals and other staff people have burned themselves out in an effort to meet the increasing demands. We have watched as some communities enjoyed the partial benefits while other communities, with needs every bit as significant, went unreserved.

Every society which has existed for any significant period of time has evolved a dispute settling mechanism short of physical combat. Our society has established a legislative and judicial systems for this purpose. We call ourselves "a nation of laws." We nave allowed the attorney to become the sole key to unlock both of these systems and established the good old profit motive as the indicator of attorney success. We can not continue to have systems which serve only the privileged few who have the means to pay. We can not continue to have those who would not think of conducting their professional or their personal lives without the "advice of consul" decide that they are the only ones who are entitled to this right.

The low income people of this country say to you, "Enough."

It is now the time for us to ask those of you on this subcommittee, your congressional colleagues and the executive branch to declare once and for all the same commitment to access to justice for all that once went into putting a man on the moon. The needs of the poor may not be fully known to you but they are real. This country hides its poor well and we are often too proud to force you to view us. But we are here, and we are real, and we hurt, and we need, and the solutions for some of these things lie to some degree, in our ability to protect and vindicate the rights that Americans so proudly proclaim to the world are basic and fundamental to the country.

Low income people say that you must recognize that you are our only advocates. We feel that you must determine what sums of money would be sufficient to insure that access for all of the poor to the high quality legal services referred to in the Act's Statement of Findings and Declaration of Purpose. You must then authorize those funds and press for the passage of the enabling legislation and the appropriation in both Houses of the Congress and the Executive branch. We feel that an appropriation of $265 million will be required.

The voice of the low income person is not the only compelling argument for you to do this. Look at your own struggles with administrative agencies which seem to take on a life of their own after you initiate them. How often have you, in behalf of a constituent, had to do battle to gain services which you know were intended when you passed the legislation? How often have you found these bureaucracies almost impregnable to men as powerful as yourselves? How then do the poor negotiate them without the assistance of legal services personnel?

You have seen and heard the statistics on the rate of successful defenses to the seizure of property in the lower courts when one is represented by counsel and when one is not. You are aware of the many reversals of local and federal actions when the matter is brought before the courts. You konw how many things in our every day world require the action of an attorney. There is, it is true, a growing move by some toward "do-it-yourself" divorces, bankruptcies, probates, etc. But, these are the sport of the very self-confident and not activities for those who are enmeshed in crisis after crisis. The poor need attorneys and para-legals.

An example may be helpful. In 1974, there was a devastating tornado in Atlanta, Ga. The federal disaster teams responded with amazing speed and with willing and able personnel. People whose rented units had been destroyed were rehoused. Furniture and clothing ruined by the storm were replaced. The federal government provided rent payment or subsidies for as long as six months. However, those who owned their own homes had to apply to SBA for disaster assistance loans. This meant proving clear title to the property, establishing the fact that several banks would not provide a loan and then completing numerous sets of complicated forms. Poor people often don't have insurance, or very good credit ratings. We don't have access to banking officials, and very often title to property is murky at best.

Without the assistance of legal services personnel the story in Atlanta would have been the same as that many years earlier in Biloxi, Mississippi. The only persons in Biloxi who ever recovered from that hurricane were those who were not poor. The poor just gathered their few remaining possessions and tried to survive. There was no fuss, no outcry. Poor people just made out the best way they could.

As subcommittee members, you realize that you are accountable to the people, all of the people. We, the poor, ask that you take this accountability seriously and insure that the funds are available to provide on-going access to every eligible person.

As if this was not going to be a sufficient enough task, we ask that you undertake yet another one. That is to insure that the enabling legislation this time is truly consistent with the Findings and Purposes of the act.

Currently, this is far from true. The act, in its present form, restricts the areas in which representation can be provided, may well violate the constitutional rights of the people it was designed to serve and may, in many ways, force legal services attorneys to violate the standards of conduct imposed upon them by their profession.

There can be no question that the current act contains restrictions on the matters which may be undertaken. Section 1007(a)(5) regarding legislative and administrative representation, section 1007(b)(4) regarding juvenile representation, section 1007(b)(6) regarding organizing activities, section 1007(b)(7) regarding school desegregation cases, section 1007(b)(8) regarding abortion cases and section 1007(b)(9) regarding selective services cases validate this point.

We of the National Clients Council are not qualified to address the question of the violation of constitutional rights. We are the consumers of legal services and will leave for others the task of commenting on this possibility. We have, however, heard it often enough from people for whom we have respect, to ask the subcommittee to examine the issue.

As to the act's impact on attorneys, we can say that a program's credibility is seriously impaired when matters of critical community concern can not be undertaken. This is particularly true since we have been led to believe that this is a program designed to give the poor the same access to justice as the larger society has.

Perhaps this is not significant to some. We therefore turn our attention to the Code of Professional Responsibility to determine how legal services personnel should be relating to their clients.

CANON 2

A Lawyer Should Assist the Legal Profession in Fulfilling Its Duty to Make Legal Counsel Available.

Ethical Consideration (EC) 2–1. The need of members of the public for legal services is met only if they recognize their legal problems, appreciate the importance of seeking assistance, and are able to obtain the services of acceptable legal counsel. Hence, important functions of the legal profession are to educate laymen to recognize their problems, to facilitate the process of intelligent selection of lawyers, and to assist in making legal services available.

EC 2–2 The legal profession should assist laymen to recognize legal problems because such problems may not be self-revealing and often are not timely noticed. Therefore, lawyers acting under proper auspices should encourage and participate in educational and public relations programs concerning our legal system with particular reference to legal problems which frequently arise. . . .

EC 2–3 Whether a lawyer acts properly in volunteering advice to a layman to seek legal services depends upon the circumstances. . . . The advice is proper only if motivated by a desire to protect one who does not recognize that he may have a legal problem or who is ignorant of his legal rights or obligations.

Clearly, these ethical considerations guard against the attorney who would educate the public for self gain. The staff attorney in a legal services program will be paid regardless of the kinds of matters he/she undertakes. What is therefore called for is an aggressive out-reach to inform, educate, etc., a client population that has had little history of dealing with attorneys in civil matters. A population that is not at all sure of its rights. This is not solicitation. It is a fulfillment of the Canon. Whether the appropriate remedy be litigation, mediation or legislative drafting and representation, the attorney has an ethical obligation to inform the client and provide the needed services

CANON 5

A Lawyer Should Exercise Independent Professional Judgment on Behalf of a Client.

EC 5–1 The professional judgment of a lawyer should be exericsed, within the bounds of the law, solely for the benefit of his clients and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

The law referred to herein certainly can not be construed to be the Legal Services Corporation Act. To the contrary, it may well be that the Congress might be held to be the "third persons, referred to in the ethical consideration. How then can an attorney, upon finding that a client has a meritorious claim in an abortion or school desegregation matter, refuse to provide representation?

CANON 7

A Lawyer Should Represent a Client Zealously Within the Bounds of the Law.

EC 7–1 . . . . In our government of laws, and not of men, each member of our society is entitled to have his conduct judged and regulated in accordance with the law, to seek any lawful objective through legally permissible means, and to present for adjudication any lawful claim, issue, or defense.

EC 7–3 . . . . A lawyer may serve simultaneously as both advocate and advisor . . . . In asserting a position on behalf of his client, an advocate for the

most part deals with past conduct and must take the facts as he finds them. By contrast, a lawyer serving as advisor primarily assists his client in determining the course of future conduct and relationships. . . .

The act, in its prohibitions, clearly then seriously inhibits attorneys from the exercise of their responsibilities under the Code of Professional Responsibility. Further, the act is replete with warnings against taking "frivolous appeals", "inciting litigation", and places the sword of cost and fee awards over the program and the Corporation in case the chilling effect of other sections was not sufficient. We of the Clients Council sometimes wonder if this is not one of the more regressive pieces of legislation ever enacted under the guise of aiding the poor.

We recognize fully and appreciate the role that many of you have played in obtaining what benefits are currently possible under the Act. We ask that you now take the steps which will bring full meaning to the Act. This is not a time when relations between the Legislative and Executive branches are strained to the breaking point. This is the time to salvage those principles which supporters correct the faults which another committee made because they failed to recognize the true meaning of the client/attorney relationship.

It would not be inappropriate, we believe, to conclude this section of our testimony with one further look at the Code of Professional Responsibility. We would like to return again to Canon 2 and its requirement that the lawyer assist in making legal counsel available. The low income community might well look with hope to this Canon and its requirement that attorneys provide pro bono services to those who can not afford a fee. Unfortunately, here to we are doomed to disappointment. This requirement to work for the disadvantaged is a relatively new one. The original 32 Canons, adopted in 1908, did not contain a similar mandate. Only seven years have passed since the Code became effective and since 1973 a Special Committee of the ABA on Public Interest Practice has been struggling to define public interest services, establish standards for the giving of time or financial contributions, etc. The ABA has not yet taken formal action on the recommendations of that Committee.

Even if every lawyer was clear that fulfillment of the obligations under Canon 2 did not mean service on local school boards, or on the boards of charitable organizations, it is by no means certain that the poor in many areas of the country would achieve any great benefit. This is particularly true in rural areas where there are few attorneys to provide pro bono services. Even where such attorneys can be found, there are often conflicts of interest that preclude the attorney from undertaking and representation which goes much beyond intrafamilial disputes.

Attorneys in private practice in rural communities earn their livings representing the banks which foreclose on the mortgages, the utility company which may be attempting to shut off services, the business firm being sued for consumer fraud. Often, they are part time public officials. They can not, with all the good will in the world, provide representation to a poor person who is pressing a claim against someone they represent or the government for whom they work.

No, unfortunately, that Canon does not truly address the access needs of low income people. We find our solutions only thru the expenditure of funds and that brings us right back to the Congress.

There are several sections of the Act upon which we feel we must make comment beyond that already provided. They are Sections 1007(b)(6) thru (9), Section 1007(c) and Section 1004(a).

We have attempted to state the position that legal services attorneys and paralegals have an obligation to provide the full range of representation on any noncriminal matter which impacts the lives of low income people. We strongly hold this to be a correct position.

On the matter of abortions, we fail to understand why the restriction is placed in the Act. We are, of course aware that there are conflicting moral and religious views on the issue. The writer has personal reservations about abortions but they are not germain here. If the Congress wishes to contravene the decisions of the courts which establish the rights to abortions, then so be it. The Congress can take up the issue in legislation which will prevent every woman, not just a poor woman from vindicating her rights in this matter. As long as the courts hold that women have the right, the Legal Services Corporation Act is not the place to wage the battle.

It is interesting to note that obtaining an abortion has never really impacted those with sufficient money to travel to those many countries where abortions have long been held to be legal. The issue has also had limited impact on women who have access to private hospitals and doctors who found the need for a thera-

peutic abortion for the physical or psychological safety of the expectant mother. It has always been those who had to depend upon public hospitals or government benefit programs who have borne the brunt of the conflicting values struggle. We do not condemn those whose value system forces them to seek ways to end abortions. We only ask that they not use the inappropriate arena of this act.

The Clients Council can not reasonably predict how many communities would opt to have any but a small portion of their sharply limited resources expended in representation of abortion matters. However, as has been proven the case in many other substantive areas the knowledge that there was a vehicle for the vindication of this right might cause the problem to greatly abate.

School desegregation cases pose another problem. This too is an issue frought with conflicting values. There are some in low income communities who do not wish to see desegregation. Others are strong advocates for it. There is no doubt poor people see the education of the young as the only means of breaking out of the cycle of poverty. The question at issue becomes what is the best method of achieving quality education relevant to low income children. Where the low income community decides that the means to achieve this goal is through the desegregation of schools then they must have access to consul. Here again, the mere fact that poor people had competent representation available might go a long way toward making the entire community take steps to avoid crisis oriented litigation with its "win-lose" consequences and its scarred feelings on both sides. Whether we believe in desegregation or not, the Legal Services Corporation Act must provide full access to all eligible persons in all matters which impact their lives. Again, this is not an issue that should be fought in this legislation but in a bill designed to address that issue and that issue alone. Too many communities are reaching the boiling point over quality education for this Act to be left as it is now.

As to selective service cases, we of the Clients Council just don't see what the issue is. It was not the poor who avoided the draft. It was the children of the well to do. Low income men served in numbers far greater than our numbers in any community. We had no college deferments. We had no idea that appeals of draft classification were a possibility. When called, by in large, low income men went.

That is not to say that in all instances those who went in stayed in. Minority and low income individuals found that even minor infractions of the UCMJ were dealt with harshly. In many cases protective reaction was to run away from the situation which they had entered willingly. They were late returning from liberty and just stayed away. Declared AWOL, thirty days later, they were dropped from the roles as deserters. Just thirty days. The consequence for this was a dishonorable discharge and the stigma that carries in this society. The upgrading of such discharges is possible as you well know. However, one has to have help in understanding his rights and in getting through the legal maze. To low income people this means a legal services attorney in the vast majority of cases.

The act's restrictions on organizing are, at best, a gratuitous slap at the low income community and the skills legal services personnel bring. Low income people must often seek skills which can not be found within their community. Organizing leadership is certainly not one of the skills we must look for outside of our own community. Low income people organize to bury our dead, sometimes to pay the rent of those about to be evicted. We help each other face the many burdens and live through the ever mounting crisis. We don't need, or want, lawyers to be our organizational leaders. We do however, at times, need the special skills which the lawyer has in order to assist in our efforts. This assistance may not always fall within the technical meaning of the phrase, "except for the provision of legal assistance." Therefore, we and the attorney must be wary lest this onerous portion of the Act be violated. Calling upon the attorney to assist in the establishment of a buying club, a community self-help group, etc., all may be suspect under this section. We would hope that this subcommittee joins us in seeing this as an unwarranted intrusion into the role which an attorney can play in assisting low income people in our efforts to help ourselves.

The matters of juvenile representation as currently found in the Act also cause us some concern. In almost every low income community this is an important issue. However, the restrictions imposed by the Act may well adversely affect those who need help most. There is no way an attorney can sustain an allegation of child abuse without investigating. It is not appropriate for that attorney to undertake such an investigation until he/she has a client. The Act currently

demands the signature of one of the parents before this representation can be undertaken. If another authoritative body has already made such a determination then it is questionable whether a legal services attorney, or an assigned counsel, would be most appropriate.

Let us assure you that no low income community, which is truly involved in the decision making process of its program, is going to allow resources to be spent on children suing their parents. Further, poor people have too much respect for education (if not for school systems) to have program resources expended on matters which are not truly serious. But we hasten to remind you that in some areas repressive dress codes, inappropriate text books, etc., do force the community to seek protection in the courts. This is not a matter of children being pampered. This is a case of the adult community agreeing with the children of that community that action is needed. Low income parents are often afraid to step forward for fear of the consequences to their jobs and standing in the eyes of the powers that be in the wider community. Often it is a nonparent who seeks with the children the remedies which are needed.

We are also requesting that the sub-committee seek to change the section of the Act dealing with local governing bodies. The Corporation has, we believe quite correctly, recognized the fact that the presence of one eligible client on a local governing body is really not sufficient. This determination is well within the scope of the Corporation's authority. However, it would be most helpful for local programs to have the weight of the Congress as well as the weight of the Corporation behind them when they seek to implement the regulation.

Experience has shown that programs require a balanced in-put from both the attorney and the low income communities if sound decisions are to be made and if on-going self evaluation is to be achieved. We would hope that the Congress would take this opportunity to act on the data gained from thirteen years of practice.

The final specific amendment we would like to address deals with the composition of the Corporation's governing board. As you well know, to date, there has not been a client nominated to serve on that body. This seriously impacts the decision making capability of the Corporation's Directors. They are able men who have worked at understanding the fact that they were not just running a large law firm and that principles taught in the classroom are not necessarily applicable to the world of poverty law. Many have grown in the past eighteen months. Many now better understand the needs and aspirations of the poor and how legal services might best address these needs.

Try as they might, however, the absence of individuals who knew first hand from current experiences the meaning of being poor has seriously handicapped the Board. Being poor is not something one can experience vicariously. You can not remember what is was like, you have to be there, now.

To be poor is not to be unable to identify problems, spot the issues and address them with a clear and logical thought process. To be poor is to face the constant crisis of not knowing what the next crisis is going to be but being sure that it will come before you can get the present one resolved. Being poor is applying a solution to a personal situation which you know in the long run will only cause more problems than you have now but knowing clearly that there is no other way.

The board funds over 4,000 attorneys, para-legals and staff people who deal on a day-to-day basis with poor people. The Directors themselves have not themselves had this kind of experience. Further none are poor now and some may never have been poor. How can they make the right judgements? How can they understand the significance of their actions.

We are well aware of the reluctance of the Congress to put more into legislation than must absolutely be there. But, here again, we would hope that you would agree that the time is right to take those actions which will insure that no matter who is President, no matter what Committee in the Senate will advise and consent that this most serious deficancy will not occur again.

We have in the White House a President who we believe to be committed to the principle espousd here. This appears to be the time to act, not when there is a President who may be ideologically opposed to consumer involvement in the decision making process. I would think that the Executive Order of February 14, 1977 establishing Nominating Commissions for United States Circuit Judgeships would be a signal in this regard. That Order provides for panels to make recommendations to the President and it states in part, "(c) Each panel shall include members of both sexes, members of minority groups, and approximately equal numbers of lawyers and non-lawyers. . . .

There is, we strongly believe, every reason to anticipate a favorable reaction to a legislative change in the Legal Services Corporation Act which would bring non-attorney clients onto the governing board.

It would be inappropriate to close without saying a word about the Corporation's day-to-day functioning. Clients Council has over the past eighteen months been sharply critical of the Corporation and some of its decisions. We have however, felt that serious attempts were being made to reduce the mistakes and to insure that they did not reoccur.

The staff of the Corporation has demonstrated above average skill and dedication to the cause of legal services to the poor. They have been accessible, open to suggestion and have attempted to maintain the programs free of political and/or other destructive outside influences. They have taken steps to insure client involvement in every programs' decision making and priority setting processes (although we would say that these steps to date are just small ones when giant strides may be needed).

The staff has not always exercised the leadership we would like to see but that may well be linked to the absence of clients on the governing body, In the main, we would feel that the Congress can be secure that the Corporation is pursuing its mission with a staff of people who match the skill and dedication found in those who work in local programs throughout the country.

We again wish to express our appreciation for this opportunity to testify and to congratulate this sub-committee on the serious way it views its oversight responsibility. We look forward to your actions to strengthen the Corporation and the programs, to enable the growth necessary to provide meaningful access to all, to insure the delivery of high quality services and to enabling a true client/attorney relationship to be established.

Mr. KASTENMEIER. And I thank my colleagues for carrying on with the proceedings during my brief absence.

Mr. BUTLER. I never had it so good.

[Laughter.]

Mr. VENEY. Mr. Chairman, the purpose of our testimony, quite clearly, is to try and bring to this subcommittee the perceptions of the consumers of legal services. You have been hearing from eminent people who have been able to give you statistics, who have been able to give you the flavor or the law, who have been able to tell you something of what it is like from the lawyers' side. And we would like to give you some feel for the current situation from the client's side.

We would not only like to give you that perception, but we would hope that, through our presentation and through the reading of the written testimony, you will be enlisted, or perhaps reenlisted, as the champions of the poor. Because, as you may very well realize, there are very few people who haunt these halls to pressure you on behalf of the poor. You do not see lobbyists for the poor. You do not often, I suspect, hear from the poor. But it is the poor whom Legal Services is, in fact, designed to serve, and would hope that you would be our champions.

The first cause we would like you to champion, obviously, is adequate funding. We have been told by the Corporation that $217 million is all that they can absorb at this moment in time. After 13 years of doing without legal services, the poverty community is saying, we've had all the neglect we can absorb at this time.

We deserve the protection of the law. We deserve the access that was promised under the Economic Opportunity Act and of the Legal Services Corporation legislation. I find it very difficult to understand why the Corporation would take the position that it would be able to expend $265 or $275 million as its President testified yesterday, if they could find people to hold middle management positions.

In point of fact, the middle management positions do not require any great knowledge of law, as I understand it. But they require the use of techniques in the areas of supervision, managing an office and the options available in delivery of services. I would say to you that those techniques are readily available.

Perhaps the difficulty is that the Corporation, under 1006(a)(3), cannot enter into a grant or contract with an agency to train its personnel. But I would suspect that if the Congress in its wisdom saw fit to grant the $265 million, some vehicle could be found to recruit, train, and put in place the middle managers and the project directors who would be needed to expend those funds wisely.

We also in our testimony attempt to deal with the issue of the restrictions that are contained in the current act. We deal with it first, very briefly, as to the impact on the credibility on the program. The programs are supposed to be serving the poor, and when they tell a poor person, who is eligible under the act, that they cannot accomplish a particular form of a presentation, or undertake a particular matter, because restrictions in the act, it gives the lie, gentlemen, to the statement that we are providing equal access for all in this country.

Beyond that, we attempted to give you some references from that Code of Professional Responsibility which guides all attorneys, that code which provides that there will be zealous representation, that code that provides that there will be education and outreach efforts, that code that provides that there will be many activities that seem to us to be restricted by the act.

We wonder how the Congress and the attorneys justify the code of professional ethics and the language in the act as it now stands. We ask you to take a look at certain amendments that are recommended by PAG, NLADA, and the Client's Council. The amendments on abortion and desegregation we realize are very, very volatile issues. We knew that there are very many conflicting values involved with these subjects. We recognize that there would probably be substantial debate and perhaps substantial difference within the Congress on these matters.

However, I don't know how you can justify saying to a poor woman that she may not vindicate her rights for an abortion, when the courts have established that that is the right of everyone.

On desegregation, as with the abortion, we feel that the Legal Services Corporation Act is not the place to fight those battles. The Congress is free, I am sure, to introduce measures on abortion, on desegregation which will address those matters and be the law of the land, not just law as it relates to poor people.

Mr. BUTLER. Mr. Chairman, let me just interrupt you, just out of curiosity, what would happen, what litigation would we have were the abortion limitation taken out of there?

Mr. VENEY. I can't really react in any meaningful fashion. I would suspect, Mr. Butler, that very few communities would devote a great deal of their staff's scarce resources to abortion litigation. I would think that there are too many other priorities that are prevalent in most communities, but that in the planning and priorities sessions, which the President of the Corporation talked about yesterday, there would be some provision made for abortion litigation in very specific emergency situations.

I can't make the same statement with regard to desegregation. I would think that there would be a considerable amount of desegregation litigation. These actions are now being held back by the mere fact that organizations such as the NAACP cannot take on all of the cases, all of the matters that wish to be heard. And certainly people do not now come to the programs with issues like this because we in the client community know that our programs can't undertake that kind of representation.

Desegregation is still a very burning issue in many of communities. We would hope that, perhaps through other testimony, perhaps through other discussions, you would take a look at the degree to which the impact of having a capacity to bring litigation often removes the necessity for litigation. It is often a most beneficial effect.

Mr. BUTLER. Excuse me. Go ahead.

Mr. KASTENMEIER. I was merely going to comment. That question had not been asked, the question asked by the gentleman from Virginia, and it occurred to me to ask the same question. I suppose there wouldn't be much litigation involving abortion rights.

Perhaps litigation by a poor person compelling an institution or a doctor to perform certain services, or that a hospital would not for one reason or another care to perform, that type of suit might be a prospect. I don't know about other suits, litigations would be involved with respect to abortions.

Mr. VENEY. Mr. Chairman, may I suggest that you might want to ask the members of the Project Advisory Group who will be testifying. They are far better qualified to say.

Mr. BUTLER. But while we're on this, and this does concern me, it seems to me that you're exactly right. We throw out these lawyers into the community; we've got to make a value judgment as to what areas they can litigate in, and what they cannot, if it's going to significantly affect the volume of their business. And then that means that their energies may be diverted to the wrong thing. So I think Congress is privileged to make some judgments.

So I don't accept your constitutional argument, but I'm worried about the judgment, whether it's sound judgment. Now with reference to these desegregation cases, we're in a situation, it seems to me where there is no shortage of lawyers, and particularly since counsel's fees are pretty much in desegregation cases affecting governmental entities are recoverable by the counsel. And I've seen some mighty nice fees picked up in a situation like that.

Have you analyzed that question in terms of new developments, both legislatively and casewise, that award attorney's fees in desegregation actions generally? And I'm glad the gentleman from Massachusetts has returned, because he is an expert in this area.

Mr. DRINAN. Well, thank you very much. I'm sorry I had to be absent. But if you give me that accolade, I accept it gratefully. [Laughter.]

Mr. VENEY. Perhaps I should defer to the expert. I certainly am not an expert in this particular area.

Mr. BUTLER. Well, I won't press you for an answer.

Mr. VENEY. Let me make an observation. We may be talking about desegregation activities in some of the smaller towns in this country

where, in fact, the counsel is not prepared either to risk the wrath of a segment of the community by entering into a desegregation suit, or attorneys who might want to represent poor people are not, in fact, prepared for the lengthy litigation which would ensue, and not be able to sustain the cost over that period of time. Again, I suggest that the lawyers from PAG and perhaps from NLADA could give a better response than I.

Mr. BUTLER. I thank you.

Mr. KASTENMEIER. You may proceed.

Mr. VENEY. Thank you.

I want to mention and particularly stress the organizing issue, because I feel that this is perhaps a fairly large error on the part of the Congress. The statute, as it is now written, seems to imply that the attorney becomes the leadership of the client based organizations.

We are perfectly capable of organizing ourselves. We do need, from time to time, the assistance of attorneys to give us advice, to give us counsel. But we can then provide the leadership. We do not look to nor do we want the Legal Services attorney, as the leader of our organization. But we also do not want him to have to turn around and question at every moment in time whether he can respond to a particular set of questions from us; whether he is, in fact, violating the act by helping us in some capacity while we are doing our own organizing in self-help groups or community groups, or whatever our endeavors might be.

Selective service and juvenile—I really don't understand the intent of Congress on these things. I can assure you that selective service cases have an impact on minority and inner-city communities, as Mr. Jones has said. And certainly, juvenile representation is an issue in every one of our poverty communities.

On the juvenile issue, more particularly, our written testimony goes to the point that you may, in fact, be hurting those very people that you wish to help in the juvenile area by insisting on the signature of one or both parents. There are instances where to get that signature is to jeopardize the well-being of the child. And again, let me stress that if there is in fact the input in the decisionmaking process on the part of the client community, there is going to be little opportunity for frivolous—I think the word is—suits on behalf of juveniles who want to sue their parents, or who want to deal with whether they can wear their hair a certain length in school, unless there is the acquiescence of the adult community that the attitudes of the school systems are, in fact, repressive. That happens from time to time. I think you've had matters brought to your attention before in that vein.

There are just two other things I want to get across before asking for comments from Mrs. Ruffin and Ms. Windel, and these two issues, I guess, are closest to the Client Council's heart. They are the participation on the local boards of eligible clients. We would ask that the Congress put its weight behind the regulation the Corporation has already wisely drafted. We think that the Corporation was well within its rights to draft the regulation as it did, to promulgate the regulation as it has, requiring that one-third of the local governing bodies be eligible clients, or representatives of eligible clients.

There is ample rationale developed in the Corporation's commentary. I will not go into it here. I do, however, wish to comment on the

governing body of the Corporation. Our written testimony accedes to the fact that the Board are men of good will who have wisely and faithfully followed the charge, as they understood it. The problem is that, because there are no clients on that Board, they have very real difficulty understanding what it is that poor people are saying to them.

We would encourage you, at this moment in time, to look favorably upon rewriting and amending the act to do what you normally do not like to do and that is to legislatively mandate Presidential action. I would cite to you the fact that an Executive order has recently been issued which, in fact, says that attorneys and nonattorneys will serve on panels to recommend judges for the Federal court of appeals.

I cannot see how a President who would make that kind of recommendation, unprecedented as it is for the selection of judges in this country, would react adversely to the Congress insisting that clients by statute, be included on the Legal Services Corporation Board.

Mr. Chairman, that ends my remarks. Mrs. Ruffin?

Mr. KASTENMEIER. Thank you, Mr. Veney. Mrs. Ruffin, please?

Mrs. RUFFIN. Mr. Chairman, in accord with what has been said by Mr. Veney, Mr. Jones, and a few others, I am agreeing that we really need Legal Services help in our communities, in our districts, in our areas where we live. The only thing that worries me most is——

Mr. DRINAN. Excuse me, Mr. Chairman.

Could the witness come a little closer to the microphone? I cannot hear.

Mrs. RUFFIN. The one thing that worries me most is that the elderly people of this country are not represented as they should be. Their needs are—preparation and fixtures of their homes, now; those that are retired, and they don't know where to turn to get this from. And I'm not suggesting anything. I'm just saying how I feel about it; that there should be some provision made, I suppose, by this body here who is in charge, that there should be some type of provision made to seek after the elderly who is retired, those that will be retired soon, concerning protecting their meager homes that they have paid for, and by no means have resources to fix them up as they should properly be. They don't know where to turn, and some of them are well aged, and can't get down to the services.

I'd like to see a way found in the interest of having some way, somehow, that these people could be reached by these resources in a manner that would prolong life, and make them feel greener in their declining years. Besides that, Legal Services is such a needed organization in this country; it needs expanding, it needs money, and just needs—absolutely needs. Because there are many people that have not even heard of Legal Services in our rural districts, and in our cities, too. And we need some way and some means and some money to reach the people that really need the services and the resources.

Mr. KASTENMEIER. Thank you, Mrs. Ruffin.

Actually, it has come to my attention that, for example, there are studies which suggest that among the poor, the elderly poor tend to be underserved; either they do not have access or do not seek access to legal services, even as the other poor do. I'm not sure the reason is, if it is the case. Perhaps it is because the nature of the problems, perhaps

it's because they're more accepting of their condition. Perhaps it's because they do not have the knowledge. It hadn't been brought to their attention now they might have access to such programs. Or perhaps it's because the sort of problems they have do not appear to have high priorities; for example, such things as simple problems concerning housing or some not necessarily complicated problem, may mean a great deal to them.

It does appear to be the case that the elderly poor are the last to have access to legal services. And apparently you're reflecting this, and one of the things you're suggesting is that we need to make sure that they know that legal services are available to them. Is that correct?

Mrs. RUFFIN. Sir, if I might say this, I heard the gentleman speak yesterday concerning the people all around the region that don't know anything about it. And I said to Mr. Veney:

> It certainly would be a good idea to manifest the interest of having outreach persons to work in the legal services program that could coordinate and get this wisdom, and get this knowledge, to these elderly people, some of whom are in wheelchairs.

And I know that represents an awful lot of poor people in my area, and I'm poor myself.

And some are in wheelchairs. Some are kind of shy, you know; and if they had somebody to go into the home, where they could sit down and tell their wants before this outreach person's face, and tell them straight up and down what their needs and desires would be, I think this would mean a greater program in this country.

Mr. KASTENMEIER. Thank you, Mrs. Ruffin. Reverend Windel?

Reverend WINDEL. My name is Bobbie Windel. I've been on the board of directors of the Legal Aid Society of Oklahoma City and County for the past 11 years. I'm now on the State Advisory Council for Legal Services in Oklahoma.

I was privileged to testify before the Senate subcommittee on the act when it was being considered. I had high hopes and eager dreams for what would come out of the corporation, and I still do have a dream of the corporation, though I think it does have a long way to go. Nevertheless, with these reservations, I want to congratulate you on having the oversight and being involved in one of the best things that the Government has ever spent money for.

During these 2 days of testimony, you've heard good remarks, good presentations from a good many people. Your heads must be spinning with the facts and figures of the corporation. I cannot add to the good and telling points that these people have made, but I would like to offer you some stories—good stories because they're true stories, as often the best stories are. And I hope these stories will lodge themselves in your hearts, the way they have in mine.

I want to tell you about a woman in Oklahoma City, a poor woman with eight children; a daughter with two children living with her in a one-bedroom house, rented; sleeping four in a bed, two beds in a room, a bed in the living room, somebody sleeping on the divan. This woman was able to buy a 235 home under this 235 plan, where for about the price of rent, that you could buy a home, and welfare would cover the payments. She said it was not like moving into a home, but more like going to heaven. Finally, they could invite somebody home from school; somebody could come and spend the night.

There was a two-car garage to this home; never had a car in it, brand new and beautiful. And the first time that happened, she put all her sons in the garage, where they could have plenty of room to roughhouse, room for their beds. A garage may not seem like much to you, but it was heavenly to them.

It was marvelous, until the caseworker came out for her quarterly visit. She said, "Mrs. A, what is the value of this home?" She said, "$14,000." The caseworker said, "But Mrs. A, on welfare you're only allowed to own a $10,000 home. You will no longer be on welfare. In fact, you must give back this check which you just received, since you've moved into this house."

And Mrs. A cried. She said, "How can I go back? How can I take my children, and the two grandchildren back into that house with the rats and the roaches? How can I go back with the porches rotting off, where the plumbing is ruined, and rain is coming through the ceiling? How can I go back to that?"

The caseworker didn't know. She just knew the welfare regulations. But in her plight, Mrs. A told a good number of people, and somebody she told said, "You ought to go to Legal Aid." Mrs. A went; she poured out this story that was more than a small matter to her. Legal Aid took it up with the welfare department. The welfare department did concede that the woman did have rights, and her home was saved.

Now, that's what I call a success story. That's what legal services is all about. They deal in success stories.

There was a young man in the Oklahoma County jail for burglary. The public defender came to see him and said, "Boy, you're in a peck of trouble," and went away and left him. Four and a half months he was in the county jail without anything—didn't see a lawyer, didn't see anybody but his wife. Every 2 weeks, she brought him clothing, he had to take his T-shirt and dip it in the toilet; it was the only water there was to wash himself off with. And after 4½ months, he had begun to think of himself as a nobody, because that all of his dignity, all of his self-esteem, had gone.

When the young wife talked to the public defender, he said, "This man is a two-time loser; no use dealing with him." He was a two-time loser because, when he was 10 years old, he had stolen four candy bars and been taken to juvenile court. When it came to Legal Aid's attention, all it required was a phone call. But without Legal Aid, the man still wouldn't have had a bath, and it would be now about 8 months that would have passed. After Legal Aid made their phone call, the man was given hot showers and decent treatment until he appeared in court. A bath is a small thing, unless you're the one who is not getting it.

In our State reformatory, there was a young man who was finishing his sentence, and ready to be transferred to an Alabama prison. He came down with a kidney infection. It was very severe. The prison doctor came to see him and told him that he must take good care of himself, because with his present condition, he was likely to lose his kidney. That was on Friday, and the man was given a pain tablet for the pain that he was suffering, and nothing else happened.

When Monday came around, he expected to go back to the doctor, and wasn't allowed to go. They were saving money on this man, and they thought if they'd just wait a little bit Alabama would come and

pick him up. The woman that he wrote to was alarmed, and contacted Legal Aid; they wrote a letter to the prison board with a copy to that doctor. And as soon as the letter got there, which was the next day, he did get help that he needed, and he did return to full health before he was sent to Alabama.

In Tulsa, Okla., there's a small poverty community, a small black community in the George Washington Carver area. In that area, the city was having difficulty collecting for the garbage bill. Because they had difficulty collecting, they decided to discontinue service to that area, except garbage trucks would go in once a month. They insisted that residents had their garbage out on the front curb, because you didn't know when the garbage trucks were coming. If you missed them, it was a month before you'd see them again.

Nobody has garbage cans to last a month. Garbage was sitting on the front curb in boxes, plastic bags, any kind of way. Dogs tore into it, rats came and filled the community. The man who talked to me about it said that the rats were as big as poodle dogs. "They run in the streets, they fight with the dogs, they're not afraid of us; we're afraid we're going to get rabies or some other terrible disease, because of the rats that are allowed to run here."

All that was required was a phone call to the health department. And the health department prevailed upon the city garbage department.

In San Antonio, Tex., there is a small Mexican-American community built around a factory. This factory had an open drainage ditch where they pumped out their refuse every day, and the smell of it and the look of it was like raw sewage. Children played in this little creek. Dogs came and rolled in it, chickens came and drank there. It was definitely a health hazard.

When Legal Aid entered into the matter, the factory agreed that they ought to do something, would do something; and installed a concrete conduit for this to be transported through the community without having to contaminate the area of the residents.

These are but a few examples of the essential things legal services programs do for us. We don't have very loud voices and often are afraid. Often when we speak we are ignored.

Many times it is only when we can use the voice of the courts that health hazards are removed and personal rights protected.

There are many people like me who live in places where the need is as great as in the examples I gave. It will take money, lots of money to set up programs to meet these needs. The $264 million you have heard discussed today is a starting point. In the name of this country's poor I ask for your support.

I will end my remarks as I began them with a recollection of my testimony in 1971. Now, as it was true then, I ask that you do what must be done to make sure that the Corporation Board is the best group of people possible. In 1971 I was concerned about enemies of the poor being placed on the board. Ignorance of the problems is an enemy too. Therefore, I ask that you change the law to insure clients on the board.

Thank you.

Mr. KASTENMEIER. I am sure that we all appreciate the essence of these cases, because there is a place for Legal Aid and Legal Services. I think we've established that.

Does the gentleman from Massachusetts have any questions at this point?

Mr. DRINAN. No, but I want to thank all three witnesses. I'm sorry I had to be absent for part of it, but I am grateful to all of you. Thank you.

Mr. KASTENMEIER. And the chair desires to thank all of you, Mr. Veney, for, I thought, a very useful statement. We appreciate it.

Mr. VENEY. Thank you, Mr. Chairman.

Mr. KASTENMEIER. Next, the chairman would like to greet the project advisory group panel, whose chairman is Melville Miller; Geraldine Moses, Leroy Cook, Leroy Cordova, and Denison Ray. Are you all here? Is Geraldine Moses here?

Mr. MILLER. No; she couldn't make it. I'm Melville Miller. Geraldine Moses wasn't able to make it this morning.

Mr. KASTENMEIER. Mr. Miller, you're the person with the prepared statement, and I'll call on you, therefore, first. And you may abbreviate your statement, if you wish, or proceed as you see fit.

TESTIMONY OF MELVILLE D. MILLER, JR., CHAIRMAN, PROJECT ADVISORY GROUP AND DIRECTOR, LEGAL SERVICES OF NEW JERSEY; WILLIE COOK, DIRECTOR, NEIGHBORHOOD LEGAL SERVICES PROGRAM, WASHINGTON, D.C.; LEROY CORDOVA, DIRECTOR, COLORADO RURAL LEGAL SERVICES, INC.; DENISON RAY, DIRECTOR, DURHAM LEGAL AID SOCIETY, DURHAM, N.C.

Mr. MILLER. Thank you, Mr. Chairman.

I would first like to express deep gratitude on behalf of my colleagues on the panel, and on behalf of the Legal Services programs in this country, for the opportunity to speak to you, and to submit the written statement. I would ask that the prepared statement that we submitted, along with the two statements from Dension Ray, be admitted as part of the formal record.

Mr. KASTENMEIER. Without objection, those statements will be received and made part of the record.

[Prepared statement of Mr. Miller follows:]

STATEMENT OF MELVILLE D. MILLER, JR., CHAIRPERSON OF THE PROJECT ADVISORY GROUP

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 nation's programs. We deeply appreciate the Subcommittee's invitation to testify. 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—a struggle 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 Chicago, Illinois 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 program from outside interference, political or otherwise, 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 withdrawn, 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 and private bar supporters all fought for the creation of the Corporation. It 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 achieved—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 imminent impeachment summer. In a fitting climax it became hostage to the threat of still another Presidential veto.[1] Restrictions breed opportunities for interference, and ultimately instability; to this extent the two objectives are closely related.

B. THE PROPOSED AMENDMENTS

All Legal Services programs were canvassed in a two-part survey to determine the most critical legislative modifications. From the responses, an overriding principle emerges: to minimize outside interference, political or otherwise, while insuring maximum accountability to the ultimate constituency—the client community. (The problems posed by each of the sections and an outline of the reasons for the amendments supported by the Legal Services community are capsulized in Appendix A, "Action for Legal Rights—1977 Agenda," and will not be repeated in this text.)

Outside interference may be reduced by several changes (references are to sections of the current Act):

[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.

(1) *Elimination of restrictions on clients' access to the full range of types of legal representation, in all types of cases (that is, permitting poor the same degree of access to the justice system enjoyed by those with greater resources).*—Such restrictions fall into three areas:

Bars to types of cases in which clients may be represented (desegregation [1007(b)(7)], abortion [1007(b)(8)], Selective Service [10007(b)(9)], juvenile [107(b)(4)]);

Impediments to clients' access to the program (the unemployment determination and "poorest of the poor" aspects of the eligibility section [1007(a)(2)(B)(iv) and 1007(a)(2)(c)]);

Limitations on the kinds of services clients can receive from the program once they do not get in the doors (the bar to some types of support arrangements which might provide more effective and efficient services [1006(a)(3)], the attempts to chill legislative and administrative advocacy [1007(a)(5)], representation of groups which are organizing themselves to improve their situations [1007(b)(6)], and innovative use of non-federal, non-governmental private funds which now cannot be used for purposes inconsistent with the Act [1010(c)]).

(2) *Elimination of disproportionate restrictions on the people who would serve the clients.*—One example is the virtually complete bar on personal, off-duty political activities [1007(a)(6)], even if they are of a non-partisan nature. Additional examples include each of the restrictions on clients just mentioned: in every instance the corollary of the restriction is a clear message to the Legal Services worker that he or she may not represent a client as fully and aggressively as a private lawyer. Here it is important to remember that "grinding" poverty is matched by the grinding frustration of concerned Legal Services workers, who are faced with an incessant march of clients plagued by terrible problems. Greeting a 50-year old disabled pensioner facing eviction because of a Social Security termination, who also lives in horribly sub-standard housing and has just been victimized by a fraudulent health insurance establishment, is very difficult when you feel that at least one hand is tied securely behind your back.

(3) *Elimination of the costs and fees provision [1006(f)].*—This and the remaining two proposals are somewhat different from the previous two groups: the first two address current restrictions which by their very existence import interference; the next three create wide openings for potential interference and harassment. As an example, the costs and fees section make it possible for hostile adversaries to simply harass programs, even if their attacks have no merit, thus creating sizeable extraneous pressures on the conduct of litigation and unfairly burdening the representation of the poor.

(4) *Elimination of the preference to local attorneys in hiring [1007(a)(8)].*—This provision, couched in salutary notions about co-operation with the private bar, in fact if meaningfully applied would severely hinder the ability of programs to engage in the affirmative recruitment of minority workers: it creates difficulties in turning to people outside the immediate area, where there may be a scarcity of qualified minority candidates.

(5) *Insuring the addition of a full, fair, adversarial administrative review of a decision by the Corporation to impose significant sanctions upon or defund a program.*—In some respects 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. Identical 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, we urge that the due process hearing requirement of Section 1011

be clarified to express directly what Congress originally intended: that there be a full, fair, adversarial hearing review after the Corporation has finalized, through action of its President or otherwise, a decision to defund or circumscribe program activity. Further, this hearing must be conducted by a person who has no other responsibility with the Corporation, so that there is no possibility of subtle influence. And it should be conducted in the first instance at an administrative rather than judicial level to insure thorough review of all aspects of the matter, without the much higher cost and awkwardness of a *de novo* judicial proceeding.

It is misleading to contend that because of their policy implications defunding decisions are enshrouded in expertise. Defunding should be the application of policy, not its creation. The contrary would be most undesireable. It would open the door to the very kinds of abuses just mentioned, inviting development policy after the fact simply to justify a particular decision. To the extent Corporation policy is formulated before the defunding decision, it is a simple matter for a person generally knowledgeable in Legal Services to become thoroughly familiar with it. The defunding then settles into the classic administrative adjudicatory mold: was the policy or rule properly invoked and applied given the particular factual situation. Defunding is by its nature adversarial; it throws down the gauntlet to a program and says there is no other recourse. It is not and should not be regarded as some sort of informal, amicable process of consultation.

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 this Congressional intent, and 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.

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.[2] 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.

The second part of the overriding principle mandates greater client involvement. Full accountability of the Legal Services program to its true constituency, the client community, must be insured. This must be accomplished at both local and national levels. It requires provision for at least one-third eligible client representation on both the national and local boards. Legal Services has suffered badly from the total absence of client representation on the national board during its first two years. While Corporation regulations provide for some client representation at the local level, this too should be made a matter of clear Congressional stipulation by statute.

Further, the Corporation Board adopted a rather restrictive open meeting policy, providing for far less openness than the recent Government in the Sunshine Act. This in turn has led to some major decisions being made in executive session. This too effectively excludes the poor community from the formulation of policy, and moves the program away from accountability to the client constituency. The Corporation should be brought fully within the provisions of the federal Sunshine Act.

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[2] 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 hostility toward the objectives of the program but expressed in the sanctimonious tones of nonpartisanship." Id. at 775, 776.

C. PROBLEMS NOW FACING PROGRAMS AND COMMUNITIES

As presented in considerable detail in the accompanying statement of Dension 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 addres only about ten to fifteen percent of the call for legal representation. This gross underfunding spawns predictable difficulties. To control caseload to a point where competent representation can be offered, absurdly cruel choices must be made, 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 fiscal year 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 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 year. Projected levels of $75 million for fiscal year 1979 and $450 million for fiscal year 1980 are eminently justified.

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 responsivness 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 atacks 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 both on the nature of the issues and on who is superintending the Corporation and on the strength and cohesiveness of the leadership exercised by the Legal Service 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.

Section 100(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, individual program evaluations and only 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 some comprehensive systems can be developed. The primary goals of 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 tentative they are, than is merited. The Corporation has already been served notice that members of Congress will be looking to the study to provide the "final answers" 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.[3] To that can be added that few performance factors are likely to be "model-dependent" and that the study is a demonstration rather than an experiment.

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 resposibility 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.

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. It is an ambitious enterprise, a nationwide colloquium by means of regional and national meetings to take stock of what the legal assistance movement values are and should be achieving. The product of this dialogue should be of some help in keeping the national Legal Services program on course through the coming years.

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

[3] "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.

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.

APPENDIX A

ACTION FOR LEGAL RIGHTS, WASHINGTON, D.C., 1977 AGENDA

In 1977, the legal services community is seeking (1) a fiscal year appropriation for the Legal Services Corporation (LSC) in the amount of $264 million; (2) the appointment to the eleven-person Corporation Board of Directors (to fill one current vacancy and four additional vacancies to be created in July upon the expiration of the terms of four directors) of persons who have experience in, and are committed to the delivery of effective legal services to the poor. Among these appointees must be at least three eligible clients who are representatives of groups or organizations of eligible clients; and (3) the extension of the Congressional authorization for the LSC under the Legal Services Corporation Act, amended to remove the restrictions that were imposed, and restore the salutary features which were excised, in the 1973–4 political context in which the struggle to save legal services for the poor was waged.

Perhaps the most critical concern of the legal services community is the renewal of the sense of purpose and vitality of the national legal services program. The Act should give emphasis to the fact that one of the goals of the program is and always has been working through legal representation of eligible clients to improve the conditions and status of poor people. Effective legal assistance to poor people must be recognized as not simply a means of access to the existing legal system, but an instrument of truly achieving equal justice. This sense should be conveyed in the Statement of Findings and Declaration of Purpose of the Act. In addition, the survey indicated that the following changes should be made:

(*a*) § 1004(a) of the Act should be amended to insert after "State" the following: "at least one third shall be, when selected, eligible clients who are representatives of associations, groups, or organizations of eligible clients." Nothing in the current provision regarding composition of the Corporation Board of Directors would prevent this result, but in light of President Ford's failure to nominate a single client to the eleven-person Board of Directors, with the unfortunate consequence that the only course available to the Senate has been to refuse to confirm Ford's most recent appointee, leaving the Board at less than full strength, this amendment is essential. Note that the Act defines "eligible client" as "any person financially unable to afford legal assistance" without regard to whether the person is then receiving legal assistance from a recipient.

(*b*) § 1007(c) should be amended to insert after "requirement" the phrase cited above in (a). This would ensure at the level of the governing bodies of local legal services programs, as amendment (a) would on the national level, the effective participation of poor people in the determination of the policies of legal services programs.

(*c*) § 1006(a)(3), the so-called Green Amendment, should be amended so as to replace the words "and not" in the phrase "to undertake directly and not by grant or contract" with the word "or." This amendment would restore to the Corporation the discretion of which it was divested in the summer of 1974 bargain with President Nixon to protect the survival of legal services, to fund certain activities by grant or contract when that would be more efficient or effective than adding staff to carry out the activities within the Corporation.

(*d*) Repeal § 1007(b)(7) to remove the restriction which prevents programs from providing legal assistance in school desegregation cases.

(*e*) Repeal § 1007(b)(8) to remove the restriction which prevents programs from providing legal assistance in most abortion cases. No legitimate purpose is served by either § 1007(b)(7) or (8); in light of the constitutional rights the courts have recognized with respect to desegregation and abortion, many question the constitutionality of restrictions effectively denying poor people access to lawyers to vindicate their rights in these currently unpopular areas.

(*f*) § 1007(a)(5), imposing restrictions on the provision of legislative and administrative representation to the poor, should be repealed or at least amended as follows:

Delete the language in parentheses in (A). ABA Ethical Opinions have recognized that because poor people tend to be ignorant of their rights and peculiarly victimized because of that ignorance, legal services programs have an obligation

to inform poor people of their rights and remedies. The language in (A) regarding solicitation inhibits this appropriate activity.

Amend (A) to replace "by an attorney as an attorney" with "recipient personnel" to acknowledge the effective use to which many programs have put paralegals.

Amend (B) to read "a governmental agency, a legislative body, a committee, or a member thereof requests the public or personnel of any recipient to testify, draft and review legislation, or make other representations thereto." This makes clear that programs can respond to requests for public comment and continue to respond to the full range of requests for assistance by government entities seeking the perspective of programs serving the poor.

Add a new (C) to state "recipient personnel may testify or make other appropriate communication to a governmental agency, a legsilative body, a committee or a member thereof in connection with legislation, appropriations, regulations, or executive orders directly affecting the activities of the recipient." This affords legal services programs the authority, granted the Corporation in § 1006(e)(2), to seek to protect or expand their activities. In order to maximize the amount of funding available for legal services from all sources, this provision is essential.

(*g*) Repeal § 1007(b)(6) ["organizing activities"]. If poor people are denied legal counsel regarding the necesary steps to the formation of organizations or the appropriate behavior within organizations, they are effectively denied their First Amendment right to associate. The breadth of the prohibition chills activities that are permissible under the exception at the end of § 1007(b)(6) with the consequence that the exception, which correctly seeks to protect legal assistance activities, is rendered nugatory.

(*h*) Amend § 1007(a)(2)(B)(iv) [eligibility] to delete the language beginning "which shall include . . ." This language, imposing a work requirement upon applicants for legal assistance, ties eligibility for legal assistance into the acknowledged problems and abuses of the unemployment compensation system. The only issue must be whether a poor person has a legal problem and the resources to deal with it; retrospective moral judgments are inappropriate to that inquiry.

(*i*) Repeal § 1007(a)(2)(C) [eligibility]. The phrase "least able to afford," in the current context of inadequate funding for legal services, works immense hardships on programs which feel compelled to make meaningless distinctions among persons all of whom are poor.

(*j*) Amend § 1007(a)(6) to delete the clause beginning "and insure that . . ." following (C). There are sound reasons for prohibiting legal services attorneys from engaging in political activity while providing legal assistance to clients. But there are no legitimate reasons for imposing any restrictions on what legal services attorneys do in their private lives. As a matter of principle, and out of a reasonable pragmatic concern about the recruitment and retention of capable attorneys committed to serving the poor, this restriction must be deleted.

(*k*) Repeal § 1006f, which contemplates the awarding of costs and fees to a successful defendant in a case brought by a legal services program upon a finding that the action was commenced "for the sole purpose of harassment" or in a malicious abuse of legal process. The supporters of legal services successfully attached the requirement of this finding to § 1006f, but legal services programs have found that that requirement has not worked to vitiate the intent of §1006f. Instead, the provision has been read by opposing parties as an invitation to harass legal services programs by filing time-consuming motions for costs and fees.

(*l*) Repeal § 1107(a)(8) (the so-called Perkins Amendment). This section, requiring that legal services programs solicit the recommendations of the local bar and give preference in attorney hiring to qualified local residents, while not requiring the solicitation of input from the client community and minority bar associations, has proved to be yet another source of harassment.

(*m*) Repeal § 1007(b)(4). This provision prohibits representation of juveniles in certain circumstances for no legitimate purpose. The tortured construction of the restriction has intimidated many legal services attorneys whose counsel has been sought by indigent juveniles.

(*n*) Amend §1007(b)(1) to replace the phrase "any fee-generating case" with "any contingency fee case" or, alternatively to permit "the provision of legal assistance in cases where the only money sought is the amount of statutory benefits to which a client claims entitlement." The current restriction has been interpreted by the Corporation to prohibit legal assistance in cases (e.g. SSI cases) in which private attorneys do not have the requisite expertise, and the attorneys fees are a percentage of the retroactive statutory benefits to which the court

has found the poor person is entitled. Because delay in pursuing these cases serves to maximize the recovery, and hence the attorneys fees, an intolerable conflict of interest is created when a private attorney represents a poor person with this type of grievance.

(*o*) Amend §1011(2) of the Act to add the following after "hearing": "at which an independent hearing officer not employed by the Corporation presides. Such hearing shall be held subsequently to any final decision by the Corporation, including its President, to terminate financial assistance or deny refunding." The Corporation's regulation on denial of refunding does not ensure the full and fair adversarial hearing which Congress required in §1011 in light of previous efforts by OEO administrators to defund programs. This addition is essential.

(*p*) Repeal §1007(b)(9) to delete the restriction on the provision of legal assistance in selective service cases. Especially insofar as dishonorable discharges continue to act as bars to employment and consequently to breaking the poverty cycle, this prohibition counteravails the purposes of the national legal services program.

(*q*) Amend §1010c to delete the clause beginning "but any funds so received. . ." In order to maximize the funding available for legal assistance to the poor, there should be no restrictions on the use to which programs can put non-Corporation funds.

(*r*) Add a new § 1005(h) as follows: "Applicability of Government in the Sunshine Act (h) The Corporation, its Board members, officers and employees shall be subject to the provisions of section 552b of Title 5, United States Code (relating to open meetings)." This addition is necessary to clarify the intent of Congress to apply the provisions of the Government in the Sunshine Act to the Legal Services Corporation, and thereby prohibit the LSC Board of Directors from holding executive sessions to discuss matters other than those enumerated in 5 U.S.C. 552b(c).

FEBRUARY 16, 1977.

To: The Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, House of Representatives, Congress of the United States.

From: Denison Ray on behalf of the Funding Criteria Committee Project Advisory Group.

Re Reauthorization bill, Legal Services Corporation—Amount of the authorization.

The Project Advisory Group (PAG), comprised of the the approximately 267 Legal Services Programs in the United States, strongly urges that Congress authorize $264,600,000 for the Legal Services Corporation for fiscal year 1978. As Chairperson of PAG's Funding Criteria Committee, I would like to tell you why it is so critical that $264.6 million be authorized.

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 threshhold—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 less than $264.6 million is adopted, hundreds of thousands of families 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 fiscal year 1977. Nevertheless, it is fully justified for several reasons:

1. When the national Legal Services Program was enacted into law in 1965 it raised such high expectations. Yet for 6 years, from fiscal year 1970 through fiscal year 1975, funding for the program languished between $60 and $70 million and the inevitable stagnation occurred. In fiscal year 1976 a modest increase occurred. It was only in 1977 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 1978 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 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."

And the 16 members of the Funding Criteria Committee—who among us have accumulated more than 80 years of experience in Legal Services—know from our first hand experience in the field that the quality of representation provided by Legal Services Programs is often among the finest available anywhere. We have a tremendous ability to respond to a given legal problem but, because of a lack of resources, we have no ability to respond at all to all those people who are beyond our reach.

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 766 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. 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 I 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 premises we 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?

APPENDIX TO THE WRITTEN TESTIMONY OF FEBRUARY 16, 1977, OF DENISON RAY, ON BEHALF OF THE PAG FUNDING CRITERIA COMMITTEE, REGARDING THE LEGAL SERVICES CORPORATION ACT

In amplification of our written testimony in support of an authorization for fiscal year 1978 of $264.6 million for the Legal Services Corporation (LSC), set forth below is an analysis of (1) the need for the $264.6 million, and (2) funding goals beyond fiscal year 1978.

I. The need for $264.6 million

A. What $264.6 million does

We understand the Committee has seen 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[1] cannot in fact provide legal service for every low-income person who needs a lawyer, or even come close to doing so—(see the discussion in part II, *infra*) but it does meet the funda-

[1] 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.

mental and initial proposition that no poor person should live without even access to a Legal Service program.

The LSC has assumed that a single attorney, or the equivalent, costs $35,000 (an unrealistically low figure—see the discussion in part II 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 alone 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 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.

Also built into our and the Corporation's '78 request is a 5% inflationary increase, or $5,527,400. This is based on the premise that all programs which are operating satisfactorily at least should stay even with their capabilities when the year began.

The Corporation's analysis of the $264.6 million 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 accept 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 (see part II *infra*); 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 1978.

In our written testimony of February 16 we 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. Since then we have sought to update that contrast. 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[2] 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 program 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.

II. Funding goals beyond fiscal year 1978

It must be emphasized that the "minimum access" goal for fiscal year '78 only creates the existence of a program responsible for serving every part of the country. While it is true, therefore, that each and every poor person will have a Legal Services program to which that person can apply for assistance, in fact most poor people will still go unserved—at $264.6 million there is only enough money to provied the equivalent of 2 underfunded attorneys for very 10,000 poor people. At that funding level there is no way to begin to serve all of our

[2] We know an argument can be made that some of those lawyers work only for corporations or government and thus "do not serve people".

client community who apply for help;[3] there is a disincentive for programs to inform our client community of our services; and for those programs which yield to the pressure and the compassion to accept more cases than can be responsibly handled, there is not the money to render high quality service.

A. The goal of meaning access

The Corporation has adopted as its long-term goal the provision of 4 attorneys, or their equivalent, for every 10,000 poor persons. PAG strongly recommends that to achieve anything remotely approaching equal justice, funds for the achievement of that goal of four attorneys per 10,000 poor be accomplished by fiscal year 1981. To do this will require funding for fiscal year 1981 of $648,834,-081.

1. *Cost per attorney*—The cost of one Legal Services attorney, including salary, was estimated by the LSC in fiscal year 1976 and 1977 as $35,000 (see Budget Request for fiscal year 1977, pp. 9–10). We believe such cost at the present time to be too low by at least $3,412 for the following reasons:

(*a*) Average attorney salary exceeds the LSG 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 ongoing training of staff but was totally omitted in the budget retabulation	500
(*c*) Litigation costs were grossly underestimated by the Corporation. One full-day's deposition would totally consume the $368. A much more realistic, though still inadequate, amount is $900	900
(*d*) The LSC estimate of $400 per attorney for a 6-lawyer office to maintain its library comes to only $2,400 annually, not enough to keep a decent library's subscriptions current, much less add new books. The figure should be doubled	400
(*e*) Average salary of paralegals is at least $7,800 according to the Corporation's own data, not $7,000 as appears to have been used for the budget request. Assuming one paralegal for every 2 attorneys means the LSC estimate is short by $400	400
(*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÷6=2,945−2,333=612)	612
	$3,412

Thus it presently costs a Legal Services program at least $38,412 for each lawyer it has in the field, excluding the administrative and supportive costs within the Corporation itself.

2. *Salary comparability*—The unit cost should be increased in the future by another minimum of $7000 to accommodate needed uplifting of salary levels.

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 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 fiscal year 1977, 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

[3] A recent American Bar Foundation study found that 23% of the population have at least one legal problem each year. For poor people it is undoubtedly much higher, but even at the 23% rate, a minimum of 6,670,000 legal problems among the poor are awaiting resolution.

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 average increase of $7,000 per cost unit is probably conservative.

3. *Per capita poor person.*—The $38,418 in estimated current actual costs plus the $7,000 or more needed for salary increases can be rounded off to $45,000 "per attorney" for fiscal year 1981 purposes, for the sake of convenience.

A goal of 4 Legal Services attorneys for every 10,000 poor people at a cost of $45,000 per attorney unit translates to $18.00 per capita poor person: 4×45,000 =$180,000÷10,000=$18.00 per person.

4. *Field base without inflation factor.*—There are 28,987,685 poor people in the U.S. At $18.00 each the basic field services requirement is $521,778,330.

5. *Inflationary factor.*—An added amount to offset inflationary increases that it is anticipated will occur after fiscal year 1978 must be included so that the $18.00 per capita actually exists in real-life purchasing power. In fiscal year 1976 and again in fiscal year 1977 we are experiencing a 5–6 percent rate of inflation after a much more dramatic rise in preceding years. We assume such inflation will continue from fiscal year 1978 through 1980. Therefore, to actively meet rising costs an inflation factor must be added or else the money to fund 4 attorneys won't in fact exist:

Preliminary field base—$521,778,330×5%× 3 yrs. (i.e., fiscal year 1978, 1979 and 1980) =$78,266,751

Thus the true field services base is $521,778,330 plus $78,266,751=$600,045,081.

6. *Administrative and supportive costs.*—The field services figure of $600,045,081 only addresses itself to the funding needed by programs in the field. Obviously additional funds are needed for the supportive services and administrative structure of the Legal Services Corporation itself. The amount requested by the LSC for fiscal year 1978 for such purposes is $32,526,000, as follows:

Regional offices	$2,178,000
Support centers	4,816,000
Reginald Heber Smith program	6,033,000
National Clients Council	425,000
Program Support Division	7,955,000
Research Institute	425,000
Demonstration projects and evaluation	6,085,000
Program development and experimentation	400,000
Management and administration	4,209,000

[See the LSC budget request for fiscal year 1978, pp. 32–33, C–6].

If the provision of legal services expands in accordance with the objectives we seek for fiscal year 1981, obviously the demands upon the Corporation's management and services will increase substantially, though probably not in direct proportion to increased funding. To assure that the LSC has the wherewithal to respond to the greater needs for training, research assistance, evaluations and all the other support it provides, and to assure that the LSC has sufficient staff to oversee its management responsibilities, we propose a minimum of a 50 percent increase in non-field services funding: $32,562,000×0.50= $16,263,000 or a total for non-field services of $48,789,000.

7. *Total needed.*—The total funding PAG believes is necessary by fiscal year 1981 is $648,834,081, i.e., the field services base of $600,045,081 plus non-field services costs of $48,789,000.

B. Moving toward the 1981 goal in fiscal years 1978, 1979, and 1980

The foregoing objective creates the circumference of a funding plan which we believe to be essential to the active realization of the concept of equal justice. By this plan Legal Services will move from the provision of a chance for every poor person to get representation—the threshold proposition of minimum access—to the capability of Legal Services to in fact represent a significant number of poor people with a high quality of professional service.

In the development of the plan between 1978 and 1981 many considerations must be examined. There will be the need to determine whether to increase all programs, new and existing, an equal proportionate amount each year; whether to achieve salary comparability for existing programs before opening new programs or offices; whether to complete coverage, even though at somewhat

underfunded levels, while gradually increasing funding levels of existing programs; whether to emphasize improvement of other service characteristics to bring all existing programs up to, and begin each new program at, a minimum delivery capability even though it inhibits start-up of new programs; and so forth.

Certainly these considerations will have to be explored in the light of further experience and data. We do not presume to provide definitive answers now. We do propose that in each new year between 1978 and 1981 there be an increase in funding of approximately equal proportions. The difference between the 1981 goal of $648,834,081 and the 1978 appropriation we seek of $264,600,000 is $348,234,081; to achieve it in equal increases in 1979, 1980 and 1981 amounts to $128,078,027 per year. Thus the desired funding over the next 4 years is:

Fiscal year:

1978	$264, 600, 000
1979	392, 678, 027
1980	520, 756, 054
1981	648, 834, 081

In this way growth can be gradual, but consistent with the ends of equal justice; and the Corporation can plan its own management development to assure that it retains the capacity for effective administration of Legal Services.

One final thought: we realize that the figures projected are substantial in comparison to past funding of Legal Services. We know that to some people they will appear to be politically impossible of attainment. But they represent our considered judgment as to the resources necessary at this time to provide meaningful 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 grasp if we but choose to lay hands on it.

TABLE 1.—SUMMARY OF PRESENT AND NEEDED FUNDING FOR LEGAL SERVICES IN THE STATES REPRESENTED ON THE HOUSE SUBCOMMITTEE

State	Number of poor people	Fiscal year 1977 funding	1977 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	Per capita needed to obtain 4 attorneys per 10,000 poor [1]	Funds needed to obtain 4 attorneys per 10,000 poor
California	2, 148, 920	$13, 218, 691	$6. 15	$0. 85	$1, 826, 582	$11. 85	$25, 464, 702
Illinois	1, 110, 293	3, 846, 138	3. 46	3. 54	3, 930, 437	14. 54	16, 143, 660
Massachusetts	473, 847	3, 793, 379	8. 01	----------	----------	9. 99	4, 733, 732
Nevada	43, 333	216, 982	5. 01	1. 99	86, 233	12. 99	562, 900
Pennsylvania	1, 227, 951	3, 341, 679	2. 72	4. 28	5, 255, 630	15. 28	18, 763, 091
Virginia	689, 249	1, 308, 094	1. 90	5. 10	3, 515, 170	16. 10	11, 096, 908
Wisconsin	461, 064	1, 257, 201	2. 99	4. 01	1, 688, 466	15. 01	6, 320, 171

[1] Assumes a cost of $18 per capita poor person.

TABLE 2.—SUMMARY OF FISCAL YEAR 1978 LEGAL SERVICES CORPORATIONS BUDGET REQUEST FOR EXISTING AND NEW BASIC FIELD PROGRAMS [1]

	Increase requested	Poor persons without access, pre-1978	Percent of poor without access, pre-1978	Number poor who will gain access in 1978 [2]	Percent of col. 2 who will gain access in 1978	Number poor without access, after 1978	Percent of poor without access, after 1978
New areas	$40, 000, 000	9, 590, 000	81. 74	5, 610, 000	58	3, 980, 000	33. 92
Existing legal services programs	37, 345, 000	6, 409, 000	37. 14	4, 986, 000	78	[3] 1, 423, 000	8. 25
Total	77, 345, 000	15, 999, 000	----------	10, 596, 000	----------	5, 403, 000	----------

[1] Exclusive of Indian, migrant, and support center programs because of the difficulty in calculating minimum access figures for breakdown of their proposed funding in fiscal year 1978. See Legal Services Corporation budget request p. C-6.

[2] When $40,000,000 and $37,345,000 are divided by $7, 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 assume the discrepancy with the budget request is because part of the money will go to legal services programs already at $7 for their entire client populations.

[3] This entire 1,400,000 people reside in areas served by 11 legal services programs, each of which has more than 100,000 without minimum access. The Legal Services Corporation has made a policy decision to pick up such people in 1979. The 11: Appalred, Ky., Brooklyn, Chicago, Georgia, Houston, Los Angeles, north Mississippi, Philadelphia, Puerto Rico (statewide), San Juan, Texas (rural).

[The following is a supplemental statement from PAG which was received after the hearing:]

MARCH 1, 1977.

To: Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, House of Representatives, Congress of the United States.

From: Dension Ray on behalf of the Project Advisory Group (PAG).

Re: Followup to testimony of February 23, 1977, concerning the Legal Services Corporation authorization for fiscal year 1978.

During my testimony on Feb. 23, the question arose as to how to deal with the dilemma of having inadequate funds with which to both complete expansion to give all low-income persons minimum access to Legal Services programs, on the one hand, and, on the other hand, to significantly increase resources of existing programs so that they can improve quality and retain experienced staff.

The obvious solution is to avoid the dilemma by a Congressional appropriation adequate to accomplish both goals. But if the amount is insufficient for that achievement, what gives? Congresman Drinan, in seeking a solution, asked whether the Corporation shouldn't take money away from existing, better funded areas in order to reach into those areas completely without service.

That is an option to which the field programs, through PAG, have given considerable thought, though I'm afraid my answer did not convey that fact. Another option at the opposite end of the spectrum is to put no more money into expansion until the existing programs are brought up to minimum adequacy of service capability.

PAG has opted for neither of those alternatives but rather for a middle position, i.e., to move ahead on both fronts simultaneously. Certainly the 15 million low-income Americans who will remain without even access to a Legal Services program in fiscal year 1977 cannot be ignored. They have as much right to participate in our legal system as anyone else. But if it is wrong to exclude them from the legal system, it is just as wrong to keep existing programs at such depressed levels of funding that they in fact cannot serve those poor people for whom they have already been given responsibility.

Legal Services programs currently receive funds for their existing populations which average only about $4.95 per capita poor person. It is self-evident that such a level cannot begin to do justice to the legal needs of present client communities. As a consequence, we lose ⅓ or more of our attorneys each year because of low salaries; a number of programs restrict new caseload to the point where they can only handle emergencies; and the "impact" cases, which might bring relief to thousands of poor besides the actual clients, cannot be subsidized with enough money to conduct the investigations, take the discovery and hire the experts necessary to their prosecution.

Therefore, PAG strongly opposes removing any funds from existing programs. In only a handful of states do the programs receive more than the $7.00 per capita poor person which is the "minimum access" goal. Father Drinan's own State of Massachusetts is one of those but to take money away from that state or the others like it would do a great disservice.

PAG believes that expansion and improvement of existing programs must go hand in hand. And the only real solution to the dilemma is to provide the Legal Services Corporation with enough money to do both well.

Mr. KASTENMEIER. The Chair will announce that we will proceed through the noon hour. The House is in session this afternoon, and we'll try to conclude our work. I apologize to those who had lunch plans, but we'll do the best we can.

Mr. MILLER. What we would like to do, with the Chair's permission, is to have each member of the panel speak rather briefly about specific topics. Our intent is by no means to repeat the testimony, but to stress certain points, partly in response to some of the concerns that have come out in the last day and a half.

Just a couple of introductory remarks. The Project Advisory Group is the national organization of legal services programs. It is broadly inclusionary, by means of a national steering committee. The positions

it takes, the representations that it makes, by and large, are consensus positions; they are at least majority positions.

On my left—on your right—is Willie Cook, the director of the neighborhood legal services program in Washington, D.C., a large urban program dealing with the concentrated problems that that kind of community brings. On my immediate left is Denison Ray, director of the Durham, N.C. program, and also chairperson of the PGA funding criteria committee. He will address you on funding issues. On his right is Leroy Cordova, director of the Colorado rural legal services program, a statewide program in Colorado which, as the name indicates, focuses on problems of the rural communities.

Our perspective, the perspective you'll hear in the ensuing remarks, is quite obviously rather different from that of the Corporation in one or two important respects. We daily see, and have to try to assist, poor people. What are abstract notions on the effect of restrictions and the effect of political interference become, to us, day-to-day realities. We're the ones who try to represent people, try to get them access to the system, in the face of that kind of interference.

When we talk in funding terms—and Denny Ray will do that shortly—it's important to keep in mind that behind that is a very real, very pressing human fact. Nationally, the legal services program is able to meet an estimated 10 to 15 percent of the need for our services. The translation of that, in day-to-day operations of programs, is myriad people turned away; programs faced with what really amounts to absurd decisions about whether a particular summons in an eviction case, when a person is about to be put in the street, is more or less important than a summons against a person in a consumer case, where somebody's being sued for $3,000 and barely has an income to afford a minimally decent existence now.

Just a couple of examples from my own program, the Middlesex County program in New Brunswick, N.J., which is a small city program. The kinds of priority decisions that we've been forced to make force us to exclude all upper court negligence or tort defense cases, where people don't have insurance policies of any sort. In other words, when a person is sued for $50,000 and has no insurance coverage, and the company won't defend him, and faces that kind of serious effect on his life, because of the press of other matters—such as evictions and consumer cases—by program policy, our Board has determined we can't take those kinds of cases. We're able to take very few bankruptcy cases. We have a year and a half waiting list for divorce cases which are not of an emergency nature.

About 95 percent of our caseload can, within any reasonable definition, be called emergency cases. And yet, at that, we're forced to turn away other cases which, by any reasonable definition of the term, are emergencies too.

I have just a side note. It pains me when the justification for $217 million, as opposed to $264 million, is expressed in terms of a lack of middle level management people to staff new programs in expansion areas. There's no question that we could effectively, in my own program, double our budget, use it effectively, without in any way meeting the pressing needs of the community.

One last comment on the funding issue. Each project director on this panel has had to struggle daily and weekly and monthly, through

the long time that they've been in legal services, with the loss of staff. A major factor in that staff is certainly salaries. We've already heard some testimony from the Corporation in that regard. The salaries are 50 to 60 percent below comparability.

Other factors almost as important—perhaps, in my own program, as important—are the crush of clients, and the frustration of being a sensitive, concerned, dedicated person who works in an office where you have to make these kinds of decisions, and turn these people away every single day. And there's only so long at the current level of funding that people can take that kind of pressure, and make those kind of decisions; just one more notion we ask you to keep in mind as the dispute goes on over authorization levels and dollar amounts which sometimes boggle the mind.

At this point, I'd like to yield to Denny Ray, who as I've indicated earlier, is chairperson of the Funding Criteria Committee, who will address briefly the question of authorization levels in the coming years.

Mr. KASTENMEIER. Thank you.

Incidentally, if you touch on areas that you think represent a difference with preceding testimony, or have not been discussed at all, or aren't reflected in the bill that I've introduced, please note them for us and tag them for us, so that we can highlight those areas.

Incidentally, you've offered your prepared statement, I notice, with an appendix A prepared by the Action for Legal Rights, Bari Schwartz, executive director, who accompanied Mr. Jones preceding us here.

Mr. MILLER. That's right. Actually, perhaps I can go into this in somewhat more detail a little later, when we talk about restrictions in the act. But just as an overview, the legal services community programs were canvassed last fall as to the problems and perceived necessary changes in the act. Action for Legal Rights is the umbrella organization which lobbies for the legal services community. Those are its proposals.

Mr. KASTENMEIER. Thank you.

Mr. Ray?

Mr. RAY. Thank you, Mr. Chairman.

I'm going to address the authorization proposals for fiscal 1978 and beyond. There is written testimony which we have submitted from the Funding Criteria Committee, which includes an appendix. I might point out that table 1 to the appendix analyzes the funding needs of each of the States represented on this committee, so that you might at some point wish to refer to that for your own curiosity.

I am particularly going to confine myself to two major points. One, with respect to fiscal 1978, has to do with the contention by the Corporation that the middle management problems will forestall going immediately to a minimum access concept. The second, is to deal with the proposition which was raised yesterday; namely, what do we actually mean by minimum access, and how does that portend for the future?

Now, it is without question the position of the field programs that Congress should authorize and subsequently appropriate $264.6 million for fiscal 1978 for Legal Services Corporation. It is that figure which is needed to assure minimum access for every low-income person

in the country. That's a very fundamental and elementary proposition. In other words, there would be a program established with at least responsibility for serving every area in which poor people live.

On January 4 of this year, when Mr. Ehrlich analyzed, on behalf of the Corporation, in a memorandum to the Board of Directors, that proposition, along with the one the Corporation subsequently adopted, he seemed to have no doubt that the Corporation could successfully implement the $264 million figure in fiscal 1978, and I have quoted on page 2 of my written testimony at the bottom of the page the statement that he made in that memorandum. And it is unequivocal. The only inhibition which he cited was the lack of money.

I would submit to you, therefore, that it is perhaps as much of a political consideration of what may be possible than simply a managerial consideration of what can be effectively implemented, that the Corporation may have lapsed back into the $217 million figure. With respect, however, to the merits of the notion that middle-management problems will prevent going to the $264 million figure, let me say this.

I would assume that, as a conceptual premise, we would all agree that every low-income person should have access to legal assistance. Now, if you don't go to the $264 million, there are going to be 5½ million poor people in this country who will be foreclosed altogether even from the chance of getting legal assistance. Do middle-management problems really prevent going that additional step?

Well, the legal services programs are going through expansion right now in fiscal 1977, and we are receiving applications from legal services attorneys all over the country, who because of the funding freeze which existed for approximately 6 years in Legal Services, have reached a point where they can't move further; where they have managerial aspirations, but nowhere to go. They are a source, readily in existence now; and we are finding that there are ample applications for managerial positions in the expansion which is already undertaken.

A second, and I think salient, point is that of the 5½ million people the Corporation would propose to exclude from legal services access in 1978, 1½ million of them already live in areas with existing programs providing at least a modicum of service to those areas. You're talking about 11 of the largest legal services programs in the country, and we have contacted the directors of many of those programs. There is no question in their minds, as Mr. Miller indicated with respect to his own program, that they already have the administrative structure and the cadre of personnel to fill in the management positions which woudl become necessary if they were to move to include that additional 1½ million people.

Let me cite to you a specific example from my own experience. In North Carolina, the legal services programs in Charlotte, Winston-Salem, and my own in Durham, are conducting a legal education community project. Presently, the directorship of that project is vacant. We advertised for 4 days in five newspapers. We have received over 300 applications for that single job, a managerial type of position, from a host of qualified people; and our problem is how to weed out those that are deserving of having a position which we cannot possibly tender them with the present limited extension which we are undertaking.

Let me move on now from the pragmatics of middle management to the concept of minimum access. Minimum access, in a funding sense, is meant simply to provide the equivalent of two legal services attorneys for every 10,000 poor people. Minimum is, indeed, the word that needs to be stressed. When the representatives of the National Clients Council were before you a few moments ago, you got into a colloquy about outreach with respect, for example, to the elderly. I would submit to you that outreach, as desirable as it is—that is, going out and informing people who we are, what we can do for them, what their legal rights are—is a virtual imposisibility under the present funding approach that is to be taken even with minimum access.

You're going to have the equivalent of two attorneys serving 10,000 poor people. Among those 10,000 poor people, according to a study made by the American Bar Foundation, there are at least 23 percent of them with one or more legal problems every year, year in and year out. I would parenthetically suggest to you that, for low-income people, many more than 23 percent will have legal problems. But if we only stick with that study result, you're going to have 2 lawyers with at least 2,300 legal problems coming to them from those 10,000 poor people, which is almost 1,200 legal problems a year.

Obviously, they cannot possibly contend with any suggestion of quality with those legal demands; and that's what minimum access is. It only gives a chance, a kind of russian roulette opportunity, to the given low-income person to go knock on the legal services' door and ask for help. It does not, in any way, really provide meaningful access.

Therefore, PAG has proposed, in the appendix to my written testimony, a plan for the next 4 years, beginning with fiscal 1978, in which to achieve a meaningful access content to legal services. The cost, by fiscal 1981, would be approximately $648 million. It would begin with the accomplishment of the minimum access, which we ask be enacted into law in fiscal 1978, and proceed accordingly. And all that that does is to assure that you end up with the equivalent of four attorneys for every 10,000 poor people, and that those four attorneys and their supporting staff are paid well enough to compete with other Government institutions, the necessary facilities, litigation costs, and other things—which, as you well know, go with being a lawyer—are there. The resources exist.

We would submit to you that meaningful access, in those terms, is a very small price to pay to give some substance to the rhetoric of "equal justice under law." Thank you.

Mr. KASTENMEIER. Thank you, Mr. Ray.

Mr. Miller?

Mr. MILLER. If I may proceed, Mr. Chairman, I'd like to call next on Willie Cook, the director of the Metropolitan Washington, D.C., program. Just as a preface, before I do that, to the following remarks, which will deal with potential amendments to the act; in our written statement, we suggested an overriding principle combining, really, two pieces. One, to follow through on the promise of the Corporation to minimize the political interference with the program—political in this sense means outside interference, not partisan by any means, necessarily; and, at the same time, absolutely essential, to

maximize the accountability of that program to the community that it is supposed to serve.

Mr. KASTENMEIER. Mr. Cook?

Mr. COOK. Mr. Chairman and other members of the subcommittee, for the record, my name is Willie Cook, and I'm the executive director of the neighborhood legal services program here in the District of Columbia. I'd like to address myself to a number of issues that we who provide legal services for the poor on a local level feel are important to bring to this committee's attention.

First of all, 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 from my own experience on my own board, we don't have to guess how clients feel about particular policies, because they are vocal and knowledgeable about expressing those needs. I strongly oppose the notion expressed here by one witness yesterday that the matter of client representation on the Legal Services Corporation Board should be left to the wisdom of those doing the nominating and the confirming. It is my view that Congress should say, in an affirmative way, to our clients that it recognizes the valuable contribution that they make in participating in decisions that affect their lives; and, in my view, that can best be said by giving those 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, and at each of those meetings, the Legal Services Corporation Board has found it necessary to go into executive session for an extensive period of time.

Now, it has been apparent to me and to many others who are in the legal services community 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 that 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, in my view, that are closed to the public should be rare, and should only by permitted in extraordinary and very limited circumstances.

I would next like to deal with two issues that have, in my view, a chilling effect upon representation of our clients, and expose us to the real possibility of harassment. First, I'd like to draw the committee's attention to the present provision of the act, section 1006(f), which allows a court to award costs and fees to a defendant sued either by

the Legal Services Corporation or a grantee of that Corporation. In my view, that section 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 either judicial or administrative forums. Sometimes those rights are not recognized on the first try, the second try, and sometimes the third try; because in this country, in the judicial arena, and sometimes in the administrative arena, changes on behalf of our clients do not always come easily.

The provisions of the present section 1006(f) open 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 to 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 to the Legal Services Corporation. I have been in Legal Services now 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, in my view, 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, there are State advisory councils which can deal with these complaints as well as the Legal Services Corporation itself. In my view, this is not the kind of issue that should be dealt with judicially, and its determination should be expressly removed from the judicial arena.

A question was raised here yesterday by one member of this subcommittee concerning how programs deal with making their services accessible to the client community. I would just like to share briefly with this committee, and relate to the committee, how we in Washington, D.C., deal with that problem.

The bulk of our personnel in the District of Columbia program is spread out through a network of neighborhood offices in District of Columbia. We presently have six neighborhood law offices, and those neighborhood offices are located in the communities where our clients live. For the 13 years that the neighborhood Legal Services program of District of Columbia has been in existence, 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 personnel in our program in those neighborhoods, so that they can get firsthand knowledge of our clients' needs, and also a better understanding of the problems that face people on a day-to-day basis.

I would finally 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. Now, when I say "seriously underfunded," I don't mean to give the committee the view that the District of Columbia program is the only program in the United States that's having funding problems. I think you recognize, and I recognize, that we all have problems, but I just want to sort of spotlight, and give

you some sense of some of the things that I have to deal with as a project director in trying to overcome some of the problems that are attendant, or are a residue of inadequate funding.

I don't want to deal with the technical aspects of an appropriate budget for Legal Services for fiscal 1978, 1979 or 1980. That has been done by other colleagues of mine here on the panel, and also by the Legal Services Corporation staff presentation. Rather, my focus is on the real day-to-day problems that I have in coping with a local budget that doesn't 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 can't begin to meet that demand because of insufficient personnel. The average attorney stays with the Legal Services program in the District of Columbia between 2 and 3 years. But many leave because of the mental and physical exhaustion occasioned by trying to deal with so many clients.

I am also faced with a salary structure that doesn't begin to compare with agencies like the Public Defender Service, Corporation Counsel, the U.S. Attorney's Office, and also many agencies of the Federal Government. Moreover, the District of Columbia has one of the highest costs of living in the United States. It also becomes very difficult, under those circumstances, to keep good people for a very long period of time. My experience is that a lot of my administrative time, and a lot of some of the other administrators in our program, 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.

I'd like to thank you for your time.

Mr. KASTENMEIER. Thank you, Mr. Cook.

Mr. Miller?

Mr. MILLER. Mr. Chairman, I would like to next turn to Leroy Cordova, director of the Colorado rural program.

Mr. KASTENMEIER. Mr. Cordova?

Mr. CORDOVA. Thank you, Mr. Chairman.

For the record, my name is Leroy Cordova, of Colorado Rural Legal Services. I would like to direct my remarks to three matters as I see those matters affecting provision of legal services in rural America.

I would like to mention the pressing need for legal services in rural America, given the high incidence of poverty in that part of the country, the problems faced in attempting to reach clients in remote, far-distant rural areas, and the degree to which some of the restrictive provisions in the Legal Services Act may make an already difficult task even more difficult. I view these issues from the perspective of the director of a project which is presently attempting to provide legal services to the poor in rural Colorado in a variety of ways, ranging from mobile law offices to serve migrant farmers—which are sent out in Volkswagen vans—to regional staff attorney offices which also do circuit-riding to communities in their area, and to an alternative delivery system study project in which we'll be contracting on a fee-for-

service basis with private practitioners in private law firms in a sparsely populated, mountainous area of the State.

The incidence of poverty in Colorado is high. Sometimes, 70 percent of the population of a particular community is classified as being below the poverty level. The incidence of poverty among the Chicano population of that community is even higher. Often they constitute 60 percent of the poverty population in an area where they comprise only 10 percent of the general population. Added to this fact is the fact that much of the Chicano community is in varying degrees Spanish speaking. This means that in order to meet a requirement in the Legal Services Corporation Act, we are attempting, and must continue to attempt, to develop the capability in our offices to make legal services available in Spanish. We are pleased that the act does so clearly require that that effort be made, and the legal services be made available in the principal language spoken by the client community.

However, the present requirement contained in section 1007(a), requiring programs to solicit recommendations from the organized bar, and to give preference to local applicants before filling a staff attorney position, is nothing more than needless hindrance to our efforts aimed at recruiting qualified minority, bilingual attorneys to serve the Spanish-speaking community.

As I mentioned earlier, attorneys in our program do circuit-ride to other communities in their area. This effort most of the time only succeeds in our meeting the client halfway, so to speak. Instead of having an 80-mile round trip, the client only has to make a 40-mile trip to see the Legal Services lawyer. The circuit-riding effort, however, is also costly, not only because of the high mileage reimbursement costs that the program incurs each year, but because of the many hours of so-called dead time spent by the attorney driving to and from offices and to courts on their circuit.

Even the mobile law offices, which we utilize to serve migrant workers, are only of limited utility in our effort to serve those migrants. One reason may be that the migrant may come to Colorado with legal problems which arose in Texas or Oklahoma; or, if the legal problem does arise in Colorado, the migrant must move on to the next employment site, which is often in another State. Oftentimes, the migrant worker must move while his case is in litigation, thus requiring an expensive and time-consuming effort for keeping in touch with the client, and in having a client and his witnesses appear for a hearing and a trial if the case does go to trial.

Oftentimes, very valid claims are abandoned or compromised at the request of the client simply because of the logistical problems involved in pursuing this matter.

Another problem in the rural areas is the unavailability of other legal resources, such as exist in metropolitan areas for poor persons. Pro bono work by private practitioners is usually done on a very small scale, something on the order of two or three cases per attorney per year, in a community where there are no more than 8 or 9 or 10 lawyers. That is not much of a contribution. Neither is there available the public interest law firm, or the low-cost law clinic, or the ACLU lawyer. This means that if a lawsuit on behalf of poor persons against the local school district, or involving such educational issues as the

right to quality education or to a uniform education, or to bilingual, bicultural education, or to require the desegregation of schools in the district, is not brought by Legal Services lawyers at the request of their poor clients, the suit simply will not be brought, and very important and fundamental rights of clients will never be vindicated.

The same can be said for the matter which may arise in the small town, involving—especially in the small town—very volatile abortion issues. The full range of legal representation in all types of civil cases must be made available to the Legal Services lawyer. Our clients should have the same access to the legal system as is enjoyed by the person of greater means.

Another characteristic of small-town private bars is that oftentimes, the lawyer who might otherwise assist by taking a case of a poor person whom the Legal Services are prohibited from representing because of the type of case, can't do so, because of conflict of interest. It's not unusual to find that oftentimes, all the members of the private bar are foreclosed from participation in most poverty law cases, because they are either part-time county court judges, part-time deputy or assistant district attorneys, or on retainer by the city or by the county. Or, if the individual lawyer is not so employed or so retained, his law partner is. We are finding it difficult to recruit practitioners to participate in our alternative delivery system study, for the conflict of interest reasons that I have just mentioned.

On behalf of the rural poor which Legal Services must attempt to serve, we would ask that in view of the serious need to be met in achieving minimum access to legal services to the poor, that it not be delayed for 2 more years or 3 more years, but that it be achieved this next fiscal year by funding the Legal Services Corporation the full amount required to achieve minimum access; that is, $264.7 million.

We also ask that you make available the money necessary to provide minimal access for all poor persons, so then we can move on from the very basic minimal access to dealing with the special problems involved with certain migrant farmworkers, and the poor person living in distant and remote areas of the country, and those persons of the poor population whose primary language is Spanish.

Finally, we request that Congress make such changes in the act as would permit us to make available the full range of legal representation for all poor persons, and for all areas of civil cases. Thank you.

Mr. KASTENMEIER. Thank you, Mr. Cordova.

Mr. MILLER. Mr. Chairman, if I may add just a few brief comments about specific additional restrictions that have not been addressed, and where we either sharply differ from the Corporation or wish to make observations on your bill.

First—which is a sharp difference from the Corporation—relates to section 1011(2), already addressed earlier this morning by Mr. Jones in his testimony. We ask in this regard two things. One of them is met, I think, by your language; one is not.

The hearing examiner in that defunding situation should be, we urge, a person who has no other responsibilities with the Corporation other than that of hearing examiner. We would think the defunding mechanism would be resorted to so infrequently that there not even need be any kind of staff position to that effect created, but that the

hearing examiner role could be handled on a consulting basis. That is addresed in the bill that you've introduced.

The second point, though, relates to timing, and it goes really to the core of our concerns about the hearing process. We contend that an adversarial situation, such as the defunding of a program—and in our view, it makes no sense to treat it as an amicable sitution, or one of a consultative nature; we're talking about the complete termination of a program and its tradition—that that hearing should come after the review, including the final decision of the Corporation and its president, not be a precedent to that decision.

Our reasoning here is that a look at the track history to date, the five hearings, at least, that I'm personally aware of; I believe it's accurate to say that four and three-quarters of those five have simply resulted in the affirmation of the original determination by a Corporation employee that a program should be defunded. The hearings that took place were held in front of other Corporation employees.

The first merger case involving programs in Connecticut was held in front of another regional director, when a regional director in the Connecticut region was the one who had made the decision to defund in the first place. That kind of peer pressure, we would suggest, that kind of influence, simply does not lead to a healthy, objective look at the issues at hand.

There are values to be preserved in programs. We're not suggesting—and I want it to be very clearly understood that we are not suggesting—anything like perpetual funding for legal services programs. That clearly would not be a healthy kind of development. On the other hand, given the investment of Federal dollars and other dollars in the development of expertise and good will, and the reliance of the community on the programs, it is a matter to be treated with great seriousness and great care, and decisions to defund ought to be made, in our view, only on the most objective and sound grounds, not simply as experiments, unless the program was originally constituted as an experiment.

I just want to add something very quickly. I got a letter from a program director in Connecticut, the director of the New Haven program, not directly involved in the merger situation there, who was gravely troubled by the "standardlessness," as he characterized it, of that merger hearing; and asked that it be brought to the attention of this subcommittee and to others in Congress who care, his view that these kinds of decisions pellmell toward consolidation and centralization—perhaps noble goals—ought to at least be in an atmosphere where there's standards laid out beforehand, where there's notice to programs as to what should be taking place. This is supported by our own view, in contrast to the Corporation's view.

These hearing situations are not places where policy should be made. If I may refer briefly to the memorandum of the Corporation that was introduced yesterday, it was pointed out that there was a great fear that the hearing situation, if left to those outside the Corporation, would result in, in effect, people not knowledgeable messing up decisions of the Corporation on discretionary or highly sensitive policy issues.

We would suggest that, at least in the case of the Legal Services Corporation, which is first and foremost not a regulatory agency in

the classic sense, hearing procedures are not the place for policy-setting or for rulemaking. And we would further suggest that this policy kind of judgment, which could lead to the defunding of programs, is precisely the kind of issue which should be debated by the Legal Services Corporation Board with its complement of client representatives, so that the community is directly involved in those decisions.

Just briefly, on a couple of other matters, the Congressman from Illinois yesterday raised the question of the organizing restriction, which is dropped, and asked—I think—a question which went to the importance of it as we perceive it. Our suggestion here is that the organizing section, as it was drafted in the current bill, in the current act, which you've deleted, was so overbroad as to chill very legitimate kinds of activities on the part of programs representing, in very legitimate ways, organized groups. And I can testify firsthand to the questions that have come to me from other program administrators around the country wondering whether certain kinds of activities were appropriate.

They were plainly appropriate. But the inexperience and the uncertainty around the language in the Act indicates that if there are legitimate concerns—and I think there may be—they not be dealt with in the language that is contained presently in the act. If there are concerns about it, I believe that—to hark back to 1973 for a moment—the concerns are on the organizing section where the Legal Services lawyers, "unguided missiles" in Roger Cramton's term, would somehow impose their viewpoints on groups and individual clients.

I think that this section, one, doesn't address that concern at all; two, goes far beyond it, and actually inhibits the lawyers counseling clients about their rights, and the advisability of organizing.

A couple of comments on things that are not in your bill, Mr. Chairman, that we do consider important. Mr. Cook has touched on one; the costs and fees section. There was an omission in the legislative and administrative advocacy section of our suggestion that the phrase "by an attorney as an attorney" be deleted. That phrase would limit any legislative advocacy that the program does to be done by lawyers, which at least in our experience is not efficient at all in some circumstances; and that nonattorney personnel have clearly demonstrated their capability and proficiency at some sorts of legislative advocacy. That phrase doesn't, in my recollection, relate to any particular debate on the floor of Congress; I doubt that that's a controversial issue.

Second, it has been mentioned several times yesterday and this morning; it relates to the SSI cases and the fee-generating section. We very much urge, if not a statutory amendment, at least clear legislative history, taking SSI cases for the reasons that have been stated earlier out of the definition of the concept of fee-generating cases. Our experience in this case, in New Jersey, for instance, has been that the private bar simply is not attuned to social security issues in the first instance. Those few who are, and those few who have taken social security cases, have led to what might be charactezied as unpleasant situations because the attorneys' fees are a fixed percentage of retroactive benefits of an accumulation of retroactive benefits which, from our point of view, does not benefit the client.

The third item which is not included, which I'd like to call your attention to, is the provision regarding hiring attorneys. I'd just like to make one point in that regard. There is a preference in the act for those attorneys who reside in the community to be served. We'd like to call to the subcommittee's attention that that very much hinders in some parts of the country affirmative action recruitment of attorneys from outside the jurisdiction. In other words, a particular jurisdiction may or may not be able to support sufficient numbers of qualified minority candidates for an attorney position, and it may be the program's only recourse to turn outside that jurisdiction.

This section, while it's loosely drawn and so on, perhaps is easily dealt with. It acts as a chilling factor to a very legitimate affirmative action effort that should be going on in the community.

Just one last point on the organizing regulation. I wanted to correct one impression that was left by Roger Cramton yesterday. There is no corporation regulation on organizing. He I believe made the representation that—or at least left the implication—that the possible constitutional objections to the organizing section were cured by the corporation interpretation. There is no such cure; there's no such regulation.

Thank you. I think any member of the panel would be delighted to respond to any questions you might have. We appreciate the opportunity to testify.

Mr. KASTENMEIER. Thank you, Mr. Miller.

I will yield to my colleagues first. The gentleman from California?

Mr. DANIELSON. I'll pass.

Mr. KASTENMEIER. The gentleman from Massachusetts, Mr. Drinan?

Mr. DRINAN. I want to thank all of you. It was very unexpected to me, but I wonder if Mr. Denison Ray would want to explain something on a chart which he has at the back of his fine material. It seems that Massachusetts has slightly more poor people than Wisconsin, and yet Wisconsin needs almost $2 million more for legal services. I don't understand the barriers. Then, there are two figures missing from Massachusetts.

Mr. RAY. Yes, Congressman Drinan. That is because, according at least to the Corporation information furnished us, Massachusetts is receiving about three times as much money as Wisconsin at the present time And therefore, you have a per capita funding level for fiscal 1977 which exceeds $7 per poor person. Wisconsin, and indeed all of the other States on that chart, do not. Yours is the only one above $7. And expansion money—or let me put it this way; equalization money, that is, money to existing programs to go beyond simply a cost-of-living increase in fiscal 1977—were only given to those programs that were below the $7 per capita.

That explains the blank spaces in those two columns for Massachusetts. I think, though, the critical factor for your attention is the very last column to the right Because it's obvious that in Massachusetts, as throughout the country, the $7 per capita is the barest of minimums, and in order to get up to even four lawyers for every 10,000 poor people in Massachusetts, it is going to take nearly $5 million.

Mr. DRINAN. All right, thank you.

On a broader question, it's my clear recollection that when the Legal Services Corporation Act was enacted, in fact when the old OEO

passed, the Congress intended that preventive law be practiced. In other words, the Congress intended the prevention of injustice. It was understood that the lawyers should work to alter or eliminate those regulations or laws, those judicial decisions, which impede the rights of the poor and which bring about all types of situations for which a class action remedy might be available.

If the Legal Services Corporation concentrated on that over the next 2 or 3 years, would the figures and the total sum necessary in fiscal year 1981 still be the same $648 million?

Mr. RAY. I think they would, sir, because we have found, in the experience of Legal Services, that although changes in legal principles and policies of institutions is very important, and indeed is also economically sound—in other words, you get more for your money, obviously, in terms of fallout effect—nevertheless, on a filtered-down basis to the daily lives of people, it's simply impossible to have those changes do anything but to change the frame of reference, in order to bring home to bear on the daily lives of people those changes. You have to enforce the law, and that's where day-to-day need comes in.

We've also found, in the preventive law sense, that part of our business should be going out into the community and telling people what their legal rights and responsibilities are, and how to use the legal system. The dilemma there is that the more that we do that, the more it will generate a greater demand, and unless we have the resources to respond to the demand, we are in a quandary.

Mr. DRINAN. Following up on something that you stated here, we know that to some people the figure you suggest of $264 million will be politically impossible to attain. If that turns out to be so, how would you react to some language in the statue stating that the 5½ million people who now have absolutely no access to legal services should be serviced? Should there be some mandate to the Corporation that some service be given to them, even if in fact the Corporation has to reduce funds that are now given to those that have minimum services?

Mr. RAY. Well, I would be hard pressed to give you a definitive response today, because I think that that would require the consideration of my colleagues in PAG. I will give you a reaction, and that is that we know, even in areas such as my own part of the South, where we have historically been more underfunded than others, that there is a terrible need of existing programs to get more money simply to keep the good staff that they've got, and to try to build up a minimum high quality of service for the cases that we do have.

So, I would be reluctant to adopt the premise—certainly, without giving it much more serious thought.

Mr. DRINAN. It may become the dilemma, though, that this subcommittee or the full Judiciary Committee has. If we allow all of these uncovered areas to go on this way, we're not being fair to them.

I'd appreciate any thoughts that you or your association would have at a later date.

Mr. RAY. Father Drinan, I might just add a footnote there. Unfairness cuts both ways. We obviously, from our presentation, are very much concerned about those people getting access. At the same time, we do have an obligation to those people who already have access to do that job well. So it is a dilemma. I don't pretend to know the answer, except to get more funding.

Mr. DRINAN. If we did, in fact, extend some services from the Legal Services Corporation into these new, totally uncovered areas, it might stimulate the local bar to be more responsive to the needs of the poor, right?

Mr. RAY. It might theoretically. My experience is, to look to the private bar as any meaningful solution on a pro bono basis is illusory.

Mr. DRINAN. Once again, Mr. Chairman, I appreciate the testimony of the four witnesses. It has been very helpful to me, and I'm grateful. Thank you.

Mr. KASTENMEIER. Yes?

Mr. DANIELSON. May I ask a question of Mr. Ray, please?

Mr. KASTENMEIER. Yes.

Mr. DANIELSON. I revert back to Father Drinan's question about the difference between Massachusetts and Wisconsin in funding on the chart. I wonder if this would have any validity. I note that Wisconsin—I know it has a more substantial size, both in square miles and in number of rural areas; people living in rural communities, small towns or farming areas, than Massachusetts, which is pretty much urbanized, with heavy centers of population.

Would there be anything—I have a feeling, in legal services, that the Legal Service Corporations' programs around the country are understandably located in the more densely populated urban areas, rather than out into the rural area. Therefore, in a State in which you have a good deal of high population density urban areas, you're going to be providing a little bit better per capita service to the poor than you are in another State which has a largely rural or small-town type of population.

Could that be any part of the reason why you've got such a difference here between Massachusetts and Wisconsin?

Mr. RAY. Sir, I don't think so. Certainly, the day is upon us when we need to custom tailor many of the responses to funding of legal services programs, based upon the kind of logistical and other problems that they have; as, for example, rural communities. But funding through fiscal 1977 has been largely a product of the past, plus the need to inculcate certain operating premises in the present.

Let me explain briefly what I mean. Before there was a Legal Services Corporation—and one of the great advantages of having a corporation is that it can in a professional way approach it with an overview to this whole problem—before then, funding was on the basis of who demanded the most, had the best political connections. It bore no rationale to any need.

So, when the Corporation began to receive additional funds, you started with certain funds in place that bore no intrinsic rationale to one another. Since then, the Corporation has, with the influence of this group, sought to at least keep even with inflationary increases for all programs, and meanwhile bring those programs below that rather arbitrary $7 per capita minimum up toward that figure.

So that the purpose of the request we make for fiscal 1978 is to at least get every program up to that floor, so that you can enable the real, custom-tailored approach to begin, as you suggest.

Mr. KASTENMEIER. Would the gentleman from California yield?

Mr. DANIELSON. I yield.

Mr. KASTENMEIER. Actually, the fact is that Massachusetts early had much more aggressive legal aid and legal services activities than

Wisconsin did. The gentleman from Massachusetts was a part of this. There are a number of institutions there even now that are support centers. It suggests that that is the reason for the figure of $3.7 million, three times as much as Wisconsin. Outside of Judicare in the North, and Milwaukee Legal Services, there were no other Federal legal services programs in Wisconsin.

And actually, just the opposite would be true if you had, as Mr. Cordova and others suggested, large, remote areas within such a State where rural clients need to be served.

The per capital basis costs might run higher because of transportation and other special costs of delivering effective legal access, minimal access, to such a large State with a similar population, but without population concentrations; and that the differential might change the cost.

Mr. RAY. That could well be the case, Mr. Chairman. There is a cost study going on now, as perhaps you're aware. The Corporation has undertaken it, with the assistance of outside consultants. And probably by the end of the summer, some results should be forthcoming.

Mr. DANIELSON. Would the gentleman yield back?

This point interests me very much. I've listened with a good deal of care to Mr. Cordova's testimony, and I know a little bit about Colorado. You've got three large population areas: Denver, Pueblo, Colorado Springs; you might stretch it and toss in Grand Junction and Boulder, but that's about as far as you could go. But you have some remote towns where it just wouldn't be feasible to have a full, independent program operating—not that there are no poor there, but there are not sufficient numbers of poor within the geographical area to justify the entire program.

The rural poor are just as poor, and they need just as much help. But you have a smaller number of them within the geographical area, which is probably one reason you get all these road trips you were talking about, which are expensive in mileage reimbursement and time consuming and dead time, and the like.

I think we've got a problem here that we must face; where you have concentrated poor—as in Los Angeles and Boston and Milwaukee—you can have programs to serve them. But where you have a rural area, such as large parts of Colorado and other Midwestern and Western States, it just isn't efficient to try and operate a program in every town, every small city and town. Therefore, there are going to be a lot of poor who need the services, but who just won't have them available to them.

Would Mr. Cordova comment on that?

Mr. KASTENMEIER. Would you comment briefly, please?

Mr. DANIELSON. I think it's an important feature.

Mr. CORDOVA. Yes, sir, it is. And that's the reason why, as I mentioned, we had the alternative delivery system study that is being put in place in northwestern Colorado, a very mountainous—the most mountainous part of the State. And there are poor people living around such areas as we hear of—Vail, Aspen, those sorts of places. There are poor in small mining communities in those areas.

But we do recognize the inefficiency of the staff attorney office in those areas, because there's no one place that is central or accessible to any large number of the population.

Mr. DANIELSON. I think the gentleman said that you find that, in those small towns where you do try to enlist the aid of the private bar, there's a conflict of interest; he's a city attorney or a deputy prosecutor or some such thing. I thank you; I can see this point.

Mr. CORDOVA. Yes, sir.

Mr. KASTENMEIER. Thank you.

Whatever questions I have, because of the time element, I will not now ask. But we may want to pose them to you in correspondence or otherwise. In Mr. Cook's case, we might go so far—insofar as he's local, we might prevail upon him to return at some later point, and we can go into more precisely the operation of a legal services program in a large metropolitan center, facing the challenges that he faces.

In any event, I want to thank all four of you for your contributions today in shedding some light on this question.

I'm told that Mr. Abascal is here, and would very briefly discuss his testimony or statement.

[The prepared statement of Mr. Abascal follows:]

STATEMENT BY RALPH SANTIAGO ABASCAL, CALIFORNIA RURAL LEGAL ASSOCIATE

AMENDMENTS ON SALARY COMPARABILITY TO THE FISCAL YEAR 1978 AUTHORIZATION FOR THE LEGAL SERVICES CORPORATION

The proposal.—The authorization bill for the Legal Services Corporation should be amended to include the following sentence: "In order to maintain the quality of existing staff attorney programs, the Corporation shall ensure through sufficient additional funding that each recipient forthwith maintain employee salary levels comparable to those in other parts of the public sector, including levels contained in the general schedule of the Federal Civil Service Commission applicable to employees in comparable federal employment."

The problem.—For poor Americans to have the same quality of representation available to affluent Americans, their attorneys must be paid comparable salaries.

Since 1969 the Consumer Price Index for urban wage earners and clerical employees rose over 70 percent; average federal civil service pay increased over 65 percent; management pay rose more than 52 percen .

Not so for legal services, however. Salaries of the program employees, particularly staff attorneys, have remained at previously low 1969 levels. The majority of programs, like CRLS, have received only a 16 percent funding increase over the ensuing eight years. They have applied this nominal increase toward skyrocketing non-personnel costs, leaving salaries frozen at 1969 levels.

The results affect the very quality of representation of clients by existing programs. Low salaries cause high attorney turnover, particularly among experienced attorneys capable of bringing the kind of creative, aggressive law reform advocacy which has been the hallmark of legal services.

Comparability.—The LSC cited low staff attorney salaries in their successful request for budgetary increases during the past two years. It failed to act, however, and the gap between LSP salaries and comparable public sector salaries remains huge. The following recent sample reflects, average salaries of LSP staff attorneys in Boston, Michigan, Chicago, Miami, Dallas, and CRLA and comparisons.

Experience	Legal services programs	Federal	Legal Services Corporation	Legal services program, Federal gap (percent)	Legal services program-Legal Services Corporation gap (percent)
Beginning	$11,400	$16,250	$16,013	+43	+40
3 yr	15,800	21,970	26,250	+39	+66
Maximum	19,060	[1] 39,450	33,600	+60	+76

[1] 8 yr.

Recently, the LSC mandated that LSPs (1) conduct attorneys' salaries comparability studies and (2) thereafter pay competitive wages. (Fed. Reg. Nov. 12, 1976, p. 50042.) The LSC prohibits budget increases for this purpose, however, necessarily requires programs to cut back existing services in order to pay reasonable salaries. Thus, the Corporation would close down offices of established programs in order to open offices among new and inexperienced programs.

The cost.—CRLA estimates that an adjustment of its attorney salary scale to competitive levels would require an increase of 10 percent of its budget, beyond a current cost of living adjustment. A similar adjustment for LSPs nationwide would not exceed 10 percent, or $11 million of the current $110 million program base.

Conclusion.—The business world is replete with examples of rapid company expansion to the neglect of existing efficient operations. The analogue here is obvious. The Legal Services Corporation must assure LSP salary comparability in order for effective and aggressive advocacy to continue.

I. THE CORPORATION'S CURRENT FUNDING POLICY CREATES AN UNACCEPTABLE THREAT TO THE QUALITY OF EXISTING LEGAL SERVICES PROGRAMS

A. Historical background.—The Legal Services Corporation did not begin in a vacuum but instead inherited a collection of legal services programs seasoned by a decade of experience, conflict and growth. Indeed, the overriding congressional policy in forming the Corporation was the preservation and strengthening of that system of legal advocacy for the poor which legal services had come to provide. Just as Congress gave the Corporation the assets and liabilities of its federal predecessor, the Congress assured LSC assumption of its predecessor's intangibles, both the quality and responsibility inherent in any professional legal services program.

Professor Johnson[1] describes with clarity OEO Legal Services' departure in the mid-Sixties from previous "bandaid" legal aid efforts. Those new directions charted the course for Congressional passage of the Legal Services Corporation Act in 1974; maintenance of program quality was a central motif in these efforts. The Act's explicit purposes include 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 service 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). A key criteria for selection to the Corporation board is a person's commitment "to comprehensive and effective legal services"[2]—a criteria of considerable Congressional interest in the later selection of board members.

A well run law office invites an analogy to a well run vehicle. Such a vehicle, with proper upkeep and fuel, will function effectively for an indefinite period. In the mechanical metaphor, the LSC sadly has opted to create more vehicles at the cost of proper upkeep for existing ones. Put in intangibles, the Corporation's policy of using additional funds almost exclusively for expansion and equalization jeopardizes the professional effectiveness of existing programs above the qualization levels.

B. The CRLA experience.—In 1970 California Rural Legal Assistance, Inc. was named by the Director of OEO as the outstanding legal services program in the nation.[3] In the past six years CRLA has had thirteen cases heard before the California Supreme Court and has won all thirteen.[4] CRLA, of course, owns no monopoly on quality of many established legal services programs across the country as well as the weaknesses caused by Corporation cutbacks in funding.

Legal Services budgets were low in 1969; since then they have risen only 16 percent while inflation has skyrocketed. The Federal Commission on Executives,

[1] E. Johnson, "Justice and Reform: The Formative Years of the OEO Legal Services Program," 14–19 (1974).

[2] Report of the Senate Committee on Labor and Public Welfare, (S. 93–495, 93 R.D. Cong., 1st Sess., pp. 9–10).

[3] N.Y. Times, December 1, 1970, at p. 20, col. 4 (city ed.) quoting OEO Director Donald Rumsfeld.

[4] The cases include *Carmona* v. *Califronia 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).

Legislative and Judicial Salaries, recently noted how the Consumer Price Index for urban wage earners and clerical employes rose over 70 percent since 1969 and the general schedule Federal Civil Service Pay increased on the average by over 65 percent.

The 70 percent cost of living increase measured against a 16 percent 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 measured in the kinds of lawsuit it brings, in the way those lawsuits are prosecuted, and in its ability to conduct effective legislative and administrative advocacy on behalf of eligible clients.

C. The nexus between funding and quality.—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 percent of that offered by many private firms. In the intervening eight years the cost of living has increased 70 percent, civil service pay 65 percent, 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 increase 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 percent. Consumable supplies have increased 174.6 percent. [Equipment leased and purchased has increased 160.6 percent.] 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 filing 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, 39 and 54 percent per year. By contrast, turnover from 1967 to 1970 averaged only 22 percent, 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.

Although the Corporation once flagged low attorney salaries before Congress in a successful effort to increase its appropriation,[5] since then it has treated the matter at best with benign neglect and at worst with a view that legal services attorneys, like Helots, should be kept "lean and mean." Certainly 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 of the regional offices of CRLA are located in relatively remote agricultural areas of 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 percent Spanish speaking attorneys and 50 percent 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 percent in each category.

[5] Hearings before a Subcommittee of the House Committee on Appropriations, 94th Cong., 1st Sess, pt. 9 at 18–21 (1975). See generally George, "Development of the Legal Services Corporations," 61 Cor. L.R. 681, 699 (1976).

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 in requiring all programs to conduct comparability studies for all classes of employment, 41 Fed. Reg. 50052, but has not been willing to fund programs to implement the results of those studies. In the Federal Register 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. For CRLA to make its pay scale comparable it would have to close two of its ten regional offices as well as terminate numerous central office personnel.

II. THE DOLLARS PER POOR PERSON FORMULA APPLIED TO ALL PROGRAMS DISCRIMINATES AGAINST REGIONAL RURAL PROGRAMS

The use by the Legal Services Corporation of a mechanical dollars per poor person formula in deciding what is adequate funding for all programs discriminates severely against a statewide rural program such as CRLA and its client community. The cost per service rendered is greater for a statewide rural program than an urban program. The extra tasks assumed in being a statewide program increase operating expenses over those of county based rural programs. At the same time a statewide rural program is unable to draw on resources other than the Corporation as easily as can either an urban or county based rural program and the alternative resources that are available outside of the Legal Services program for its clients are far less.

1. Cost of rural program vs. urban program.—In comparing CRLA's budget with that of most other programs the first thing that stands out are a number of communication costs, i.e., travel, phone, conference expense. Because CRLA is spread throughout the state mainraining the flow of information and assistance necessary to have the organization function as a unit and handle many of the statewide issues which were the rationale of CRLA being established as it is. Over the last two years with inadequate budget increases CRLA has had to make cuts. Inasmuch as CRLA differs most strikingly from the stereotype single office or single city program which the Corporation had in mind in formulating its dollars per poor person formula, many of the initial cuts were made in these communication costs. The result was disaster. Each office lost a sense of being part of a larger organization. Information of relevance to each of the offices in handling their cases no longer flowed between offices. Information in priority areas was no longer gathered and disseminated to each of the offices. The morale of the program took a nosedive.

It is particularly ironic that as the Legal Services Corporation has been adopting many structural innovations that CRLA has used in the past, CRLA has had to abandon those very same structures for cost reasons. The Corporation has added to its own staff management experts to upgrade the administrative procedures of all programs. In this region, the Corporation hired a former CRLA Administrator and is using CRLA procedures as a standard against which to measure other programs. The Corporation has mandated that programs establish priorities. (45 CFR 1620). Region IX has devoted substantial efforts toward establishing a system of task forces for coordination between programs, similar to the Task Forces CRLA uses internally. Each of these steps will improve the quality of services performed by legal services programs. Each involves negligible costs for a program which can train its personnel and communicate with them without high travel and phone bills. Each of these steps CRLA has done internally in the past but until two or three months ago had been forced to abandon because of their expense.

From the last two years experience the feeling within CRLA is clear that cuts in communication costs can no longer be tolerated. The program will be forced to make further cuts in services and recognize that whether the Corporation will acknowledge it or not the non-personnel costs in running a state-wide rural program are far greater than those of a program more geographically compact.

Other costs are also higher for a state-wide program. Although the cost per square foot for rental space may be higher in urban areas, because of its dispersed population many of CRLA's offices have to rent outreach offices in addition to their head office in a particular office. Gilroy, Salinas, and Ceres currently rent one office large enough to house all four of their attorneys and in addition a second office in a second community some twenty to twenty-five miles away for outreach intake. Thus, the office space per attorney is far greater for a rural program needing an outreach office than for an urban program.

More time is consumed in traveling to interview clients, to get to court, to go to the county law library, to investigate the facts of a case, or to meet with community groups. Attorneys and community workers are able to do far less in a given number of hours because of the distances they have to cover. The Delano office, for instance, is forty minutes from its nearest Superior Court and county law library. It represents clients who come from as far as an hour and a half away. When fact investigation has to be done on these clients' community. The community cannot be brought to the attorney. The office represents groups in Visalia (fifty minutes away) and Lamont (one hour away) among other communities. If a program in such a community is provided with only the same number of attorneys per poor person, it can hardly be expected to provide the same volume of services if a substantial amount of its employees' time is spent just in travelling between the places at which the services are renderd.

Urban programs also benefit from economies of scale. With more clients concentrated in a small area, the attorneys who render the services can be concentrated. Greater specialization amongst attorneys is possible. Many urban programs have one or two attorneys grind out tremendous numbers of dissolution cases which greatly inflate the caseload per attorney statistics for the program. Even if dissolutions are included, if one attorney is able to specialize in Welfare matters or landlord/tenant matters he is able to provide a greater volume of high quality service than if he has to handle the whole range of legal services problems, keep abreast of the developments in each area, and familiarize himself with the experts and specialized resources that he may have to use in each area to do a quality job. Urban programs are frequently able to specialize. A rural program with four attorneys in an office clearly cannot.

A similar economy of scale arises in the area of community education. With more people concentrated in one place, an urban program can reach a far larger number of people with a given amount of effort in community education. Community education is most effective when it is done in conjunction with an existing community group, especially if a member of the group is trained as a paraprofessional in the process and can serve as a resource for the office and community members in spotting legal issues. This type of community education is extremely difficult in a rural area. Fewer people can be gathered in one place for any type of training session. Community groups with any stability are far fewer. Far greater efforts are necessary to achieve the same level of community education in a rural area as opposed to an urban area. Legal Services programs have been quite successful in working with Welfare rights organizations in urban areas, for instance, but almost without exception unsuccessful in rural area. Community education in conjunction with a Welfare rights group frequently solves many cases before they come to the office and make many that do come to the office easier of resolution. The difficulties encountered by rural programs in this area are a further limitation on the services that they can render for the same number of dollars when compared with urban programs.

Rural programs in many south-western states face a further disadvantage. Many of their clients are migrants who come to the office for services but have vanished when the census taker comes around. Census statistics of Mexican Americans of all kinds have been criticized for under counting.[6] The census has never attempted to allocate migrants to the different communities in which they work. Yet these census statistics which understate CRLA's client community are used in allocating program funds.

[6] See P.L. 94-311, 90 Stat. 688, directing the Departments of Labor, Commerce, HEW and Agriculture to improve their methods of counting "Americans of Spanish origin or descent."

Because of the number of extra costs involved in the operation of a rural program, because of the inability to specialize, and because its statistics will show fewer cases even though comparable amounts and qualities of work may be performed in a rural as opposed to an urban area, a mechanical dollars per poor person formula severely hampers rural programs.

2. Costs of a rural vs. statewide rural program.—CRLA is even at a disadvantage in comparison with other rural programs because of the extra obligations it assumes that is expected by other programs and the Corporation to assume. These include responsibility for disseminating substantial information to programs outside of CRLA and engaging in substantial litigation, lobbying, and in depth technical assistance with other programs. None of this is expected from county based rural programs. Nevertheless the mechanical funding criteria treats CRLA the same as for instance Merced Legal Services. It is important both for the quality of the services that CRLA provides and for the benefit that CRLA can provide to other programs that CRLA continue these extra functions. Nevertheless CRLA has and will have to continue cutting back on services to its client community in order to continue as it has in the past.

3. Lack of non-Legal Services Corp. resources available to a statewide rural program.—Few programs in the history of Legal Services have derived as few funds from sources other than the Corporation as has CRLA. Some people would say that CRLA has just not done its job in recruiting other sources of funds. In fact it is the aggressiveness with which CRLA has operated and the basic structure of the program which has precluded CRLA from obtaining the sources of funds that other programs have received. Small rural programs tend to be less aggressive, tend to keep closer ties with their local Bar, their local charities, and local government officials. The net result is they get in some cases substantial free services provided by the local Bar, substantial contributions from United Way and other local charities, and substantial revenue sharing, CETA, or other local funds to expand their operations. In aggressively representing its clients CRLA does not deliberately try to alienate the local Bar, local charities and local government officials. Such alienation in many cases, however, is inevitable if CRLA is to continue to vigorously represent its client community in a basically conservative rural area.

When a valley merger was discussed a year ago, several attorneys in smaller programs objected to the merger for reasons such as that CRLA attorneys filed truth in lending counter claims in contract cases and the local Bar would hit the ceiling if they did that, that CRLA excessively considered affirmative action in its own hiring, and that CRLA would not allow a merged program to fire a staff attorney because he filed a suit which though permissible under the guidelines was offensive to local Bar members. In a rural area these differences between CRLA and other small programs are the price you have to pay to get local money. CRLA is not willing to pay that price. If the Corporation wants aggressive legal services in rural areas it has to realize that such services are more expensive because local sources will not chip in.

The contrast between the non-Legal Services Corporation resources available to an urban program and those available to CRLA are even greater. Urban Bars tend to be more liberal and in any case more diverse in their composition. Aggressive representation in an urban area will not necessarily cut off free contributed services by local Bar members. Similarly local charities and local government officials are more broadminded. Opportunities to tap these sources of funding may be available whether the program is aggressive or not. Perhaps the greatest disparity however arises from the availability of law school students, college students and community volunteers who are willing and able to work for free with a program. CRLA offices tend to be located far distant from educational institutions other than community colleges and as a result get very few such volunteers. Similarly CRLA has historically been denied VISTA and Reggie resources that were available to other programs. Finally urban areas have stable and effective community organizations. Even when they do not the community structure that exists is awesome in contrast to the rudimentary community structure that exists amongst the client community in rural areas. The effective-

ness of a legal services program probably depends more on the strength of the community structure to which it can relate than it does even on the quality of the attorneys hired. Urban programs have far more out there in the community with which to leverage their effectiveness than a rural program such as CRLA.

4. *Resources available to the client community outside of the legal services program in an urban area.*—A variety of factors bring far greater resources within the reach of the eligible client community in urban areas compared with rural areas. Attorneys, like doctors, tend to flock to the cities. This appears to be especially true of lawyers seeking alternative styles of practice that are less oriented towards a high income life style. Such attorneys will give up the money of a business practice but not the stimulation of the urban area. San Francisco has far more struggling young attorneys who will take an interesting case for free to establish their reputation or their contacts in the community than is the case in any of CRLA's communities. Similarly the law schools tend to be in urban areas. The schools frequently run clinics that are not affiliated with any legal services program. These clinics provide substantial services to the eligible client community even though those services are not included in any calculation which is used in coming up with funding allocations. The grassroots community groups mentioned above in urban areas provide many services independently of the legal services program which are not available to clients in rural areas.

III. CONCLUSION

Thus The Corporation faces a choice. It can discourage quality legal services and the retention of experienced, effective attorneys; it can discourage aggressive litigation; it can discourage programs from doing lobbying, disseminating information to other programs, keeping offices within its program informed on issues of common interest, and developing expertise in areas of state-wide concern to the client community; or it can find a way to temper the discriminatory effect of its current funding criteria mechanisms.

Three immediate steps are necessary to correct the situation. The Corporation should first set standards for making legal services attorney pay scales comparable at least with other public and private interest salary schedules and fund the programs to equalize their pay scales. Otherwise high turnover and a decline in the quality of services provided is inevitable.

Secondly, The Corporation should immediately calculate an accurate increase in the cost of doing business and should guarantee every program a budget increase of that amount unless the Corporation can show that some of the previous funding was not necessary for adequate services. The past practice of giving inadequate increases have forced existing programs providing quality services to cut back on those services. Such cutbacks inevitably lead to a drop in morale and a drop in the quality of services. No program can maintain its performance while constantly cutting out job slots or fringe benefits or cutting salary. The programs that performed best in the past were the ones to get the most funds. These programs which were previously the pride of legal services are now rapidly slipping in performance because of present policies.

Finally the Corporation should recognize that state-wide rural programs are performing functions similar to those of a backup center and quite different from those of a local county based legal services program. For that reason statewide programs should receive funding for their client intake based on dollars per poor person and additional grants for their backup center type activities. CRLA conducts statewide lobbying activities. It provides backup to many of the other smaller programs through four experienced attorneys. It has a specialized senior citizens unit that represents urban as well as rural senior citizens and has a lobbying office, the only such lobbying office for senior citizens in Sacramento. It gathers information and does research on issues of statewide concern for its own offices and those of other programs throughout the state. It engages in statewide litigation that county based programs are not equipped to handle. All of these functions should be funded apart from the normal funding mechanism.

Even if these changes are made, in the long run rural programs will continue to suffer for the variety of reasons outlined above. If the Corporation is not going to accept and rigidly perpetuate discrimination against effective rural programs, it must incorporate in its funding criteria factors to offset the greater cost of performing equivalent services in rural areas and the deprivation the clients of such a program suffer from the lack of alternative resources either through the program or independently available in the community.

TESTIMONY OF RALPH S. ABASCAL, DEPUTY DIRECTOR, CALIFORNIA RURAL LEGAL ASSISTANCE

Mr. ABASCAL. Yes, Mr. Chairman.

Mr. Chairman and members, my name is Ralph Santiago Abascal, deputy director of California Rural Legal Assistance, a statewide rural legal services program serving 10 rural areas in California.

I want to be very brief. Because I've done a lot of school lunch litigation, I really believe that schoolchildren perform better after they've had lunch, and I think the Congress will also perform better if they have lunch.

[Laughter.]

Mr. KASTENMEIER. You're probably right.

Mr. ABASCAL. We are proposing an amendment to the Legal Services Corporation Act which essentially would require the Corporation to insure, through sufficient additional funding, that employees' salary levels are comparable to those of other parts in the public sector. There has been much discussion here. I'd like to pinpoint a couple of facts.

The budgets of most programs have increased 16 percent since 1969. The Consumer Price Index has increased 70 percent. Civil service salaries have increased 65 percent. One consequence of these facts has been increased personnel turnover in programs. The last 3 years have seen turnovers of 36, 39 and—in the most recent year—over 54 percent in 1 year; a tremendous turnover of personnel. And I don't think that's necessarily just because of salary inadequacy.

Salary inadequacy is part of another inadequacy of funding. When you have to work not only at relatively substantially reduced salaries, but with inadequate library facilities, with inadequate secretarial assistance paralegals—the whole other complement of those supporting factors necessary for provision of adequate legal services—all of those things combined, it can get very tedious. And there are psychic rewards we get out of this work. I am fast approaching social security age, and as one part of my work, I concentrate a great deal on SSI and social security and medicare for my own self-interest.

But, in spite of those psychic rewards, it becomes difficult to do the things that we like to do most—to win on behalf of our clients. We need money to win on behalf of our clients, to aggressively represent them.

The proposal that we are suggesting presents a substantial dilemma to the Corporation and to the committee, because if one assumes a fixed and limited amount of funding, then to provide additional funding for salary inhibits the direction and the movement toward adequate access

by blanketing throughout the country. There is a dilemma and we recognize that.

At the same time, we believe that the existing programs, if they continue in the present path that they have for many years, are going to jeopardize the quality of service that they can provide. There's a very close interrelationship between adequate minority hiring, between preventive law—as Congressman Drinan discussed earlier—and between the quality of representation and the interrelationships between funding: those interrelationships, those goals of minority hiring and preventive law, cannot be looked at in the abstract, but we have to look at the budgets with which we deal.

Eighty-five percent of the cost, roughly speaking, of legal services programs consists of salary costs. The Corporation issued a regulation in November 1976 requiring salary comparability surveys, and in a sense mandating that after those surveys be conducted, that we adhere to them by increasing salaries. [See app. 1 at p. 349.]

On page 2 of my testimony, I have a chart that describes comparable salaries between the salaries presently paid by programs in Boston, Michigan, Chicago, Miami, Dallas, and the CRLA. That is seen in column 2. Column 3 is on page 2 of my testimony, Mr. Chairman.

For example, the beginning salary of those programs is $11,400; while GSA, beginning salaries for comparable attorneys, is $16,250. At the top end, the maximum salary, for 8 years experience, is $19,000. GSA is $30,000, and the Legal Services Corporation itself is $33,600. The fourth and fifth columns show the disparity between, on the one hand, those programs surveyed, the salary structures paid there, and GSA; the last column shows the disparity between legal services programs and between the Corporation's own salary structure, which is even higher than GSA.

Now, we are faced with a dilemma in CRLA, a similar dilemma faced in other programs. If we are to pay comparable salaries, the only way we can do it is to close 2 of our 10 offices down, take the resulting funds, and increase our salaries. We do not want to do that. And that is essentially why we, as a single program and, in addition, representing a number of other programs, are asking the committee to deal squarely and directly with the salary issue.

Now, one other proposal. We have written this proposed amendment to require comparability to salaries in other parts of the public sector. Another alternative to that would be to permit the Corporation to establish a percentage short of 100 percent—80 percent, 90 percent—some percentage—of that standard, to allow some compromise between the goal of adequate access and the goal of quality service. I think that the committee should address this issue, and address it so that the quality of representation throughout the country does not diminish further.

Thank you.

Mr. KASTENMEIER. Do you have any questions?

Mr. DANIELSON. I want to thank Mr. Abascal.

Mr. ERTEL. I have no questions; thank you.

Mr. KASTENMEIER. Thank you very much. And you're right: this is a dilemma. But we appreciate your own contribution, and the background paper will be made available.

Mr. ABASCAL. Let me, Mr. Chairman—the appendix, if you will, is a special pleading on our own behalf which we are directing to the Corporation for CRLA alone. But I think it does elaborate on some of the points that Leroy Cordova made earlier; the difficult, peculiar problems of a statewide rural program.

Mr. KASTENMEIER. I appreciate that. Thank you.

And now, our last witness this morning is Ms. Kathleen Mullen, an attorney representing the program, Legal Research and Services for the Elderly, which is sponsored by the National Council of Senior Citizens.

[The prepared statement of David H. Marlin, director, Legal Research and Services for the Elderly, follows:]

STATEMENT OF DAVID H. MARLIN, DIRECTOR, LEGAL RESEARCH AND SERVICES FOR THE ELDERLY, SPONSORED BY THE NATIONAL COUNCIL OF SENIOR CITIZENS

The National Council of Senior Citizens is a nonprofit membership organization of over three million older Americans and three thousand affiliated senior citizens' clubs located throughout the country. Although NCSC is devoted chiefly to supporting national and local legislation which will benefit the elderly, particularly those with limited incomes, it often joins its efforts with those working to improve the quality of life of other segments of the Nation's poor. It is, in fact, the basic tenet of the National Council that the needs of all poor people must be equitably tended to if the rights of the elderly are to be preserved and enhanced.

Our purpose, then, in commenting today upon the extension of the Legal Services Corporation Act of 1974 is to raise the issues of the historic and continuing under-representation of various segments of the poor population by legal services programs. Although we can speak with authority and provide documentation only with respect to the elderly poor, we suggest that the blind, handicapped, migrant workers, Indians, and rural poor might raise similar complaints. Our recommendations for amending the Act, therefore, are aimed at ensuring that all segments of the poor are serviced equitably according to their proportional representation in the individual legal services programs' client population.

Legal services programs have since their beginning under the Office of Economic Opportunity experienced great difficulty in reaching and serving the elderly poor. The establishment in 1968 of Legal Research and Services for the Elderly[1] through funding by OEO reflects the early recognition on the part of OEO's Office of Legal Services that the elderly poor were not being served—and would not be served—by the conventional methods then and now employed by legal services programs. LRSE was mandated by OEO to identify and research substantive areas of the law which particularly impact the elderly poor and to demonstrate legal services delivery systems which would both meet the legal needs of the elderly and overcome the barriers—both physical and psychological—which prevent older persons from receiving adequate representation. In the years since 1968, LRSE, its progeny, and other elderly law programs—financed both through the Administration on Aging and OEO/Legal Services Corporation funds—have researched and highlighted the substantive areas of the law which negatively impact the elderly; developed model legislation and/or litigational theories aimed at redressing the severe injustices experienced by older persons; and demonstrated that the access problems barring older persons from securing the necessary legal representation can be overcome by vigorous outreach and the judicious use of trained and sympathetic lawyer/paraprofessional teams focused on legal needs of the elderly.

Despite these efforts, however, the pattern of under-representation of the elderly poor by Legal Services Corporation projects 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. The following caseload percentages culled from data collected by LRSE in HEW Regions I, III, and IV during the past six months reflect similar service levels.

[1] Legal Research and Services for the Elderly is the legal program of the National Council of Senior Citizens.

CONTINUED

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State	Legal Services Corporation program	Percent of States' poor who are 65+[1]	Percent of Legal Services Corporation caseload who are elderly[2]	Source of information
Vermont	Vermont Legal Aid, Inc	22.3	6.5	Legal Services Corporation office estimate reported to LRSE (1976).
New Hampshire	New Hampshire Legal Assistance.	28.9	[3] 6	Do.
Connecticut	All legal service corporation programs.	21.7	5	Estimate reported to Connecticut Commission on Aging for all Legal Services Corporation offices (1975).
Massachusetts	Greater Boston Legal Assistance.	23.5	10	Legal Services Corporation
	Western Massachusetts Legal Services.		4	Do.
	Central Massachusetts Legal Services.		5	Do.
	Legal Services of Cape Cod and Islands.		5–10	Do.
	Merrimack Valley Legal Services, Inc.		10	Do.
	Onboard Legal Services		7.35	Do.
Maine	Pine Tree Legal Assistance	22.7	6	Legal Services Corporation office estimate reported to Bureau of Maine's Elderly (1976).
Delaware	Community Legal Aid Society at Kent, New Castle, and Sussex.	17.0	3	Legal Services Corporation office estimate reported to LRSE (1976).
District of Columbia	Neighborhood legal aid program.	11.4	10	Do.
Maryland	Legal Aid, Inc	16.2	5	Legal Services Corporation office estimate reported to Maryland Office on Aging (1977).
Pennsylvania	Central Pennsylvania Legal Services.	24.1	4	Legal Services Corporation office estimate reported to LRSE (1977).
Virginia	Legal Aid Society of Roanoke Valley.	15.9	10	1976 survey of Legal Services Corporation office programs by the Virginia Office on Aging.
	Smyth-Bland Legal Aid Society		15–20	Do.
	Charlottesville-Albemarle Legal Aid Society.		5.1	Do.
	Richmond Legal Aid Society		15	Do.
West Virginia	West Virginia Legal Services Plan, Inc.	19.5	19	Legal Services Corporation office estimate reported to LRSE (1977).
Alabama	Legal Aid Society of Birmingham	16.5	7–10	Legal Services Corporation office estimate reported to LRSE (1976).
	Madison County Legal Aid		7–10	Do.
Georgia	Georgia legal services program	15.7	4	Legal Services Corporation office estimate reported to LRSE (1977).
Florida		21.6	[4]	Florida Legal Services, Inc., response to both LRSE and the Florida Aging and Adult Services Office (1976).
Mississippi	Mississippi Bar Legal Services[5]	15.4	3	Actual caseload figures for 1975.
Tennessee	Legal Aid Society of Chattanooga	18.8	6	Actual caseload figures for 1975–76.
	Knoxville Legal Aid Society		6	Legal Services Corporation office estimate reported to the Tennessee Commission on Aging.
	Legal Services of Nashville		6	Actual caseload figures for 1975–76.
	Memphis and Shelby County Legal Services.		23.4	Do.
North Carolina	Legal Aid Society of Mecklenburg County.	15.7	1.9	1975–76. Legal Services Corporation office response to State legal services corporation survey (1976).
	Durham Legal Aid Society	15.7	[6]	Legal Services Corporation office response reported to LRSE (1976).

[1] 1970 Bureau of the Census, supplementary report issued December 1975.
[2] Legal Services Corporation office definition of elderly vary from 55+ to 65+.
[3] Does not include cases handled by elderly law unit funded by title III, Older Americans Act.
[4] No accurate estimates available.
[5] Now merged into Central Mississippi Legal Services.
[6] No estimate available because age statistics not maintained.

To be fair, it should be noted that the above chart does not include all the Legal Services Corporation funded projects in Regions I, III, and IV, but only those for whom LRSE has caseload estimates.

Secondly, the caseload percentages, as noted, are merely estimates. However, it should be underscored that the estimates are those of the local projects themselves and not the mere conjectures of LRSE.

What the chart does yield is a rough calculus of the extent to which the elderly poor are not receiving their fair share of services rendered by the legal services programs. Assuming that these listed programs are fairly representative of Legal Services Corporation funded projects, these figures demonstrate that the elderly poor are generally under-represented by legal services programs. (The two programs which report older persons as 19 and 23.4 percent of their caseloads, unlike the majority of projects funded by the Corporation, both have established specialized units to do outreach and focus on the legal needs of the elderly poor.)

In raising the issue of the under-representation of the elderly and other segments of the poor population, we are not unmindful of the severe problems faced by the Legal Services Corporation. We fully recognize that the limited resources available are continually dwarfed by the staggering legal needs of the poor and, accordingly, we have and will continue to support the Corporation's request for additional appropriations. Our contention is simply that, whatever the limits on resources, the Corporation has the obligation of ensuring that all segments of the poor receive an equitable share of available services. To this end, we submit the following recommendations for amending the Legal Services Corporation Act of 1974.

We believe that Congress should build into the law specific mandates to the Corporation to improve its service to the elderly and other under-represented groups. Despite the historic and current under-representation of the elderly by legal services programs, the Corporation's present posture is that present law does not mandate any specialized service to the elderly poor or to any other categorical segment of the poor. Accordingly, we recommend:

(1) *Amendment of Section 1007(a) of the Legal Services Corporation Act as follows:*

"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—

* * * (10) Establish guidelines to ensure that recipients serve the significant segments of the population of eligible clients (including handicapped individuals, elderly persons, Indians, migrant or seasonal farmworkers, persons in rural areas and others with special needs) in proportion to their representation in the poor population and shall report annually to the Congress regarding progress made or obstacles encountered in implementing these guidelines and providing equitable services to all segments of the poor population."

Another way of ensuring that under-represented persons' legal needs are adequately known and addressed by the Corporation is to include their representatives among the policy makers. This might be accomplished by:

(1) *Amendment of Sec. 1004(a) to specify that board members selected will represent specific constituencies, i.e., client population in general, organizations of under-represented client populations, the private bar, legal services community, etc.* At the present time, the only limitations in the law regarding board membership are (a) no more than six shall be of the same political party; (b) a majority must be members of the bar of the highest court of any state; and (c) none shall be a full-time employee of the U.S.

(2) *Establishment of a National Advisory Council as was included 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)

With regard to the latter, several Senators encouraged, during the floor debate on the 1974 Act, the Corporation to establish such a national advisory council. To date, the Corporation has refrained from doing so.

A fourth recommendation relates to the continuation of funding of elderly law units established in Legal Services Corporation programs through Title III of the Older Americans Act funding from area agencies on aging. During the past three years, over 100 elderly law units or projects have been funded in whole or in part with Title III money. Fifty-five of these units have been established within Legal Services Corporation programs. Many of these elderly law units are in their third and potentially last year of funding under Title III. Assuming that the unit is actually providing quality services to the elderly, they should after their three years outside funding be incorporated into the general operating budget of the LSC office. Such a public commitment by the Corporation would not only evidence the Corporation's commitment to the elderly but also stimulate other area agencies to invest Title III money into establishing elderly law units. Therefore we recommend that Congress *mandate the Corporation to give priority status for funding to specialized elderly law units which are established within Corporation offices through Title III of the Older Americans Act.*

Finally, the Corporation maintains that its system of offices has difficulty reaching the elderly poor in a cost efficient way. Perhaps, the Corporation needs to experiment once again within its own network to improve management techniques and develop more effective ways of delivering service. To stimulate such experiments, Congress might consider *adding a new section to the Act similar to Section 308 of the Older Americans Act which would mandate the Corporation to fund demonstration projects aimed at reaching underserved populations.*

Such a fund would differ from the present Alternative Delivery Study fund in that it would provide the Corporation with a permanent resource to highlight underserved populations and to encourage innovative solutions to the problem of underserved segments of the client population.

[This supplemental letter was received after the hearing:]

LEGAL RESEARCH AND SERVICES FOR THE ELDERLY,
Washington, D.C., February 25, 1977.

HON. ROBERT W. KASTENMEIER,
House of Representatives,
Rayburn House Office Building, Washington, D.C.

DEAR MR. KASTENMEIER: On behalf of the National Council of Senior Citizens, thank you for including our testimony in the record of hearing on the extension of the Legal Services Corporation Act of 1974. We appreciate your assistance in surfacing the issue of the historic and continual underrepresentation of groups such as the handicapped, elderly and rural poor and urge you to continue to bring this issue to the attention of your colleagues on the subcommittee.

Having listened to the two days of testimony and mindful of the many demands placed on limited resources, we have reassessed our own position and now suggest a more limited treatment of underrepresented groups in the amended Act. Rather than the five recommendations submitted as part of our testimony, we ask the committee to consider including in the Act only recommendation No. 1:

Amendment of Section 1007(a) of the Legal Services Corporation Act as follows:

"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—

* * * (10) Establish guidelines to ensure that recipients serve the significant segments of the population of eligible clients (including handicapped individuals, elderly persons, Indians, migrant or seasonal farmworkers, persons in rural areas and others with special needs) in proportion to their representation in the poor population and shall report annually to the Congress regarding progress made or obstacles encountered in implementing these guidelines and providing equitable services to all segments of the poor population."

This provision merely establishes the principle that all segments of the poor must be equitably served within the limits of the available resources. It is a principle embraced by the Senate in its version of the Legal Services Corporation Act passed January 31, 1974. The specific language of the Senate bill is as follows:

"Sec. 1007(a) with respect to grants or contracts for the provision of legal assistance to eligible clients under this title, the Corporation, consistent with attorneys professional responsibilities, shall—

* * * (3) insure that grants and contracts are made so as (A) to provide the most economical, efficient, and comprehensive delivery of legal assistance to persons in both rural and urban areas, (B) to assure equitable services to the significant segments of the population of eligible clients (including handicapped individuals, elderly individuals, Indians, migrant or seasonal farmworkers, and others with specific needs) . . ."

According to the legislative history, the Senate receded from this provision because the House bill contained no comparable provision. However, the conferees agreed that service to these deprived segments of the population should be a special concern of the Corporation.

We submit that the experience of the elderly, handicapped, rural poor and others with special needs since the establishment of the Corporation three years ago requires that the principle of equitable representation be articulated once again and be incorporated as a basic provision of the Corporation's enabling legislation. Therefore, we ask that you include it in the bill your subcommittee will report out.

Respectfully submitted.

KATHLEEN MULLEN,
Staff Attorney.

TESTIMONY OF KATHLEEN MULLEN, NATIONAL COUNCIL OF SENIOR CITIZENS

Ms. MULLEN. Mr. Chairman, I appreciate the opportunity to submit, first of all, our testimony: the testimony of David Marlin, director of Legal Research and Services for the Elderly. Our program, Legal Research and Services for the Elderly, is sponsored by the National Council of Senior Citizens.

The issue I want to raise this morning is a very narrow one. But, in preface to raising that issue, I would like to say that the Council would support the proposals that the Project Advisory Group has offered. We would support a strengthening of the program through a lessening of restrictions on attorney activities and a substantial increase of the appropriations so that the legal services lawyers can be free to represent fully all segments of the poor population.

The issue that we are concerned about is the issue of underrepresentation of certain segments of the poor. We submit, on page 3 of our testimony, a survey of Legal Services programs, 29 programs in 17 States. Now, these estimates of service levels to the elderly are estimates made by the programs themselves.

We recognize that these estimates are purely that, estimates; that the project data collection system is not uniform, so that where one program would say an elderly person is a person 65 and over, another program would define an elderly person as 55 and over. We further recognize these are not the final figures. The Corporation itself says that final figures will not be in for 12 months, when the project data collection system is in place.

We are suggesting, however, that they do give an indication that the elderly, as one segment of the poor population, are consistently underrepresented by the legal services programs.

Having said that, we concede that the problems of the Corporation are extremely severe. Resources are not sufficient to take care of the staggering need. Our basic point, however, is, given the limitations on

resources, all segments of the poor, including the elderly, must be equitably represented.

We can only speak with authority with respect to the elderly. But we suggest that handicapped people, the rural poor, Indians, or migrants can say the same thing. What we're asking is that the Corporation be mandated to insure that Corporation funded projects establish their service priorities in such a manner that all segments of the poor population will receive their fair share of representation.

This means that with respect to the elderly, it is not enough for a project to adopt the policy that those who knock on the door will be served in order of appearance. As Mrs. Ruffin pointed out this morning, this is not a neutral standard because the elderly will not be there. They will not be served.

Mr. KASTENMEIER. As a matter of fact, Ms. Mullen, I think statistically, you do demonstrate in the paper which you have submitted to us—the testimony which will be made part of the record—that the elderly poor are not participating in terms of legal services to the extent that other poor are. And arbitrarily, I suggest a possibility as to why that may be true.

For one reason or another, they are less knowledgeable about the program. Two, they may not be assertive in seeking the services. Or three, they may have types of problems which tend to be less urgent, apparently, than other problems in terms of priorities.

But whatever the reason, apparently, they are not—they don't have as great an access as others. One of the problems is that, as someone suggested, they need an outreach program. However, you may be promoting more demand for legal services than even presently they are able to deliver. And therefore, if you aggressively seek to inform the elderly poor of the potential access they might have to such a program, and we don't give the money suggested by some of the former witnesses here, we have another dilemma. How can we give the services we are talking about?

Ms. MULLEN. I would respond in three ways. First, I admit that that is the dilemma. If you're going to equitably serve older persons who have previously received little or no service, you may have to divert resources that are presently being used for other clients.

The question remains, nevertheless, is it fair to say that older persons will not be served at all because we have too many clients?

The second response is to say that there are efficient ways of serving older persons. Some of the legal services programs have demonstrated that. By utilizing paralegals and establishing intake offices at senior citizen centers, nutrition sites, et cetera, older persons can be served as efficiently as other poor persons.

The third response goes to the issue of operating additional funding. Under the Older Americans Act, there is some money possibly available. This is good and bad for older persons. It's bad insofar as some Legal Services programs say that since Older Americans Act money is available to serve the elderly, we'll set our priorities using the Corporation money to serve the other segments of the poor. The area offices on aging, who control this money, like the Legal Services Corporation projects have enormous demand for that money, or at least they perceive needs of the elderly that far outreach the available money. Believing that it's the Corporation's responsibility to provide

the legal services for the elderly poor, they decide there is no reason to spend Older Americans Act money on legal services. So the legal needs of the elderly get left out of both programs.

I suggest also that if the Corporation were to adopt a position of giving priority to refunding after 3 years those legal services units which are set up to serve the elderly with Older Americans Act money, then that would be a greater incentive for area agencies to begin funding such projects, at least for the initial 3 years. The Older Americans Act, at least at the present time, has a three year funding limitation for any particular program. This can be waived, but that is not often done.

In New England, where there are quite a few elderly law units set up with Older Americans Act money, the 3 years are coming to an end. So these programs face the possibility of defunding unless the Corporation picks them up. The Corporation, in some instances, has elected not to continue these elderly law projects with Corporation money despite the fact that they are effectively and efficiently serving poor people.

Mr. KASTENMEIER. Thank you very much. Any questions?

Mr. DANIELSON. I would like to make a comment, if I can.

I appreciate your bringing this to our attention. I don't think we're unmindful of it, and I fully agree with you. But in the 2 days we've been hearing this testimony, I'm fully aware that the dimensions of the problem of providing legal service to the poor are so great that, no matter what we do, we're not going to reach all of them. But I'm glad you're reminding us of segments here and there and the other places which may not be getting their fair share. So maybe we can do our best to see that they do get their fair share.

Mr. KASTENMEIER. Mr. Ertel?

Mr. ERTEL. I have no questions. Thank you.

Mr. KASTENMEIER. That concludes the testimony on the re-authorization bill for the Legal Services Corporation. I'd like to thank all the witnesses who have made a contribution, today and yesterday, and all the others present who form part of our audience who have heard the testimony that we have.

I don't think we have a session next week. We will not be having a markup next week. I would say this committee may meet the following week and mark up on the subject.

Until then, we stand adjourned.

[Whereupon, at 1:40 p.m., the subcommittee adjourned.]

APPENDIXES

APPENDIX 1—LEGAL SERVICES CORPORATION MATERIALS

Letter to Hon. Carl Albert from Roger C. Cramton, chairman, board of directors, April 27, 1976.
Letter to Hon. Robert W. Kastenmeier from President, Thomas Ehrlich, October 26, 1976. (Demonstration Study).
Letter and audit report to Hon. Robert W. Kastenmeier from President, Thomas Ehrlich, November 17, 1976.
Legal Services Annual Report, 1976.
Letter and budget request for fiscal year 1978 to Hon. Robert W. Kastenmeier from President Thomas Ehrlich, January 21, 1977.
Letter including proposed technical or clarifying amendments to Hon. Robert W. Kastenmeier from President Thomas Ehrlich, February 1, 1977.
Published Regulations of the Legal Services Corp., Parts 1600–1621.
Support Center Resolution.
Regulation on recipient employee salary instructions.
Letter to Hon. Robert W. Kastenmeier from President Thomas Ehrlich, March 7, 1977.
Letter including Affirmative Action Plan and Employee Profiles to Robert W. Kastenmeier from President Thomas Ehrlich, March 9, 1977.

LEGAL SERVICES CORPORATION,
Washington, D.C., April 27, 1976.

HON. CARL ALBERT,
Speaker of the House of Representatives,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. SPEAKER: In furtherance of the purposes of the Budget Control Act of 1974, the Legal Services Corporation hereby requests the passage of legislation authorizing continuation of the legal services program after the end of fiscal year 1977.

As a non-profit corporation, created by the Legal Services Corporation Act of 1974 (Public Law 93-355), the Legal Services Corporation is charged by Congress with responsibility for providing high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel. To carry out this responsibility, the Legal Services Corporation Act authorizes appropriations to the Corporation of $90,000,000 for fiscal year 1975, $100,000,000 for fiscal year 1976, and "such sums as may be necessary" for fiscal year 1977. The Corporation is currently operating with funds appropriated for fiscal year 1976 (Public Law 94-121) and its request for an appropriation of $140,300,000 for fiscal year 1977 is presently being considered by appropriate committees of the Congress.

In keeping with Congressional intent, embodied in Section 607 of the 1974 Budget Act, to develop a pattern for the enactment of authorizing legislation at least one year in advance of the fiscal year to which it applies, the Corporation is requesting the enactment of authorizing legislation that will permit it to make timely requests for appropriations for fiscal year 1978 and subsequent years. The Corporation requests the enactment of legislation authorizing for at least three years the appropriation of such sums as may be necessary to carry out its activities under the Act. Such an authorization would renew the three year operating authority provided in the 1974 enabling legislation and greatly facilitate the Corporation's ability to plan future programs. By extending the 1974 Act's authorization of "such sums as may be necessary" for fiscal year 1977 to subsequent years, the legislation would permit the Corporation to present to Congress annually realistic budget requests for each fiscal year. In the mean-

time, we will submit to appropriate committees of the Congress the Corporation's budget projections for the fiscal years covered by the authorization, along with supporting information and such additional materials as the committees find relevant to their deliberations on the authorization bill. We plan to submit such material at times to be arranged with the committees' staffs, but not later than the end of January, 1977.

A similar letter is being sent to the President of the Senate. Copies are being sent to the Chairmen and Ranking Minority Members of standing committees and subcommittees of the Senate and House with jurisdiction over the Legal Services Corporation as well as to the Budget Committees of the Senate and the House and the Congressional Budget Office.

Sincerely yours,

ROGER C. CRAMTON,
Chairman, Board of Directors.

LEGAL SERVICES CORPORATION,
Washington, D.C., October 26, 1976.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration on Justice, Committee on Judiciary, House of Representatives, Washington, D.C.

DEAR CHAIRMAN KASTENMEIER: As you know, the Legal Services Corporation Act of 1974 requires the Corporation to study the existing staff attorney program and—through use of appropriate demonstration projects—alternative and supplemental methods of delivering legal services. On September 30, the Corporation awarded grants for 19 demonstration projects under the study mandated by that provision.

The attached paper explains the process by which models were developed, concept papers and applications solicited, and grantees selected, all with the assistance of an Advisory Panel representing the private bar, legal services projects, client groups, and the public. The response from the legal community has been gratifying; more than 150 concept papers and 101 specific applications for funds were received.

With only $1.5 million available to fund demonstration projects, very difficult choices among competing applications had to be made. I am confident, however, that the open and objective process used to solicit and evaluate the proposals has resulted in the selection of projects of the highest potential. We do not expect the study to identify a single best approach to deliver legal services to the poor, but to identify delivery systems that seem appropriate for different types of communities.

We will be submitting an interim report on the progress of the study next July, as the statute reqiures. If you or any other members or staff of the Subcommittee would like more information at this time, I will be pleased to arrange a briefing by appropriate Corporation personnel at your convenience.

We would welcome your comments now and as the study proceeds.

Cordially,

THOMAS EHRLICH.

Attachments.

SELECTION OF GRANTEES FOR THE DELIVERY SYSTEM STUDY

Section 1007(g) of the Legal Services Corporation Act requires the Corporation to conduct a study of existing staff attorney programs, and, through demonstration projects, of methods of delivering legal services that are alternatives or supplements to those programs. The legislation identifies judicare, vouchers, prepaid legal insurance, and contracts with law firms as delivery methods that should be included in the study.

The Corporation requested and received a supplemental appropriation of $1.5 million for fiscal year 1976 to fund an initial round of demonstration projects. The first step in developing the study was to establish an advisory panel of 21 representatives of the private bar, legal services projects, client groups, and others. With the help of the advisory panel, the Corporation then solicited ideas from members of the legal community about new methods of legal services delivery. The response to this request was significant; we received over 150 concept papers from private bar groups, existing legal services projects, and others. On the basis of these papers we developed models for the demonstration projects.

Again the legal community aided the Corporation by submitting proposals for

projects to test the models. Over 700 individuals and groups were sent requests for proposals in mid-August. The response to these requests was gratifying. Over 100 proposals were received by the September 7, 1976, cut-off date.

Each proposal was individually reviewed and evaluated on the basis of these criteria: whether the approach seemed feasible; whether the information to be gathered from the project would be generalizable; whether the project would meet the legal needs of the client community; whether testing the project would contribute useful knowledge regarding legal services delivery; whether the delivery approach could be replicated in other communities, and whether the project conformed to one of the models. Selection of the projects was based upon these criteria and upon the study design developed with the help of the advisory panel. Nineteen projects were funded. The projects will operate in fourteen states across the nation. Eight of the projects will operate judicare programs; four will employ prepaid legal insurance; five will involve contracts with private law firms; one will operate as a pro bono clinic; and one will use a voucher system to test the effect of client choice on the delivery of legal services.

The eight judicare projects will use private attorneys to serve indigent clients. When possible, sites were selected to test similar judicare approaches in more than one community setting. Two of the judicare projects will serve urban populations, four will serve rural populations, and two will operate in areas with mixed urban and rural populations. The judicare projects selected are as follows:

Charles Houston Bar Association, an association composed primarily of minority attorneys, was awarded $100,000 to provide general legal services in the East Oakland area of Alameda County, California.

Multnomah County Bar Association, was awarded $60,000 to modify the existing bar sponsored, staff attorney Legal Aid Service in Portland, Oregon by using privare attorneys in domestic relations matters.

California Lawyers Service, Inc. was awarded $74,000 to use the private bar to provide general legal services in Siskiyou County, a rural area in Northern California.

Northwest Minnesota Legal Services Corporation was awarded $100,000 to use private practitioners in several rural counties in Northwestern Minnesota to provide general legal services.

Judicare of Anoka County, Inc. was awarded $97,000 to continue its presently locally-funded program that provides general legal services to clients in Anoka County, Minnesota.

Rock Island Legal Referral Services, a small bar association sponsored staff attorney program, was awarded $75,000 to provide general legal services in rural Henry and Mercer Counties, Illinois.

The Gainesville Regional Office of the Georgia Legal Services Program was awarded $55,000 to use the private bar for general "non-proverty law" services in Murray and Whitfield Counties, Georgia.

Utah Legal Services was awarded $76,160 to provide specialized legal services to the elderly in southern Utah.

Four projects that will utilize the concept of prepaid legal insurance were selected. There will be two rural and three urban sites. Two sites will be served by open panels of attorneys and law firms, three sites will be served by closed panels. One project will allow the Corporation to test both open and closed panel plans in one state. The projects selected are as follows:

Barnett, Jones, Seymour and Weldon, a private law firm located in Norwalk, California, was awarded $60,000 to provide service to a selected sample of AFDC recipients in Los Angeles County. The firm will use the grant funds to pay the premiums on prepaid legal insurance policies for the sample population.

Group Legal Services, Inc. was awarded $56,000 to provide prepaid services to a selected group of public aid and Social Security recipients in Los Angeles County. Service will be provided by participating law firms and individual attorneys who are members of the group practice.

Midwest Mutual of Omaha, an insurance company that currently underwrites prepaid legal insurance policies, was awarded $200,000 to run two prepaid programs, one open and one closed panel, in Virginia. Although the two sites have not been selected yet, it is anticipated that one site will be urban and one will be rural.

Prepaid Legal Services of Kansas was awarded $150,000 to serve indigent clients in 10 rural counties of Kansas through its existing open panel prepaid program.

Five existing staff attorney programs were awarded funds to contract with private law firms to provide supplemental legal services. Three programs will contract with private attorneys to provide legal services to currently unserved rural areas. Two programs will use private attorneys to handle specialized types of cases in urban areas. The projects to be funded are as follows:

Volusia County Legal Services was awarded $17,720 for a contract with an individual private attorney to provide general legal services in neighboring Flagler County, Florida.

Monterey County Legal Services was awarded $16,930 for a contract with two private attorneys to provide general legal services to the Spanish speaking clients in a currently unserved area of Monterey County, California.

Colorado Rural Legal Services was awarded $75,600 to extend legal services to several currently unserved counties in rural Colorado by using contracts with individual private attorneys.

The Legal Aid Society of Birmingham will enter into a $40,000 contract with the private firm of Crittenden and Still, which will provide services to eligible clients in a range of cases that the Legal Aid Society currently does not generally have the resources to handle, including wills and testamentary documents for the elderly, small claims prosecutions, automobile accident defense for uninsured clients, and bankruptcy.

Legal Services of Nashville was awarded $60,000 to contract with private attorneys to handle some domestic relations work and special area such as real estate, tax, tort defense, and bankruptcy.

The Corporation will study the feasibility of increasing the legal services to the poor in urban areas through support of large scale pro bono efforts. The Boston Bar Association was awarded $110,000 to run pro bono clinics in several Boston neighborhoods that are not currently served by legal services offices. General legal services will be provided by a panel of approximately 1,000 volunteeer attorneys who will be trained in poverty law by paid clinic staff.

Windham Region Community Council, Inc. a local community action agency, was awarded $75,000 to run a voucher program for clients in 10 rural townships in Connecticut. Clients will be issued vouchers that will enable them to choose between the local legal services program and private attorneys who will be reimbursed for their services up to the value of the voucher.

The corporation intends to monitor the demonstration projects with care to determine the feasibility and practicality of the approaches taken and to measure the performance of the demonstration projects in four respects: cost of service; quality of service; client satisfaction; and impact of the services on the client community as a whole. We do not expect to identify a single best approach to deliver legal services to poor people, but to identify delivery systems that seem appropriate for different types of communities. The results of the study should assist the Corporation in making funding decisions and in improving the delivery of legal services to the poor.

Descriptions of Delivery Systems Study Demonstration Projects: Round One

This attachment contains detailed descriptions of the individual demonstration projects that were funded by the Corporation in Round One of the Delivery Systems Study. The projects are listed by model, and are described alphabetically within models.

A. JUDICARE

Eight judicare projects were funded in Round One.

1. California Lawyers Service (LSC demonstration grant: $74,000)

The California Lawyers Service (CLS) was organized by the State Bar of California to establish and administer legal service delivery programs. CLS will administer a pure judicare program in Siskiyou County, a rural area in northern California that currently has no legal service program for the poor. Approximately 18 private attorneys—most of the members of the Siskiyou County Bar Association—will provide general legal services to about 300 clients during the demonstration year. The private attorneys will check the eligibility of the applicants against the LSC guidelines and provide service to eligible applicants. The attorneys will bill CLS for services performed after cases are closed, using a fee schedule that specifies set fees for certain types of cases and $33 per hour for advice and consultation. CLS will retain a portion of the grant

as a fee to review the billing, to reimburse the attorneys, and to perform other administrative tasks for the project. The project plans to begin serving clients in mid-January 1977.

2. Charles Houston Bar Association (LSC demonstration grant: $100,000)

The Charles Houston Bar Association (CHBA), a 160-member association composed primarily of minority lawyers in private practice in the area around Oakland, California, will operate a new pure judicare program in East Oakland, an area also served by an LSC-funded staff attorney project. Participation in the program will be open to all members of CHBA, as well as to other private practitioners in the area, who agree to the project's fee schedule. Attorneys are being recruited through CHBA publications and mailings to CHBA and State Bar of California members practicing in the area. CHBA expects that 170 attorneys will participate, providing general legal services to approximately 780 clients during the demonstration year. Participating attorneys will be compensated for services at the rate of $25 per hour, with maximum fees that range from $150 to $300 per case, depending on the type of case. The project coordinator is a paralegal who will do the initial client intake, determine the client's eligibility for service, and make referrals to the participating attorneys on a rotating basis. The project plans to begin serving clients in late January 1977.

3. Northwest Minnesota Legal Service Corporation (LSC demonstration grant: $100,000)

Northwest Minnesota Legal Services Corporation (NMLS), a new non-profit organization set up to provide general legal services to eligible clients in rural northwestern Minnesota, will operate a pure judicare program in a 22-county area that currently has no legal services program for the poor. Client outreach, intake, and financial eligibility for services will be done by county welfare department caseworkers and community action outreach staff, who will also provide clients with a list of the attorneys enrolled in the program. All licensed attorneys who practice in the 22-county area may enroll as participating attorneys, and the project anticipates nearly all attorneys to enroll. A client may request service from the attorney of his or her choice. The attorney will be compensated for services by NMLS at $20 per hour with a $250 per client maximum; attorneys will receive set fees for wills, divorces, and bankruptcies. The maximum client eligibility limit will initially be set at 75 percent of the OMB poverty line (LSC Regulations limit maximum eligibility to 125 percent of the OMB poverty line), and case load control mechanisms will be used to conserve the project's resources. NMLS expects to handle a minimum of 383 cases using demonstration project funds. The project has also received a grant of $42,470 from HEW's Administration on Aging (Title III), which will enable NMLS to provide judicare services to elderly clients in an additional 316 cases. NMLS plans to begin serving clients by late January 1977. A project director assisted by a bookkeeper/secretary, will administer the project.

4. Georgia Legal Services Programs (LSC demonstration grant: $55,000)

The Georgia Legal Services Programs (GLSP)—a state-wide LSC-funded legal services staff attorney program—will initiate a judicare program in rural Whitfield and Murray Counties, Georgia, an area currently without legal services for the poor. The project will be managed by GLSP's Gainesville Regional Office which currently serves clients in neighboring counties. GLSP will set up an office in Dalton, Georgia, staffed by a paralegal and a secretary who will coordinate and administer the judicare program. The paralegal will provide assistance in approximately 120 cases per year that do not require the intervention of an attorney (e.g., public assistance termination hearings). For another 420 cases per year, the paralegal will refer clients to participating attorneys on a rotation basis. Nearly all of the 40 members of the Conasauga Bar Association are expected to join the judicare panel. GLSP will reimburse these attorneys for their services on the basis of $20 per hour, with maximum fees for each case type. The GLSP Gainesville Regional Office staff attorneys will be available for consultation and technical assistance to the private attorneys, and to provide direct legal assistance to clients in cases that require special expertise in poverty law. The managing attorney of that office will make regular visits to the project office to supervise the paralegal's case load and monitor the referral system. The project plans to begin serving clients by mid-January 1977.

5. Legal Aid Service—Multnomah Bar Association (LSC demonstration grant: $60,000)

The Legal Aid Service, an LSC-funded staff attorney program in Portland, Oregon, will operate a judicare supplement to provide representation to clients who are eligible for legal services but whose cases pose conflicts of interest for the Legal Aid Service program. Most of these conflicts will be in contested domestic relations cases and will be handled by those members of the Domestic Relations Panel of the Multnomah Bar Association's Lawyers Referral Service who have agreed to accept as payment 75 percent of the Oregon State Bar fee schedule, with a $500 per case maximum. Intake will be done by the regular Legal Aid Service intake worker who will refer clients to the judicare coordinator when a conflict is noted. The project coordinator will then refer clients to panel members on a rotation basis. The Legal Aid Service estimates that the project will handle 160 cases per year, 95 percent in the domestic relations area, and will begin serving clients in mid-January 1977.

6. Utah Legal Services (LSC demonstration grant: $76,160)

Utah Legal Services (ULS) is an LSC-funded staff attorney program that operates principally in the Salt Lake City area. The Utah Department of Social Services administers an HEW Title XX-funded judicare project in Utah, which reimburses private attorneys up to $300 per case to provide legal services to eligible clients. At present, most of the judicare cases are divorces, and very few of the judicare clients are elderly. The ULS demonstration project staff, consisting of two attorneys and a paralegal, assisted by a legal secretary, will supplement the Title XX judicare program by providing training and back-up assistance in poverty law to judicare attorneys in order to encourage and assist them to handle more non-domestic relations work in the rural areas of the state now now served by ULS. In addition, the staff will undertake substantial outreach work to encourage eligible senior citizens to utilize the services of Title XX attorneys, and will train elderly paralegals to provide limited assistance and representation for other senior citizens in matters not requiring attorney intervention. ULS has worked closely with the Utah State Bar, the State Department of Social Services Title XX Administration, and the Division on Aging in order to ensure full cooperation and coordination for the project. The project plans to begin providing back-up assistance to Title XX attorneys and outreach services to senior citizens in late January 1977.

7. Judicare of Anoka County (LSC demonstration grant: $97,000)

Judicare of Anoka County is a locally-funded judicare project that has been providing general legal services for approximately one year to poor persons in Anoka County, Minnesota, a suburb of St. Paul. Demonstration project funds are being used to expand the level and scope of services provided by the present judicare project to cover public assistance and divorce cases and to replace some local funds that are expiring. The project director and paralegal will administer the program and will provide representation to clients with public assistance and other poverty-related cases. The project estimates that it will handle 25 such cases each month. Eighty-nine private attorneys who are members of the existing judicare panel will handle approximately 50 cases each month for clients with non-public assistance problems. They will be reimbursed for their services at the rate of $25 per hour, with maximum fees for different case types. Maximum fees may be waived in specific cases. The project will make special outreach efforts to encourage the elderly poor to use the services that are available. The project began its expanded operations on January 3, 1977.

8. Western Illinois Legal Assistance Foundation (LSC demonstration grant: $75,000)

Western Illinois Legal Assistance Foundation (WILAF) is a locally-funded legal services staff attorney program operating in and around Rock Island, Illinois. Henry and Mercer are nearby rural counties that do not currently have a legal services program for the poor. WILAF will operate a judicare project to provide general legal services to eligible clients in these counties. Applicants for service will be screened for financial eligibility and to determine the nature of their problems by the paralegal or clerical workers at one of the two demonstration project offices. If an eligible person has a problem that is classified as a "poverty law" case, it will be referred to the demonstration project staff attorney. All other cases will be referred to private attorney members of a

judicare panel, who will be reimbursed by WILAF for services on the basis of $35 per hour with a maximum of $500 per case and $6,000 per attorney per year. Both of these maximums may be waived in exceptional circumstances. Fourteen private attorneys are expected to join the judicare panel. The demonstration project staff attorney will provide back-up assistance to the judicare attorneys and will provide direct representation in poverty law cases under the supervision of the WILAF director. WILAF began serving clients using demonstration funds on January 17, 1977. An estimated 450 cases will be handled by the project during the demonstration year. The WILAF director has worked closely with local bar groups to implement the demonstration project and to recruit the members of the judicare panel.

B. PREPAID LEGAL INSURANCE

Four prepaid legal services projects were funded in Round One. One will serve clients at two sites.

1. Barnett, Jones, Seymour & Weldon (LSC demonstration grant: $60,000)

The grantee is a private law firm with four offices in Norwalk, California, an urban area in Los Angeles County. The firm has been offering prepaid and group legal services to non-poor groups for several years. The LSC demonstration funds will be used to purchase prepaid legal insurance policies for a group of approximately 700 Norwalk families who meet LSC eligibility guidelines. A marketing research firm employed by Barnett, Jones identified these families as a representative sample of the eligible poor population of Norwalk. The families will be issued membership cards to indicate eligibility for services. Attorneys and paralegals employed by the law firm will provide legal assistance for matters covered by the benefits package of the insurance policy to members of the LSC group. The policy covers most personal nonbusiness legal needs of individuals, and is tailored to the anticipated legal needs of the poor. The firm will bill the insurer, Midwest Mutual Insurance Company, for the services on the basis of a fee schedule. Barnett, Jones estimates that 80 percent of the premiums ($48,000) will be paid to the firm as reimbursement for services, and that the remaining 20 percent ($12,000) will be retained by Midwest Mutual to cover its administrative overhead and profit. In addition to the service for specific legal problems, the firm will conduct extensive preventive law orientations for the members of the group. The firm estimates that 20–30 percent of the group members will use the project's legal services during the demonstration year. Group members were identified during December 1976. The firm plans to run the group orientation sessions during January 1977 and begin handling cases for group members by February 1, 1977.

2. Group Legal Services (LSC demonstration grant: $56,000)

Group Legal Services (GLS) is a private law firm that, for several years, has provided prepaid and group legal services to a variety of non-poor client groups. With the help of the Los Angeles County Welfare Department and the local Social Security office, the firm has identified 3,000 eligible families from four areas of Los Angeles County, California, who will be issued membership cards with identification numbers. Group members request services by telephoning GLS and giving their identification numbers. GLS attorneys will provide members with unlimited legal assistance that can be handled by telephone or through the mails. The firm estimates that 80 to 83 percent of the members' legal problems can be resolved using this type of service. The remaining 17 to 20 percent of service will be performed by a panel of private attorneys in the Los Angeles area who have contracted with GLS to provide specialized services to GLS clients, and who will be reimbursed at the rate of $25 per hour. GLS estimates that 90 to 180 cases can be handled each month in this manner. GLS will provide an extensive orientation program for group members to familiarize them with the project and to encourage them to utilize the services that are available. The firm places heavy reliance on paralegals and specialized technology to handle the large volume of cases. GLS plans to begin providing service to demonstration group members by mid-January 1977.

3. Prepaid Legal Services of Kansas (LSC demonstration grant: $150,000)

Prepaid Legal Services of Kansas (PLS) is a non-profit corporation sponsored by the Kansas Bar Association which currently operates an open panel, statewide prepaid legal services program in Kansas that provides legal services to

group clients at all income levels. The program is administered by Farmers Alliance Mutual Insurance Company. The LSC demonstration project funds will be used to make general legal services available to between 1,600 and 2,200 families in a seven-county rural area in south central Kansas that currently has no legal services program for the poor. All family members with current Medicaid cards will be eligible for services. In addition, a mechanism has been set up to provide PLS membership cards to other people who meet LSC financial eligibility guidelines, but who do not have Medicaid cards. Members will present their Medicaid or PLS cards to the attorneys of their choice. If an attorney is already a member of the PLS panel, the attorney will provide the service and bill PLS for his or her usual and customary fee. If an attorney is not a member of the PLS panel, he or she will be asked to join the panel before providing service. All private attorneys in Kansas who agree to the terms of participation, including a $50 membership fee, may become panel members. There are currently 79 practicing attorneys in the service area. Reimbursement is made by PLS on the basis of the attorneys' regular billing as long as the fees are normal and reasonable and do not exceed the policy limits for various categories of activities. The only specific limitation is on billing for advice and consultation, which may not exceed $25 per interview. PLS has done extensive planning and publicity, both in English and Spanish, and has worked closely with the Kansas Bar Association and the State SRS agency in the initial implementation of the project. PLS expects to begin serving demonstration project clients by February 1, 1977. No estimates are available at this time of the number of LSC clients who will actually receive service under the demonstration project.

4. Midwest Mutual Insurance Company (LSC demonstration grant: $200,000)

Midwest Mutual is a private insurance company that has developed and marketed prepaid legal insurance policies throughout the United States. Midwest Mutual will operate a prepaid legal services project at two sites in Virginia. Beginning on February 1, 1977, the Company will operate an open panel prepaid plan in Norfolk and a closed panel prepaid plan in the Roanoke Valley. With the assistance of the Virginia State Welfare Department, local client groups and a clearinghouse for poverty law programs, Midwest Mutual is identifying a group of 900 to 1,000 families who meet LSC financial eligibility guidelines in each site. These families will be enrolled as LSC group members and will be entitled to the services that are contained in the Midwest Mutual prepaid legal insurance policies covering the LSC groups. These policies, which will be identical for both sites, cover most personal and non-business needs of the members, and are specially tailored to the anticipated legal problems of poor clients.

To receive service from the open panel in Norfolk, an LSC group member may choose any participating private attorney or may contact the Norfolk Lawyer Referral Service for the names of participating attorneys who accept and have the expertise to handle cases in the client's problem area. Any active private attorney in the Norfolk area who submits an application and whose fee profile is approved, as described below, may participate in the panel. Attorneys in Norfolk are being enrolled with the cooperation and guidance of the Virginia State Bar Prepaid Legal Services Committee and the Bar-sponsored Foundation for Prepaid Legal Service of Virginia. The Norfolk open panel will provide services to members of other non-LSC groups which purchase prepaid policies from Midwest Mutual or other insurance companies. No estimates of the number of attorneys who will participate in the open panel are available at this time.

LSC group members in Roanoke will receive services from a closed panel composed of a small number of previously designated attorneys who will be selected by a Project Policy Board through an open bidding process.

Participating attorneys will be compensated for providing services covered by the policies on the basis of their usual, reasonable and customary fees. When attorneys apply to the open panel they submit an individual fee profile indicating the fees that they usually and customarily charge clients. If these profile are reasonable in light of prevailing fees in the area and other profile submitted, they are approved and represent the billing limitations for the individual attorneys who have submitted them. Members of the closed panel will be selected, in part, on the basis of competitiveness of their fee profiles. Attorneys in both the open and closed panels must agree to provide services and to accept Midwest Mutual's reimbursement as payment in full. Actual payment will be made in two steps. When bills are received, Midwest Mutual will pay the attorneys 60 percent of the amounts billed. The remainder plus interest will be paid on a date set for distribution. The remainder is limited, however, by the policy's "stop-loss" pro-

vision which limits the amount of claims paid out to 80 percent of the total premiums paid for each group. This stop-loss provision limits Midwest Mutual's risk of loss and discourages attorneys from overbilling and providing unnecessary services.

Because of the complexities of this project and the long implementation and planning period that was necessary, the grant to Midwest Mutual will not be effective until February 1, 1977, and will run until January 31, 1978. In addition to the Virginia State Bar and the Welfare Department, Midwest Mutual received a great deal of assistance from the Legal Services Corporation of Virginia and the Roanoke Valley Legal Aid Society.

C. CONTRACTS WITH LAW FIRMS

Five contract projects were funded to use the private bar to supplement the services of existing LSC-funded staff attorney programs.

1. Colorado Rural Legal Services (LSC demonstration grant: $75,600)

Colorado Rural Legal Services (CRLS), an LSC-funded staff attorney program serving rural areas of Colorado, will contract with a small number of individual private attorneys and law firms who practice in a rural eight county area in northwest Colorado that currently has no organized legal services program for the poor. These contract attorneys will provide general legal services to eligible clients in approximately 440 cases during the contract year, in return for payment based on an hourly rate which has not yet been finalized. In addition to providing services, contract attorneys will be required to participate in some form of training in poverty law during the contract period. A half-time demonstration project director will administer the contracts and supervise the contract attorneys. He will also provide back-up research and technical assistance to contract attorneys, and act as co-counsel in cases where appropriate. The director will be assisted by a full-time secretary. Extensive pre-service planning, involving careful coordination with Colorado bar groups, recruitment of attorneys, and negotiation of contracts was done by the project director in order to ensure smooth project implementation. The contract attorneys plan to begin serving clients in late January 1977.

2. Crittenden & Still (LSC demonstration contract: $8,000 to $40,000)

The law firm of Crittenden and Still has contracted directly with the Corporation to provide specialized legal services to clients referred to the firm by the Legal Aid Society of Birmingham (Alabama). The firm will prepare wills and other testamentary instruments at $30 per instrument for the first 200 and $20 for each additional instrument; they will also provide representation in defense of automobile accident cases and small claims prosecutions for $30 per hour (attorney time) and $15 per hour (paralegal time). These are services that are not generally provided by the Legal Aid Society staff. The minimum payment under the contract is $8,000 and the maximum payment is $40,000. Intake and client eligibility determinations will be done by the Legal Aid Society of Brimingham. All service will be performed by attorneys who are members of the firm and paralegals employed by the firm. The firm began serving clients under the contract on January 3, 1977. They estimate that they will prepare between 400 and 800 wills or testamentary instruments and will handle a total of between 500 and 800 auto accident and small claims cases during the contract year.

3. Legal Aid Society of Monterey County (LSC demonstration grant: $16,390)

The Legal Aid Society, an existing LSC-funded staff attorney program, has contracted with two Spanish-speaking private attorneys to provide general legal services (except bankruptcies and dissolutions) to the predominately Mexican-American poor population in the rural area of southern Monterey County, California. This agricultural area does not currently have a legal aid office, and many clients cannot travel to the Legal Aid Society Office in Seaside in the northern part of the county. The attorneys and a part-time secretary will see clients by appointment two days each week, in a new project office in Soledad which is within the service area. The Legal Aid Society is also seeking additional LSC funds to hire a paralegal to staff the project office on a full-time basis. The project estimates that 48 to 50 clients will be served each month beginning in late January 1977. The contract provides for a flat payment of $1,000 per month to the attorneys.

4. Legal Services of Nashville (LSC demonstration grant: $60,000)

Legal Service of Nashville (LSN), an existing LSC-funded staff attorney program operating in Nashville, Tennessee, is contracting with a panel of approximately 50 private attorneys and law firms to provide specialized legal services to eligible clients referred by LSN. Contract attorneys will handle cases in areas such as wills, trusts, small business, bankruptcy, tort defense, and immigration, as well as emergency divorce and custody cases, which are not generally handled by LSN. The private attorneys plan to begin serving clients in mid-January 1977, and will handle approximately 25 cases each month. Reimbursement will be made at the rate of $25 per hour. No additional staff has been hired for the project; administration of the contracts will be done by the LSN director and bookkeeper. Intake, eligibility determination, and referrals will be done by the regular LSN receptionist and intake paralegal.

5. Volusia County Legal Services (LSC demonstration grant: $17,720)

Volusia County Legal Services (VCLS), an existing LSC-funded legal services program in rural Florida, has entered into a contract with a private attorney who will provide general legal services to the currently unserved poor population in neighboring Flagler County. The contract attorney will determine whether the applicants are eligible for services, and will provide the necessary legal assistance for those who are. He will be reimbursed by VCLS at $30 per hour up to a maximum of $15,000 per year. The contract attorney will handle between 25 and 30 cases each month; it is anticipated that most of the cases will involve farm worker issues, dissolutions, food stamps and Social Security benefits. The VCLS staff will provide supervision and, when necessary, back-up assistance for the private attorney. The attorney plans to begin serving clients under the contract in mid-January, 1977.

D. VOUCHERS

Only one voucher project, testing client choice among available services, was funded in Round One.

Windham Regional Community Council (LSC demonstration grant: $75,000)

The Windham Regional Community Council (WRCC) is a community action program serving a ten-town area of rural Connecticut. It will establish a voucher demonstration project that will permit poor persons who need legal services to choose between private attorneys and the existing LSC-funded staff attorney project, Tolland-Windham Legal Assistant Program (TWLAP). Financial eligibility will be determined by the voucher project director, who will identify the applicant's problem, explain the voucher system, assist the applicant in making the choice between service providers and, if necessary set up an appointment with an attorney. The applicant will be issued a voucher for a pre-established amount, depending on the service needed, which may be presented to the attorney in return for general legal services. In order to participate, private attorneys must agree to the terms and conditions of the voucher project, including acceptance of the voucher as full payment for services provided. Private attorneys may redeem the vouchers for an amount up to the value of the voucher. If a case involves unforeseen and unavoidable complexities, the project director may issue a supplemental voucher. TWLAP will accept vouchers and provide legal services to voucher clients, but will not receive any reimbursement from WRCC demonstration project funds. There are 60 private attorneys practicing in the ten-town area; the project director estimates that at least 30 to 40 will participate in the voucher panel. The project will provide services to 150 to 225 clients per year and will limit divorces to 10 percent of the total case load. The first clients will be served by February 1, 1977.

E. PRO BONO CLINIC

Even though Congress did not identify pro bono programs as one of the models to be tested, the Corporation wanted to learn about organized volunteer services for the poor. A description of the pro bono model projects follows.

Boston Bar Association (LSC demonstration grant: $110,000)

The Boston Bar Association has established a Volunteer Lawyers Project using demonstration funds to recruit approximately 1,000 private volunteer attorneys to provide general legal assistance to clients who meet LSC eligibility standards, and who live in areas of Boston not currently being served by the LSC-funded Greater Boston Legal Services neighborhood staff attorney offices. The private attorneys will not charge fees for the services they provide, but will be reimbursed for court costs and certain out-of-pocket expenses. Applicants who request service will be interviewed by a project staff paralegal and, if

eligible for service, will be referred to members of the volunteer panel on a rotation basis. The project staff, consisting of two attorneys, two paralegals, and two secretaries, will recruit attorneys and administer the project. In addition, the staff will provide training in poverty law, backup research and technical assistance, and where appropriate, will act as co-counsel with private volunteer attorneys or provide direct assistance to certain project clients. Approximately 300 attorneys have been recruited to date, and additional mailings have been sent out to members of the Boston Bar Association requesting that they join the volunteer panel. The project plans to begin serving clients by mid-January 1977, and will serve approximately 3,000 clients during the demonstration year.

LEGAL SERVICES CORPORATION,
Washington, D.C., November 17, 1976.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Judiciary Committee, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN KASTENMEIER: I am pleased to enclose for your information a copy of the annual audit of the Legal Services Corporation for the period July 14, 1975 (inception) through September 30, 1976. The audit was prepared by Price Waterhouse & Co.

If you have any questions about or comments on this audit, Fabio de la Torre, the Corporation's comptroller, will be pleased to respond.

Cordially,

THOMAS EHRLICH.

Enclosure.

REPORT AND FINANCIAL STATEMENTS OF THE LEGAL SERVICES CORPORATION FOR THE PERIOD FROM JULY 14, 1975 (INCEPTION) THROUGH SEPTEMBER 30, 1976

NOVEMBER 4, 1976.

To the Board of Directors of Legal Services Corporation

In our opinion, the accompanying balance sheet and the related statements of support, revenue and expenses and other changes in fund balances and of functional expenses present fairly the financial position of Legal Services Corporation at September 30, 1976 and the results of its operations for the period from July 14, 1975 (inception) through September 30, 1976, in conformity with generally accepted accounting principles. Our examination of these statements was made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

PRICE WATERHOUSE & Co.

LEGAL SERVICES CORPORATION

BALANCE SHEET

September 30, 1976

ASSETS

Cash	$514,910
Temporary cash investments, treasury bills at cost, which approximates market	24,996,936
Receivable from terminated grants	222,388
Accrued interest receivable	14,201
Property and equipment, net of accumulated depreciation of $23,379 (Note 2)	136,333
Other assets	8,283
Total assets	25,893,051

LIABILITIES AND FUND BALANCES

Liabilities:	
Unpaid grants	$21,100,115
Accounts payable	229,575
Accrued payroll and other liabilities	104,490
Total liabilities	21,434,180

LIABILITIES AND FUND BALANCES—continued

Commitment (Note 4)	
Fund balances:	
Federal appropriation (Note 2)	$4, 308, 337
General	14, 201
Net investment in property and equipment	136, 333
Total fund balances	4, 458, 871
Total liabilities and fund balances	25, 893, 051

(See Notes to Financial Statements)

STATEMENT OF SUPPORT, REVENUE AND EXPENSES AND OTHER CHANGES IN FUND BALANCES FOR THE PERIOD JULY 14, 1975 (INCEPTION) THROUGH SEPT. 30, 1976

	General	Federal appropriation	Property and equipment	Total
Support and revenue (note 2):				
Federal appropriations		$116, 960, 000		$116, 960, 000
Transfer of furniture and equipment			$27, 514	27, 514
Donated services	$244, 925			244, 925
Interest income	14, 201			14, 201
Total, support and revenue	259, 126	116, 960, 000	27, 514	117, 246, 640
Expenses:				
Program activities:				
Grants and contracts		109, 706, 153		109, 706, 153
Program services		891, 794	6, 407	898, 201
Total program activities		110, 597, 947	6, 407	110, 604, 354
Supporting activities:				
Management and administration	244, 925	1, 719, 945	16, 874	1, 981, 744
Transition period (note 5)		201, 573	98	201, 671
Total, supporting activities	244, 925	1, 921, 518	16, 972	2, 183, 415
Total expenses	244, 925	112, 519, 465	23, 379	112, 787, 769
Excess of support and revenue over expenses	14, 201	4, 440, 535	4, 135	4, 458, 871
Other changes in fund balances: Acquisition of property and equipment		(132, 198)	132, 198	
Fund balances at Sept. 30, 1976	14, 201	4, 308, 337	136, 333	4, 458, 871

See notes to financial statements.

STATEMENT OF FUNCTIONAL EXPENSES FOR THE PERIOD JULY 14, 1975 (INCEPTION), THROUGH SEPT. 30, 1976

		Supporting activities		
	Program activities	Management and administration	Transition period	Total expenses
Salaries and benefits	$611, 156	$780, 550	$8, 083	$1, 399, 789
Consulting	30, 938	361, 581	149, 823	542, 342
Travel	128, 462	161, 366	31, 836	321, 664
Rent and communications	73, 022	153, 355	1, 928	228, 305
Material and supplies	9, 597	47, 415	5, 647	62, 659
Printing and reproduction	22, 380	47, 523	2, 480	72, 383
Other services	16, 239	168, 155	1, 776	186, 170
Total	891, 794	1, 719, 945	201, 573	2, 813, 312
Donated services		244, 925		244, 925
Depreciation and amortization	6, 407	16, 874	98	23, 379
Total	898, 201	1, 981, 744	201, 671	3, 081, 616
Grants and contracts	109, 706, 153			109, 706, 153
Total expenses	110, 604, 354	1, 981, 744	201, 671	112, 787, 769

See notes to financial statements.

NOTES TO FINANCIAL STATEMENTS FOR THE PERIOD FROM JULY 14, 1975 (INCEPTION) THROUGH SEPTEMBER 30, 1976

Note 1—Nature of the Corporation

Legal Services Corporation is a private non-membership, nonprofit corporation, established by Congress in the Legal Services Corporation Act of 1974, Public Law 93-355. The purpose of the Corporation is to provide financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance.

The Corporation is exempt from Federal Income Taxes under Section 501(c) (3) of the Internal Revenue Code.

Note 2—Summary of Significant Accounting Policies

Basis of accounting.—The Corporation records revenue and expenses in conformity with the accrual-basis of accounting.

Support.—Legal Services Corporation is funded through appropriations from Congress. The appropriations are recognized as support for the period designated by Congress.

The following information summarizes the Corporation's funding during the period covered by this report.

Appropriation designated for the period July 1, 1975 through June 30, 1976	$88,000,000
Supplemental appropriation designated for the period July 1, 1975 through June 30, 1976	4,330,000
Appropriation designated for the period July 1, 1976 through Sept. 30, 1976	24,630,000
Total support recognized	116,960,000

Federal appropriation fund balance.—The Federal appropriation fund balance consists of $1,500,000 designated by the Board of Directors for future grants and contracts to test alternative and supplemental methods for the delivery of legal services.

The remaining Federal appropriation fund balance of $2,808,337 is available for future grants and contracts and other legal services activities. Budget commitments are subject to continual review by management and may be increased or reduced at any time.

Effective October 1, 1976, annual appropriations to the Corporation will be paid by the U.S. Department of Treasury in one installment at the beginning of each fiscal year. After payment to the Corporation, all funds remain available until expended.

Grants and contracts.—Liabilities and expenses related to grants and contracts are recorded when the awarding document is signed.

Property and equipment.—The acquisition cost of office furniture and equipment is capitalized and depreciated by the straight line method over an estimated useful life of ten years. Leasehold improvements are capitalized at cost and amortized by the straight line method over the life of the lease. Depreciation and amortization expenses for the period covered by this report are $23,379.

Property donated or transferred to the Corporation is recorded at its estimated fair market value.

On October 14, 1975, in accordance with the Legal Services Corporation Act, the Comunity Services Administration transferred office furniture and equipment to the Corporation. Such property was recorded at an approximate fair market value of $27,514.

Donated services.—Donated services represent the value of services contributed to the Corporation. The value of these services is based upon the difference between the fee normally charged by the donors rendering the services and the pro bono publico rate charged to the Corporation. Donated services are recognized as support and expenses in the accompanying financial statements.

Note 3—Retirement Plan

The officers and employees of the Corporation are considered officers and employees of the Federal government for purposes of civil service retirement. Accordingly, the Corporation makes contributions for this benefit at the same rate applicable to agencies of the Federal government. The Corporation's contribution included in the accompanying financial statements is $84,450.

Note 4—Lease Agreements

During the period from its inception through October 31, 1975, office space was provided to the Corporation at no cost. Subsequent to October 13, 1975, the Corporation entered into several long term leases for office space for its headquarters and regional offices. The amount due under these lease agreements approximates $200,000 annually through 1980. Rent expense for the period covered by this report amounted to $132,214.

Note 5—Transition Period

This report includes the 90-day transition period from July 14, 1975 (inception) to October 13, 1975 provided by Congress for the transfer of legal services activities from the Community Services Administration to the Corporation.

Note 6—Subsequent Event

On October 1, 1976, the Corporation received an appropriation of $125,000,000 designated by Congress for the period October 1, 1976 through September 30, 1977.

ANNUAL REPORT OF THE LEGAL SERVICES CORPORATION, FISCAL YEAR 1976

October 14, 1975 to September 30, 1976

TABLE OF CONTENTS

FOREWORD

This report—like the organization it describes—is about people. It is about the poor, who make up fourteen per cent of our society. It is also about the needs of the poor for equal justice—for access to the system of justice in our nation.

The Legal Services Corporation Act of 1974 established the Corporation as a private, non-profit organization, independent of the Executive Branch, with responsibility for supporting legal assistance to the poor in civil matters. The Act requires the Corporation to report each year to the President and the Congress. This is the first such report, and it includes information on past activities, present organization, future planning, and the Corporation's financial operations.

Those details, important as they are, should not obscure the Corporation's basic mandate: to ensure that all poor people in this country have available to them the legal services they need. For that reason we include with this report accounts of individuals and families who were helped by legal services programs.

These vignettes are only a sample of more than one million legal matters handled by legal services offices over the past year.

Impressive as that figure is, it represents only a small fraction of the needs of the poor in this country. The goal of the Corporation, as mandated by the Congress, is to provide legal assistance to all who are poor in this country.

Most of the matters handled by legal services offices involve relatively simple issues that are very important for the particular clients but do not establish important legal precedents. Some do result in major decisions by the United States Supreme Court, by state supreme courts, and by administrative agencies, protecting the legal rights of the poor far beyond the individual cases being decided. More important: many of these issues are personal crises about jobs, homes, families, health, food, and other fundamental needs.

Over the past year we have had the good fortune to visit legal services programs throughout the country. We have been exhilarated by the experience—by the quality of the work and the dedication of the people. The hours are long, the needs of the clients are overwhelming, the pay is inadequate, the frustrations are great. Yet the lawyers, paralegals, and other staff members work on behalf of their clients competently, vigorously, and with total dedication. They are a source of pride to their profession and to the nation.

We have also had the good fortune to work with the dedicated Board of Directors and staff of the Legal Services Corporation. Through the exceptional talents of these men and women, the Corporation has come into its own, with a most promising future. The Directors are due particular credit. For many months when there were only a few staff of the Corporation, the Directors were required to do many things that a full staff would have done. They met as a Board for at least two days each month and in committees for three or four additional days. They visited legal aid offices and in many other ways did much to further the cause of legal services for the poor.

We have worked over the past year toward the goal of equal access to justice established by the Act. Throughout the country we have found strong support for our efforts from private citizens, the organized bar, and state and local governments.

We shall continue to seek every resource to see that the job is done. We shall explore every reasonable possibility among the different ways of delivering legal services. We shall remain open, responsive, and sensitive to the expressed needs and suggestions of clients and of legal services programs. Our one firm rule is that nothing shall be taken for granted except that the poor need the best possible legal representation.

And we shall continue to guard the Corporation's independence so valued by the Congress and established in the Act. If the legal services struggle of the early 1970's taught us anything, it is that this effort must not be buffeted by partisan politics.

Here, then, is our accounting of what has been done this first year, and what we hope will be done in the year and years to come. Our aim is high—but the integrity of the legal system in our society and the guarantee of equal justice demand no less.

THOMAS EHRLICH,
President.
E. CLINTON BAMBERGER, JR.,
Executive Vice President.

PART 1.—OUR CLIENTS, THE POOR . . . AND THEIR NEEDS

Lucy was 16, and mentally retarded. She lived with her 66-year-old grandmother, recently disabled by an amputated leg and diabetes. One afternoon Lucy went to the neighborhood legal aid office for help.

During the course of the interview, the legal aid lawyer learned that Lucy was not in school—that the school authorities had refused to admit her. The lawyer contacted the authorities and eventually secured admission for Lucy to a special education class. But there was more.

Lucy and her grandmother subsisted on monthly Supplemental Security Income (SSI) of $146 and welfare benefits of $75. The grandmother told the legal aid lawyer that the latest SSI check had not arrived. The family's benefits had been "terminated" on erroneous information without notice or a hearing to catch the error. When attempts failed to persuade the Social Security office to correct the mistake, the legal aid program brought suit in the federal District Court challenging the SSI termination procedures. Seven days after suit was filed, a Social Security employee acknowledged the error and personally delivered the check to Lucy's grandmother.

Several months later the welfare payment was terminated because Lucy's grandmother had not contacted a welfare worker within ten days as the worker had told her to do in a letter. The grandmother was illiterate and did not understand the letter. She did not have a telephone, was confined to a wheelchair, and could not travel to the welfare office. A friend who called the welfare office on the twelfth day was told it was too late. The welfare worker had never visited the grandmother and did not know her circumstances. The legal aid attorney, alleging that the worker had acted improperly, appealed the cutoff and was successful; Lucy's grandmother received her benefits retroactive to the date of denial.

It was for Lucy, her grandmother, and millions in like circumstances that Congress, in the Legal Services Corporation Act of 1974, established a private corporation to support legal aid offices that provide free legal assistance to the poor in civil cases. The Duval County Legal Aid Association (in Florida), which helped Lucy and her grandmother, is typical of those programs.

An account of the activities of the Corporation in its first full year of existence must begin with the poor it was created to serve—29 million human beings on the lowest rungs of the nation's economic ladder. Many of them are beset by problems that are responsive to legal remedies.

Like the 80-year-old widow who was referred to the legal aid program of La Raza Unida de Ohio in Bowling Green after being abandoned by her family at a migrant rest center because the family could no longer afford to support her. A legal services lawyer learned that the widow had never applied for Social Security survivor's benefits. She had never heard of Social Security. The benefits were obtained and she was reunited with her family, assured of continued support and security for the rest of her days.

Like the 13-year old schoolgirl in Maine, whose teeth were so poor that she was unable to eat properly. State officials refused to authorize orthodontic work under Medicaid and said they would fund only the entire replacement of her teeth. Pine Tree Legal Assistance, Inc., represented the girl and her mother and argued successfully to the Maine Supreme Court that the state was obligated under Medicaid to pay for the repair work. It has been done.

Like the mother in Kansas, whose estranged husband—defying a court order—left the state with their two children while divorce proceedings were pending. The Legal Aid Society of Wichita, using the new School Freedom of Information Act, traced the transfer of the children's school records to Minnesota, where local counsel was recruited and a habeas corpus proceeding begun. The children were returned to their mother in Wichita.

On September 30, 1976, the close of the 1976 fiscal year, some 300 legal aid programs—located in every state, and in the Virgin Islands, Puerto Rico, and Micronesia, and funded in whole or in part by the Corporation—were handling about one million matters like these—some more, some less complex. These programs represented the poor in about 700 offices in cities and rural areas; they served the elderly, migrant laborers, American Indians, and others in programs specializing in the particular legal problems of those poor people.

One million matters. Housing issues. Administrative benefits. Family crises. Health problems. Consumer transactions.

The people with these concerns, who became clients of legal services attorneys, were the fortunate ones. They lived in areas where legal services programs exist. They were not turned away because a legal aid office had been closed for lack of funds or because their cases were not the emergencies to which many understaffed, under-financed programs must be limited.

An appliance store threatened to repossess the refrigerator of a 74-year-old Washington State woman. After a Northwest Washington Legal Services attorney pointed out to the store that its contract and sales practices violated the Truth in Lending Act, the state retail sales act, the state consumer protection act, and the state usury law, the store permitted the woman to keep the refrigerator—and paid her $800 in settlement of her claim for the illegal practices.

According to the 1970 Census—the most recent complete figures available—approximately 29 million persons in the United States have incomes below the government-defined poverty line. The figure does not include millions whose economic power has been eroded by inflation or who have been caught up in the rising tide of joblessness.

Many of them are potential clients of legal services programs. Based on a study by the Bureau of Social Science Research, about 23 per cent of the poor in the United States are faced with a legal problem each year. This means that

the poor experience some 6,670,000 legal problems each year—a figure that increases to more than 7.8 million when the multiplying effect of unemployment is added.

The result is the simultaneous reward and the immense frustration of the legal services program: the rewarding knowledge that about one million matters a year are being handled by dedicated, professional lawyers, paralegals, and support staff, with results like those described here; the frustrating awareness that less than 15 per cent of the need is being met—that more than 15.7 million poor do not have effective access to legal assistance.

"We regret that there is not now a legal services program serving your county. Perhaps your local bar association can be of assistance."—Letter from the Corporation to many indigent correspondents.

The tradition of free legal aid to the poor was nearly 100 years old when the Corporation was established. But no more than a few of the poor ever had real access to a lawyer's services—and until the middle 1960s, most poor persons with civil legal problems could only hope for a lawyer's charity.

By 1922, the American Bar Association identified 33 legal aid societies in the country. By 1965 their number had grown to 248.

By that time, it had become apparent that the few legal aid lawyers and the voluntary services donated by private lawyers could not match the legal needs of the poor. The traditional problems—in family law, housing, health, consumer concerns, and administrative benefits—were compounded by unemployment in many locales. Debt collections, evictions, repossessions, and related issues all increased tragically.

It was against that background, in 1965, that the Office of Legal Services was initiated in the Office of Economic Opportunity, later the Community Services Administration.

The cause of providing free legal services to the poor made significant progress over the next decade. Federal funds were rapidly exhausted as grants were made where strong community and bar support showed the need and desire for legal aid programs. But then—and still today—there are no legal aid offices in many communities. As the 1970s began, the legal services program became an object of partisan political controversy. Funding for existing programs was virtually frozen for five years, and programs were forced to curtail their services drastically as the budgetary freeze was exacerbated by record inflation.

But where the programs were operating, they provided service with a high degree of dedication and professionalism. Working often in shabby surroundings that no lawyer would tolerate for private practice, idealistic and overworked, committed and underpaid, the lawyers took on caseloads of up to 500 legal matters a year. Fortunately for the clients, many of the legal problems of the poor are solved without litigation: only about 15 per cent of all cases go to court; 85 per cent are resolved through negotiation and settlement.

As the legal services efforts expanded, it became evident that a structural change was necessary. Legal services attorneys and their clients, and such organizations as the American Bar Association, the National Bar Association, the National Clients Council, and the National Legal Aid and Defender Association—recognizing the need to insulate legal assistance for the poor from partisan political pressure—moved in Congress and among their own broad constituencies for the establishment of an *independent* Legal Services Corporation.

The Act that created the Corporation (P.L. 93-355) passed in 1974. It 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." That mandate was founded on the congressional judgment that "equal access to the system of justice in our Nation" must be provided to all individuals.

The strength of the Corporation lies in four fundamental principles of the Act:

Partisan political considerations have no place in a program designed to ensure high quality legal assistance to the poor. The Act precludes those considerations.

The creative energies of a corporate organization can be brought to bear on the most important problem facing our legal system: that most poor people have no access to that system.

The Corporation is not part of the Executive Branch, but is responsible directly to Congress for both support and criticism.

Nothing in the realm of legal assistance should be taken for granted except the importance of legal assistance itself. Every program is to be eval-

uated fully and carefully. Every effort is to be made to find ways to provide quality legal services on the most effective and efficient basis.

In 1975 President Ford, with the advice and consent of the Senate, appointed the Corporation's first, eleven-member Board of Directors. The Board took office in July; federally-funded legal aid was shifted from the Community Services Administration over a 90-day transition period, and by October 14, 1975, the Corporation was operating.

Through all of this, the programs were at work for their clients.

A family of six deaf mutes lived in an old apartment house plagued by vandalism. When vandals tore out the plumbing in the basement, the family was suddenly without water or sanitary facilities. The town took no action to help. An attorney with Bergen County Legal Services (New Jersey) obtained emergency water and portable toilet facilities and persuaded the town to repair the plumbing temporarily. Then the legal services attorney obtained a rent subsidy under a little-known state program to aid the handicapped, and the family moved to a decent apartment. The resulting publicity brought gifts of money with which the family was able to acquire furniture.

A county court, in a criminal proceeding, ordered the father of an illegitimate child to pay the mother thirty dollars in monthly support. That was not enough to take care of the child, but the mother's request for an increase was refused. The Cambria County office of Legal Aid (Pennsylvania) took the case. The county court ruled that since the order of support was part of a criminal sentence, it could not be increased. On appeal, the Superior Court ruled that a father is just as obliged to support an illegitimate child as a legitimate child, that the order of support was not a criminal sentence, and that the order might be changed to meet the circumstances of the parties.

PART II.—THE FIRST YEAR

Two critical priorities immediately confronted the Board of Directors—the staffing of the Corporation and the need for sufficient funding to begin to meet the mandate of the Act: ". . . to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances."

After a nationwide search the Board selected Thomas Ehrlich, dean of the Stanford Law School, to be the Corporation's first president, and Clinton Bamberger, dean of the law school of Catholic University, to be executive vice president.

With the gradual acquisition of a top-flight professional and support staff, the mechanism to support the national effort to provide lawyers for the poor was in place.

There was much to be done.

When the Corporation began operations, it assumed responsibility for 258 legal services programs operating in 638 offices. They provided legal assistance of the highest professional quality. But clearly, the amount of service was insufficient. Existing offices were unable to serve most of the poor who lived nearby, and millions of poor people had no access to any legal aid office.

Along with the severe effects of fixed funding during the inflationary years, the Corporation found:

Marked inequalities in legal services funding for various areas of the country, resulting in substantial differences among programs in their abilities to reach and serve clients.

Inefficient offices with only one or two attorneys.

Rapidly deteriorating physical facilities and shortages of basic library materials and office equipment.

Inflation since 1971 has increased costs by nearly 31 per cent. The consequent loss of staff and closing of offices meant an effective reduction of legal services for clients by about the same percentage. For want of funds, many programs were forced to stop taking new clients for long periods of time. Many could accept only emergency cases (although, for poor persons, "emergencies" can be a daily fact of life). One statewide program, for example, imposed in all of its offices a moratorium on divorce cases to reduce the attorneys' caseloads to manageable size. The offices of some programs were forced into a policy of accepting only the first 40 clients who appeared each month. Others closed their doors one day a week so that the staff could work on pending cases.

The number of attorneys in legal aid dropped sharply. Nearly 1,000 attorneys left legal services programs each year, in major part because of low salaries.

Turnover reflected not only the expected gap between the salaries of legal aid lawyers and the salaries paid attorneys in private firms; more important, it reflected the gap between the salaries paid legal aid lawyers and the salaries paid attorneys in other public agencies, such as prosecutors and city attorneys.

An elderly and disabled couple were locked out of their residential hotel room over a $6 rent dispute, and the hotel seized the couple's property—including medicine, the diabetic woman's special food, and medicine for her guide-dog. After legal aid attorneys brought suit, the property was returned, and the Arizona Innkeeper's Lien Statute was declared unconstitutional.

For lack of funds, many of those attorneys who remained were no longer able to attend continuing legal education programs directly related to their work with their clients. Travel budgets were slashed, fringe benefits reduced or eliminated. Some programs were unable to afford even minimal costs of discovery and investigation for litigation.

The financial freeze affected the quality of legal services in other ways. Physical facilities often required clients to discuss their private problems in open cubicles for all to hear—something no paying client would tolerate and no lawyer should permit—because there was no money for floor-to-ceiling partitions. Offices lacked the basic law books essential to any practice, as well as adequate typewriters, dictating machines, and copiers. Cardboard boxes served as file drawers, waiting rooms often lacked chairs for clients—many of whom were elderly.

Meanwhile, as the ability of programs to serve their clients was being curtailed, the number of eligible potential clients rose sharply as inflation, recession, and high unemployment took their toll. Court decisions and legislative enactments protecting and defining the rights of all citizens created more needs for legal assistance, especially for the poor whose rights had gone unnoticed for so long. The constitutional right to counsel in civil commitment cases, the right of both parent and child to separate representation in neglect proceedings, and the right to challenge conditions of confinement or lack of treatment in mental, juvenile, and other non-penal institutions were but a few of the areas where rights were recognized.

Within a week of the first meeting of the Board of Directors in July 1975, Chairman Roger Cramton appeared before the congressional appropriations committees seeking $96 million for Fiscal Year 1976. Congress approved $88 million, less than had been requested but a significant increase over the amount at which funding had been virtually frozen for five years at $71.5 million. A later supplemental appropriation of $4.33 million enabled the Corporation to attend to three special needs, described below, without further draining the bare subsistence funds of legal services offices. At this funding level, of course, any consideration of sorely needed expansion of legal services programs to provide access for more poor clients remained out of the question.

Before examining the Corporation's activities during the year, a glimpse of the legal services network is in order.

There are legal aid programs that received funds from the Corporation in every state, as well as in Puerto Rico, the Virgin Islands, and the Trust Territory of the Pacific Islands (Micronesia). They are listed in Appendix A. When the Corporation began operating, all but three were staffed by full-time attorneys and paralegal assistants—nearly 3,300 attorneys and 1,000 paralegals. (The three others utilize private lawyers in judicare plans.) The programs are governed by local boards that include representatives of the poor and private attorneys. The programs employ the lawyers and staff who provide advice and advocacy for those who qualify for free legal assistance.

Within maximum income levels prescribed by the Corporation, each program sets its own standard of financial eligibility, taking into account living costs and other local factors. Eligibility is determined primarily by family income, but other circumstances affecting a client's ability to pay are also considered—such as medical and child care expenses, and seasonal variations of earnings.

For many programs, the Corporation is not the only source of funds. Bar associations, law firms, lawyers, local charities, and state and federal agencies provide additional support. But even with that help, programs do not have sufficient resources to meet all the needs of the eligible population. Each program must, therefore, establish priorities by considering such factors as the availability of other sources of legal assistance in particular categories of cases.

Although funds from the Corporation are used by most of the programs to support general civil legal assistance for the poor, some offices specialize in consumer affairs, law for the elderly, social welfare benefits, housing for the

poor, and family law. Ten legal services programs specialize in serving migrant workers; eight provide legal assistance to Native Americans.

Lawyers have learned to be more efficient by utilizing paralegals and other non-lawyers in their work. In the last few years private law firms have engaged increasing numbers of paralegals. Legal services offices have been leaders in that trend to increase the quantity and quality of legal assistance. New clients are interviewed by paralegals to determine their eligibility for legal assistance and the nature of their problems; paraprofessionals, under the supervision of lawyers, can provide effective services—and they know when a lawyer is needed.

All legal services paralegals have received some training in their areas of specialty, such as administrative benefits, and many are recruited from the communities in which they work.

A typical urban program maintains a number of neighborhood offices throughout the city, in storefronts and office buildings—and even in mental hospitals—accessible to the poor.

Lawyers and paralegals with rural programs often must travel to visit migrant camps and the homes of elderly persons on farms and in small villages. A number of programs have specially-equipped vans that are law offices on wheels.

Many programs provide community education to help poor persons know their rights and responsibilities under the law and how to avoid legal problems.

Support Centers

For some complex legal problems it is not possible for the individual legal aid lawyer or program to respond adequately without specialized knowledge. As a result backup or support centers were developed and funded to provide this specialized assistance for legal aid lawyers as the federally-funded legal aid movement began.

At the inception of the Corporation there were 17 of these centers. Four were engaged in clearinghouse, research, training, and technical assistance—functions that the Legal Services Corporation Act requires the Corporation to perform directly, if at all, and not by grant or contract.

The Board of Directors brought these functions within the Corporation's Office of Program Support and its Research Institute on Legal Assistance. The remaining 13 support centers are under contract with the Corporation as specialized law offices serving eligible clients.

These offices concentrate in such areas as housing, administrative benefits, health law, and consumer rights. Some specialize in law affecting certain classes of citizens, such as Native Americans, migrant workers, and the elderly poor.

Legal services attorneys represented Molly Hootch and 14 other teenage Native Alaskans charging the state of Alaska with discrimination in establishing schools in Alaska's small communities. Specifically, they wanted their own high school in the bush village of Emmonak. As in 125 other Alaskan villages, children who wanted to continue schooling beyond the eighth grade had to leave the village to attend school in other Alaskan cities or federal boarding schools in the "Lower 48." Four years after Molly Hootch's suit was filed, the state agreed, in an out-of-court settlement, to spend $40.6 million to provide a secondary school for every village that wants one. The settlement—which affects an estimated 2,700 children—followed testimony that 15 to 30 percent of the students who left their villages to attend school dropped out each year, and that suicide and homicide rates increased dramatically among students who left home for continued schooling. In the elections of 1976, Alaska voters approved a school bond issue that includes a major start in establishing secondary schools in Alaskan villages.

Fiscal Year 1976 Activities

The first obligation that the new Corporation faced was to provide the funding necessary to keep the legal services programs in operation to serve their clients. After analyzing the critical needs, the Corporation allocated the additional funds available for field programs so that:

$1.6 million met the most urgent needs—hiring lawyers and staff to replace those who had left, salary increases to make up five years of attrition by inflation and to begin to inch closer to comparable salaries, and correcting critical physical deficiencies.

$3.7 million in an "equalization fund" strengthened the most severely underfunded legal services programs and began a more equitable distribution of the limited funds so that the chance of a poor person to have legal assistance is not so dependent upon whether the legal aid office in the client's community is well-funded or fiscally starved.

$6.1 million was spent in small grants—ranging from about $5,000 to $30,000—that substantially improved the programs' ability to serve their clients: programs with only one or two attorneys hired another; small programs consolidated to avoid management duplication.

Through careful monitoring and control of funds, the Corporation was able to establish a small reserve fund for one-time special grants on the basis of demonstrated need. These grants were restricted to restoring and renovating offices to provide space and privacy; replacing obsolete equipment such as manual typewriters and outmoded copiers; restoring libraries with up-to-date reference materials, and generally meeting important needs that had been postponed while rent, salaries and utilities took priority.

The supplemental appropriation of $4.33 million was used for three purposes. First, it replaced funds that had come from the Department of Labor for 10 programs that provide service to migrant farm workers. Second, it supported more than 50 programs that were about to close as local community action agencies withdrew their funding. Third, it financed the initial phase of a study required by the Act on methods of delivering legal services.

The Corporation developed and presented to the Congress a plan for growth over four years that will provide a minimum level of legal assistance to the poor. Under this plan, by the end of 1980 every 10,000 poor persons will have access to assistance by the equivalent of two legal services lawyers—as compared to 11.2 lawyers per 10,000 person in the population generally.[1] The objective is stated as a quantity of legal assistance, not a number of lawyers, to make clear the commitment to find the most efficient means of providing legal assistance, such as the use of paralegals.

To meet the four-year goal, existing programs will receive new funds to assist more clients and new programs will be established in the many places where the poor do not have any access to legal assistance.

The budget request for Fiscal Year 1977 sought $140.3 million for the initial stage of the four-year plan. The appropriation of $125 million made possible the first significant growth of legal assistance for the poor in many years.

In 1976 only 9.4 million of the nation's 29 million poor persons had minimum access to legal aid—the assistance of the equivalent of two lawyers for 10,000 persons. More than 19.5 million poor persons (67.5 percent) did not have access to legal assistance at even that minimum level. Grants from the 1977 appropriation of $125 million will bring minimum legal assistance to 3.9 million more poor persons. But more than half of the poor, 15.7 million persons (54.2 percent), will not have access to even that barest measure of legal aid.

The Board of Directors allocated more than $28 million—most of the funds added to the prior year's appropriation—for direct support of legal assistance to poor clients. A total of $15 million will bring new programs and new offices of existing programs to places that have not had access to legal services. About $13.5 million will be provided to existing programs to serve more poor clients living where those programs now have offices, principally by employing additional lawyers and legal assistants. Grants are not made until there is a determination that the potential grantees—both new and existing programs—will provide high quality legal assistance to the largest number of people in the most efficient manner possible.

Since its inception, the Corporation has received a large number of inquiries about grants to provide legal assistance. When the 1977 appropriation was certain, those who had inquired and all others who might be interested were invited to apply for grants. Those applications are measured against four principal policies:

Priority is given to those states (and areas within states) where the largest number of poor persons reside without effective legal assistance.

Administrative units that provide service to the largest number of eligible clients in the most efficient manner are preferred over providing funds for several smaller programs.

When poor persons who have not had access to legal services can be assisted by expanding programs of proven effectiveness, that course is preferred over beginning new entities.

[1] Empirical studies and the experience of legal services attorneys demonstrate that legal assistance by the equivalent of four attorneys is required to provide effective representation for 10,000 poor people. Even that level of service—which is the Corporation's longer-term goal—would require some restrictions on the acceptance of eligible clients. But it would mean adequate counsel in the areas of major importance to the poor—domestic relations, housing problems, administrative benefits, and consumer matters.

The funding for new programs and for expansion of existing programs will be sufficient to provide the minimum level of legal assistance (the equivalent of two lawyers for every 10,000 clients) for at least 70 percent of the poor who live in the city or county that the program serves.

An elderly New York State couple was referred to legal services lawyers after signing a contract to have their home insulated for more than $1,700. Independent estimates placed the cost at $400 or less. The legal services attorneys claimed unconstitutionality and truth-in-lending violations—whereupon the insulating compay canceled the contract and did the job for $442, including finance charges.

As these policies indicate, there are wide variations in the use of expansion funds to provide the most efficient and effective service to the poor. In some areas, statewide corporations are being formed to expand the service areas of existing Corporation-funded programs and to open additional offices in areas not previously served. In other areas geographical expansion can best be accomplished through regional programs, often using existing ones as a base. Finally, some existing programs of proven effectiveness are expanding their service areas rather than creating new administrative structures.

The costs of providing legal assistance vary among different parts of the country and between rural and urban areas. The Corporation is conducting a study to identify and measure the effect of the most important variables on the costs of providing legal assistance. That study should enable the Corporation to allocate future funds more equitably.

Projected Corporation expenses from the fiscal year 1977 appropriation

Grants to legal services programs to maintain the assistance they have been providing, and monitoring and evaluating those programs	$87, 585, 000
Grants to existing programs to provide legal assistance to more clients	13, 435, 000
Grants to new programs and for growth of existing programs to provide legal assistance where the poor have not had access to legal services	15, 000, 000
Recruitment and training of lawyers and paralegals, management assistance, and publication of specialized legal materials	3, 135, 000
Program development, demonstration projects, and evaluation	2, 650, 000
Research Institute on Legal Assistance	250, 000
Administration	2, 945, 000
Total	125, 000, 000

Of $13.4 million allocated to enable existing programs to assist more clients:

$7 million will be distributed to the most seriously underfunded and understaffed legal services offices.

$4,635,000 will support increases averaging 5.5 per cent per program to adjust for inflation and meet critical personnel and office requirements.

$1.8 million will meet special situations in which a small amount can substantially improve a program's ability to help its clients.

All grants, of course, are subject to thorough evaluation of program performance by the Corporation.

The four-year schedule enables the Corporation to define its minimum short-term goal. The schedule should and will be advanced to the extent that increased funding permits.

New Directions

A major goal of the Corporation is to ensure every possible method of delivering legal services to the poor is explored and utilized where appropriate. An essential element of that effort is the increased involvement of the private bar in legal services. Two projects recently begun by the Corporation should contribute substantially to that purpose.

Delivery Systems Study

The first is a study of existing staff attorney programs and, through demonstration projects, methods of legal services delivery that are alternative or supplemental to those programs. This effort, which is required under the Legal Services Corporation Act of 1974, will provide important insights into delivering legal services to the poor and ways to improve those services. The methods identified in the legislation are judicare, prepaid legal insurance, contracts with private law firms,

and vouchers. The Corporation will experiment with other delivery approaches, such as legal clinics and public education preventive law programs, and must report recommendations based on the study to the President and the Congress by July 1977.

The first step in this study was to develop the models to be tested. To involve as broad an array of views as possible in this process, the Corporation solicited ideas on delivery systems from some 800 individuals and groups. More than 150 concept papers were submitted. An advisory panel, which includes private lawyers as well as others, helped review the papers and select the persons and groups to operate the demonstration projects.

From among 100 grant proposals, the Corporation selected 19 projects in 14 states to test a variety of methods of delivering legal services to the poor—actually serving eligible clients while gathering data to test effectiveness. Funds will be provided and the programs will be delivering services by January 1, 1977. The programs and their expected funding are listed in Appendix B.

Ten of the programs will test alternatives to the staff-attorney method, and one will experiment with a voucher system that will allow clients to choose between the private bar and a legal services program. Seven will operate in cities, eight in rural areas, and four in areas that are urban and rural.

Judicare—utilizing individual members of the private bar—will be tested in eight projects, prepaid legal insurance in four, contracts with private law firms in five, and vouchers in one. Going beyond the models specified in the Act, the Corporation is also funding a *pro bono* legal clinic using a panel of 1,000 volunteer lawyers in Boston.

While the demonstration projects are in operation, the Corporation will be collecting data from a number of existing staff-attorney programs for comparison with the demonstration projects.

The projects will be assessed to determine their feasibility—the ability of grantees to plan and implement their projects at a reasonable cost in a particular community setting—and their performance, which will be measured by quality and cost of service, client satisfaction, and the impact of services on the poor community.

The demonstration grants are for one year. Additional demonstration grants will be awarded from 1977 funds. Once a project has been established, the Corporation expects to continue service to the clients even though the specific grantee or project design may change.

All the models involve the use of private attorneys. The Corporation does not however, view this effort as a competition between staff-attorney programs and the private bar; nor does it expect to demonstrate a single best method to deliver legal services to the poor. Rather, the aim is to identify approaches that are appropriate to individual community settings and groups.

Closely linked with the study are the design and development of a reporting system that will provide information about each legal services program supported by the Corporation. Over time, it will show what kinds of delivery techniques work best in particular settings—for example, in rural and in urban areas. The result should be much more knowledge about ways to provide legal services efficiently and effectively to different groups and in different areas of the country.

Research Institute

The second effort of "New Directions" is the Corporation's Research Institute on Legal Assistance. The Institute is devoted to substantive study of the broad range of legal problems that relate directly to the services performed by legal aid programs. Research projects will be undertaken by a number of fellows selected each year from legal services programs, from private practice, and from law school faculties. Fellows will work full or part time, either at the Corporation's office or elsewhere.

Research projects under Institute auspices will be in five broad areas:

Problems posing the most serious consequences to the poor, such as income security and health benefit programs.

Gaps in substantive poverty law such as rural issues.

Studies of agencies that provide benefits to the poor, such as welfare agencies and public hospitals—particularly their hearing and grievance procedures.

Projects to prevent legal controversies and to create new arrangements for dispute resolution.

Ways to evaluate the effect on the poor of special legal institutions, such as small claims and housing courts.

Operations of the Corporation

The Washington headquarters of the Corporation, with fewer than 100 employees, is geared to one overriding purpose: the strongest possible support for programs delivering legal services to the poor.

Following are some of the Corporation's 1976 activities, described in terms of its operating divisions:

Office of Field Services

The Office of Field Services is responsible for managing the Corporation's grants to legal services programs, including migrant and Native American programs and the 13 support centers. Assisted by regional directors and their staff, the division reviews and approves grant applications, supervises grant processing, provides management assistance, and monitors the performance of the programs.

A retired federal worker in California, living on a Civil Service pension, suddenly received a notice that his pension payments were being withheld to pay a debt he allegedly owed the government. The retiree believed the debt to have been satisfied. The government had made no effort to collect for 25 years. When the legal aid program brought an action on the client's behalf, the alleged debt was canceled and the man's pension restored retroactively.

The Office developed and implemented—in consultation with the regional staff and several advisory groups—a plan for nine regional offices of the Corporation. The plan is designed to facilitate communication between programs and the Corporation and to ensure that all programs receive the assistance required to assure quality representation of clients.

Regional offices will monitor every program in the region four times annually. Each regional office has a management specialist, who assists the regional director in reviewing the internal controls and management procedures of the programs. When necessary, modification of those systems is suggested to achieve more efficient and effective program operation. The Field Services Office has developed a number of monitoring arrangements to assist the regional offices in measuring the programs' efficiency and effectiveness.

Recognizing the special needs of Native American programs, an attorney with specific responsibility for Indian affairs is based in the Denver region.

The states are divided among the regions as follows.

Boston Region: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

New York Region: New York, Puerto Rico, Virgin Islands.

Philadelphia Region: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania.

Northern Virginia Region: Michigan, Ohio, Virginia, West Virginia.

Chicago Region: Illinois, Indiana, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin.

Atlanta Region: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee.

Denver Region: Arizona, Colorado, New Mexico, Oklahoma, Texas, Utah.

San Francisco Region: California, Nevada.

Seattle Region: Alaska, Hawaii, Idaho, Micronesia, Montana, Oregon, Washington, Wyoming.

The Office of Field Services has substantially revised and streamlined its grant application and refunding procedures. The revised refunding application calls for more program attention to budget and fiscal planning, with increased regional office review of applications prior to refunding recommendations. Beginning January 1, 1978, grantees will be funded on an annual basis every January 1.

The Legal Services Corporation Act required the Board of Directors to request the governors of every state to appoint nine-member state advisory councils. These bodies are charged with "notifying the Corporation of any apparent violation of the provisions" of the Act or of Corporation rules, regulations, or guidelines.

The councils are now in place in almost all states and maintain contact with the Corporation through the Office of Field Services.

Office of Program Support

The Office of Program Support provides legal, paralegal, and management training, management and technical assistance, recruitment and job exchange, and clearinghouse activities for the lawyers, paralegals, and management personnel funded by the Corporation. Activities formerly offered by four support centers have been reorganized in four units in this office—training for lawyers

and paralegals, management training and assistance, clearinghouse, and an administration and production unit for handling such matters as conference arrangements, travel, materials, processing of grants for local training, and surveys and evaluations for training and assistance.

The Office will conduct 53 separate training events for lawyers and paralegals during the current fiscal year. These include sessions in lawyering skills for lawyers new to legal services, several mixed substantive and skills training programs for more advanced lawyers, a number of training sessions of various types for paralegals in legal services offices, sessions in general management, workshops on specific management problems for program directors, and sessions for the managing attorneys of branch offices. The Office also sponsors a series of short substantive seminars on current problems and changes in the law that affect lawyers in legal services offices. In addition, it provides training to comptrollers and chief accountants of legal services programs, in conjunction with the Comptroller's Office.

In planning training, the Office works with advisory committees, comprised of experienced legal services persons, paralegals, private lawyers, law professors, and others who have special expertise in subjects for training.

In connection with training and career development work, the Office often provides assistance to local programs and works with state bars, continuing education programs, and committees of the American Bar Association on issues affecting the licensing, certification, and accreditation of lawyers and paralegals.

Some direct management and technical assistance is provided in cooperation with the Corporation's regional offices when problems have been observed by the regional offices or when requested by the program director. The Office also provides, with the Office of Field Services, training programs for regional directors and management specialists.

The Office of Program Support provides a clearinghouse for case information and pleadings and a monthly publication, the *Clearinghouse Review*. This Office is also responsible for the contract with Commerce Clearing House for bulk subscriptions to the *Poverty Law Reporter*.

The Office of Program Support is establishing the first effort at the national level to assist local programs with recruitment, job placement, and career development, including a job exchange program for experienced lawyers and paralegals. The office administers the grant to Howard University for the Reginald Heber Smith Community Lawyer Fellowship Program, which supports 326 fellows practicing with legal aid offices.

The planned expansion of legal services programs during the next year will require increased training and assistance provided by the Office of Program Support. Expansion will add many new legal services attorneys and paralegals. They must be trained—both in lawyering skills needed in legal services work, and in substantive areas of poverty law. Special training and assistance will be needed to help local groups start programs and cope with the early problems of financial and personnel management. Additional training and support will be required by the experimental programs of the Delivery Systems Study.

Office of General Counsel

The Office of General Counsel serves as legal adviser to the Board of Directors and the Corporation's officers and regional directors. The Office is also called upon by legal services programs and others seeking interpretations of the Legal Services Corporation Act.

An early priority for the Corporation was to develop regulations to implement the provisions of the Act. The Board of Directors—with recommendations of the general counsel and the Board's Committee on Regulations—adopted regulations governing Definitions, By-Laws of the Corporation, Freedom of Information Act procedures, State Advisory Councils, Outside Practice of Law, Appeals on Behalf of Clients, Application for and Denials of Refunding, Governing Bodies of Recipients, Prohibited Political Activities, Fee-Generating Cases, Use of Funds from Non-Corporation Sources, Restrictions on Representation of Juveniles, Prohibited Civil Representation, Attorney Hiring, Class Actions, Enforcement Procedures, and Eligibility of Clients.

For several years a California community had been divided over the issue of building a new jail to replace the old, overcrowded facility. After a legal services program brought a class action on behalf of the prisoners, a federal court ordered the county to begin immediate improvements. The county chose to construct an entire new facility.

The Office of General Counsel prepared a memorandum directing all programs to cease providing assistance in matters prohibited by the Act—such as school desegregation and Selective Service cases—unless withdrawal from a pending case would violate the American Bar Association's Code of Professional Responsibility. All programs have complied with the directive.

In its first year, the general counsel was also involved in defending three lawsuits brought against the Corporation, and assisted a number of programs when questions involving interpretation of the Act arose in litigation affecting their activities and their clients.

The general counsel worked with outside counsel, representing the Corporation *pro bono publico*, in defending a suit challenging the constitutionality of the section of the Act and the implementing regulation that prohibits legal services lawyers from engaging in, or encouraging others to engage in any public demonstration or picketing, boycott, or strike. The case was settled by a consent decree.

The Office is also working with *pro bono* counsel to defend a suit challenging the constitutionality of the Act's prohibition against staff attorneys' being candidates for nonpartisan public office.

After the Corporation decided that Section 1006(a)(3) of the Legal Services Corporation Act prevented refunding of the National Paralegal Institute, the Institute filed suit challenging the validity of the Corporation's procedures for reaching that decision. The general counsel, again assisted by *pro bono* counsel, successfully defended the suit. The court held that the Corporation's hearing procedures satisfy the requirements of Section 1011 of the Act.

The Office of General Counsel also assisted legal services programs in these instances:

The Corporation joined with the legal Aid Foundation of Long Beach in urging the ethics committee of the Los Angeles County Bar Association to rule that information concerning a client's financial eligibility is protected by the attorney-client privilege. The committee adopted this view.

When the Dallas Bar Association sought an attorney general's ruling that non-lawyers may not represent others in proceedings before state administrative agencies, the Corporation filed a lengthy brief in opposition. Paralegals play an important role in legal services programs. The Corporation drew on relevant Texas law to argue that such representation does not constitute the unauthorized practice of law, and that to prohibit appearances by lay persons would violate federal regulations authorizing lay representation hearings relating to federal benefit programs.

A suit was filed against the West Virginia Legal Services Plan, challenging on equal protection grounds the program's policy of declining to provide legal assistance in uncontested divorce cases. The Corporation prepared an *amicus curiae* brief in defense of the program's authority to set priorities.

A party opposing a legal services client in a lawsuit sometimes seeks to interject issues concerning the legal services program's compliance with the Act. When this has occurred, the Corporation has defended the client's right to undisrupted legal assistance, and has sought to ensure that the Act is enforced in the manner intended by the Congress—through State Advisory Councils and by the Corporation itself. A client must not be penalized because of the program's alleged violation of the Act.

In many jurisdictions courts have appointed legal services lawyers without compensation in cases in which there is a state-created right to compensated counsel. Such appointments deplete program resources and defeat their attempts to shape their caseloads in conformity with priorities established after a study of client needs, as required by the Legal Services Corporation Act and Corporation regulations. Further, ethical considerations prevent legal services programs from accepting more cases than they can handle adequately. In some instances such appointments violate Corporation rules limiting representation in fee-generating cases. The Corporation has supported attorneys who decline such appointments and has helped them explain to courts the valid reasons for doing so.

Office of Equal Opportunity

The Corporation established an Office of Equal Opportunity to ensure the right of all persons to work and to advance on the basis of merit and ability. It is responsible for developing, recommending, and administering nationwide policies and directives relating to equal opportunity and affirmative action. It also supervises the day-to-day activities of all Corporation offices in implementing the Corporation's Equal Opportunity and Affirmative Action Plan.

The plan has been implemented at all Corporation offices. The Office has prepared and issued statistical data and evaluation reports of progress in equal opportunity and affirmative action, including employment patterns, race and sex profiles, and a utilization analysis for the Corporation, as well as a work-force analysis report.

Budget Office

The Corporation's Budget Office prepares the basic financial estimates and supporting details to justify the Corporation's annual budget goals and plans to the Board of Directors and to Congress.

It conducts regular reviews of Corporation allocations of funds to determine whether the uses of funds are consistent with the purposes for which they are budgeted; whether surpluses or deficits are likely to occur in budget categories; and whether changes are necessary to adjust the budget to actual spending levels or changes in Corporation priorities.

The Office participates with other Corporation units in the design and operation of financial and management information systems, and in the development and testing of formulas for allocating funds to legal services programs. With the Comptroller's Office, the Budget Office develops procedures for making and controlling allotments to Corporation offices and for managing program allocations.

Office of the Comptroller

The measure of success for the Comptroller's Office, as well as other offices, ultimately depends upon whether its performance contributes to the provision of legal assistance for the poor. The comptroller's objectives are basic—to provide timely, responsive service to the legal services programs supported by the Corporation and to ensure sound fiscal management at each program.

The approach to these objectives is also basic—to operate a Comptroller's Office of the highest professional quality and to require the same standards in the fiscal operation of the Corporation's grant recipients.

The first year saw significant progress. The Comptroller's Office has progressed from a cumbersome manual accounting system to a fully computerized system. Much of the Corporation's accounting work relating to recipients has been automated. These efforts have translated into more timely service to recipients. For example, the Corporation has wired funds to a recipient within 24 hours to avert problems caused by checks delayed in the mails.

The Comptroller's Office has developed and distributed an *Audit and Accounting Guide for Recipients and Auditors*, based on generally accepted accounting principles, which recognizes the non-profit nature of the Corporation and its grantees. The *Guide* emphasizes accountability, and not merely reporting.

The comptroller is conducting audit and accounting seminars for program managers throughout the country to explain the objectives of the *Guide* and, more important, to establish relationships with programs.

A prototype legal services accounting system, which can be adopted for use by programs, has been developed. The results of this effort will not only aid existing programs but will be available for the benefit of all new programs and grantees requesting assistance.

The Corporation now invests its funds until they are actually needed. An outside investment adviser—carefully selected by the Board of Directors—counsels the Corporation in this activity in accordance with guidelines set by the Board.

Office of Program Planning

The Office of Program Planning, attached to the Office of the President, is responsible for developing long-range policies and goals for the Corporation. In carrying out this function, this Office:

Collects, analyzes, and maintains financial and statistical information relating to legal services programs.

Translates long-range policies into plans for action, preparing charts and formulas for use by the Office of Field Services, the Budget Director, and the Office of the Comptroller in allocating funds, scheduling grants, and making payments.

Prepares memoranda on special topics warranting further research and development by the Corporation.

The Office of Program Planning works closely with other offices and divisions of the Corporation to provide guidance on the control of budget and grant

activities, and as a resource center for data bearing on the operations of legal services programs.

The Office of Program Planning helped to develop the Corporation's expansion plan and to design the simplified grant refunding form and process.

Office of Public Affairs

The Corporation could not be fully effective without widespread knowledge and understanding of its goals and needs among the widely disparate publics on which it depends for support. Legal services attorneys and program staff, the client community, the private bar, the Congress, state and local governments, the academic community—all of these audiences began the year with little knowledge of what the Corporation was about.

To fill this vacuum, the Office of Public Affairs took a series of steps to disseminate information about legal services and the Corporation to a wide range of interested groups.

Last summer the Corporation began publication of a newsletter—the *Legal Services Corporation News*—That is distributed every two months to more than 7,000 individuals and organizations interested in legal services for the poor. The newsletter includes Corporation and program activities, noteworthy recent cases, and general information of interest to the legal services and related communities.

In coordination with the Standing Committee on Legal Aid and Indigent Defendants of the American Bar Association and the National Legal Aid and Defender Association, the Corporation produced a 27-minute film, entitled "A Day of Justice," on legal services programs and the needs of the poor for legal assistance. The film is available in English and Spanish for loan without charge.

The Office of Public Affairs also produced and distributed through field programs a brochure of basic information and a package of background materials for news media. The Office maintains contact with news organizations—through interviews, news releases, and articles—to keep both the public and the legal profession informed of developments in legal services.

The Office additionally serves as liaison with the organized bar and law-related organizations. It has worked closely with the American Bar Association's staff and committees dealing with the delivery of legal services and with the National Clients Council.

Office of Government Relations

The Office of Government Relations maintains liaison with authorizing, appropriations, and budget committees of Congress, as well as with individual members of Congress and various federal, state, and local government agencies. It coordinated the Corporation's activities in support of its Fiscal Year 1976 supplemental appropriations request and its Fiscal Year 1977 appropriations request.

During the last year, the Corporation provided materials for congressional committees on legal services for the elderly, the earned-income tax credit, increasing accessibility to the legal system for the poor, and many other matters.

The Office of Government Relations is developing ties with federal agencies involved in the delivery of legal services, to encourage continued funding of legal assistance and to assure coordination between those agencies and the Corporation.

Seven Native American tenants, including a disabled war veteran with one leg and two mothers with their children, were given three days notice to vacate their South Dakota cabins so that the landlord could sell the land. Legal Services attorneys obtained an injunction within 12 hours preventing the landlord from evicting the tenants for 30 days, as required by state law. The additional time enabled the tenants to locate other housing.

The Corporation is the major source of funding for legal services nationally. Those funds, however, are not sufficient to support legal services for all poor persons who need legal assistance. The Office of Government Relations assists Corporation grantees in identifying and using other sources of funding, particularly at the local level.

The Office has also continued to encourage the development of relations between federal agencies and local legal services programs in substantive areas of the law. For example, the Social Security Administration, the Department of Housing and Urban Development, and Social and Rehabilitation Services of HEW have all taken steps to establish continuing contacts with

legal services attorneys to provide advice and consultation on those agencies' policies and operations as they affect low-income persons.

Government Relations also receives and responds to inquiries from members of Congress and others about legal services programs.

Office of Administration

The Corporation committed itself at the outset to an effective, efficient—and lean—administrative operation.

The result: projected management and administration costs for Fiscal Year 1977 represent only 2.9 per cent of estimated total expenses for that year—comparing favorably with the administrative cost ratios of large private foundations, and with the 4.9 per cent average rate among 56 large foundations.

When the Corporation began operations in October 1975, it had a staff of 25 persons. While the major recruiting effort for senior staff proceeded, initial employment was limited to the personnel needed for urgent program studies and evaluation, and for internal management and program review.

In Fiscal Year 1976, the Corporation hired its senior staff, continued to executive its responsibilities for program review and internal management with limited personnel, and began planning its staff and resource requirements for Fiscal Year 1977. The initial staffing plan was expanded after the Corporation moved to implement the Act's requirement that certain activities be conducted directly by the Corporation rather than by grant or contract.

Reflecting the Corporation's continuing policy of not increasing staff in proportion to its appropriations, the 1978 budget estimate will call for an even lower management and administrative budget ratio.

The Office of Administration is charged with the internal management of the Corporation's offices in Washington and the nine regions. It groups its responsibilities into three categories: personnel management and administration, procurement and administrative services, and headquarters office management. (The Corporation headquarters leases one and a half floors of a turn-of-the-century office building in downtown Washington.)

The start-up year for the Office of Administration was a busy one. The Office:

Developed the budget allocations for administration for fiscal years 1977 and 1978.

Developed the staffing plan and implemented a hiring policy and procedure.

Hired staff.

Developed other personnel procedures and policies for Corporation employees.

Prepared administrative procedures.

Instituted a word processing center and developed other office management procedures to reduce administrative costs.

Negotiated an agreement with a space planning and office design firm for renovation of corporate offices.

Worked with the General Services Administration and prepared regulations for acquisition and control of excess federal and other property by grantees and corporate offices.

A Hawaii man was involuntarily committed to a mental institution. Legal aid attorneys investigating his case concluded that the state's involuntary commitment law was so broad and imprecise that it was an unconstitutional threat to civil liberties. The attorneys brought a class action, and the federal court invalidated so many sections of the law that the Hawaii legislature is now rewriting the entire statute. The client who had started it all was freed.

PART III.—THE YEARS AHEAD

Prediction is often a dangerous undertaking, but it is a necessary one. This section attempts to identify some of the issues that will confront the Corporation and influence its direction in the years ahead.

To a great extent, the Corporation's future will be determined by the events and activities of its first full year of operation. Three sets of issues have direct implications for the future: the permanency of legal services for poor people, expansion of access to legal services, and improvement of methods to provide legal services.

The recent history of publicly-financed legal services in this country has been of a battle for survival. Inevitably, groups that competently and aggressively promote the interests of poor people will cause controversy.

That so many diverse groups joined forces on behalf of legal services—and that legal services attorneys continued to serve their clients competently despite intense financial and political pressures—illustrate the staying power of the legal services movement: As a result of that staying power, public funding of legal services for the poor is accepted as essential throughout the country. Tangible evidence of the broad support for an independent legal services program came this year when Congress approved a budget for the Corporation of $125 million.

For these reasons, the Corporation has persuaded that publicly-funded legal services for the poor are a permanent part of the legal system. For the first time in far too many years, the energies of legal services lawyers, clients, and bar groups can be fully devoted to the objective of obtaining equal access to justice for all members of society. For the first time, the goal is within reach.

That goal is not a modest one. This report describes the large proportion of poor people who have no access to legal services, either because they live where there are no legal services programs or because the programs in their areas are seriously underfunded. The Corporation's first and most pressing priority is to deal with this problem.

The Corporation has established a minimum short-term goal of providing the equivalent of at least two attorneys for each ten thousand poor people nationwide, a level of service that prior experience indicates will provide only minimal access to justice for poor people. Plans are under way to strengthen existing programs that now are not capable of providing even minimum access to more than a small portion of the persons within their service areas, and to start new programs where none has ever existed. The increase in the Corporation's budget enabled it to take the first steps toward implementing its expansion plan, and that plan will dictate Corporation budget requests and allocations of funds for the next several years.

A door-to-door salesman pressured a California mother of 12 children to buy a Spanish-language Bible and to pay him $10 every Sunday. After she had paid more than $100—more than the total she remembered having agreed to pay—she refused to pay further. The salesman threatened her with legal action, and she handed back the Bible. With the assistance of legal aid attorneys the woman was refunded $40, and the Bible was returned to her.

The Corporation's long-term goal is to provide the equivalent of at least four lawyers for each 10,000 poor persons. No timetable has been set for achieving that objective. It is well to remember, however, that even this level of service will not be adequate unless supplemented substantially by funds from other sources and increased *pro bono publico* activity by members of the private bar. The Corporation's plans for expanding access to legal services are based upon a realistic assessment of the resources available. They are the absolute minimum consistent with the congressional mandate.

Simultaneously with its effort to provide minimum access to legal services for all poor people, the Corporation is continuing to develop the most effective ways of serving the largest number of poor people. Innovations in delivery methods have been the hallmark of the legal services movement. Faced with a huge demand from clients for whom denial of legal assistance can be catastrophic, 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 pioneered such areas as mass delivery techniques for handling routine and repetitive aspects of their practice, training and using paraprofessionals, evaluating the work of individual attorneys, coordinating efforts on recurring and complex problems through litigation support centers, and involving clients in determining the general direction of legal services programs. These developments have affected the entire legal profession.

The Corporation will continue that tradition. This report has described the congressionally-mandated study of legal services delivery undertaken by the Corporation in the past year, and the projects selected to demonstrate delivery methods that are alternatives or supplements to staff-attorney programs. The Corporation expects to fund a second round of demonstration projects during 1977 to ensure the validity of data obtained from the first round of projects and to test other delivery methods that have been suggested. In addition, a project reporting system will provide information about the work done by legal services programs, the types of problems that are presented to them, and the methods and resources used to meet those problems.

It is not expected that any major conceptual or technical breakthroughs will be needed. Unlike many federal programs begun over the past decade, legal serv-

ices for the poor are widely recognized as cost-effective. Last year's president of the American Bar Association, Lawrence E. Walsh, made the point succinctly: "The Legal Services Corporation is a remarkable bargain." Nonetheless, the Corporation must continue to improve methods of providing legal services. In the immediate future, the knowledge that is gained is necessary to make decisions regarding expansion of access to legal services, to evaluate programs, and to provide technical assistance and support for each of the projects that are funded.

There are, of course, other current trends that will affect the future of legal services for the poor. Increased awareness of every lawyer's professional responsibility to give some time and talent to those who cannot pay is essential if equal access to justice is to become a reality. Some state and federal courts have recognized a constitutional right to counsel in certain civil proceedings, a second development with enormous implications for the legal services movement. "Delawyering" disputes, either by simplifying complex rules and procedures or instituting alternative settlement mechanisms, is an issue that has received considerable recent attention and could vitally affect the role of legal services. Some have argued that the distinction between funding for civil legal assistance and for criminal defense is artificial and wasteful, and that public funding should be restructured to respond to all of the needs of the poor communities.

The Corporation must keep abreast—and participate in the development—of all of these trends to maintain its role in the legal assistance movement. Even more basic, however, that role will be defined by decisions about the purposes of legal services programs and the goals they seek to achieve. Those issues have been dominant in the minds of all of those at the Corporation over the past year. It is essential that purposes, goals, and priorities be reviewed in processes as open as possible, with substantial involvement by all those involved in and affected by legal services.

A confession that the Corporation is still struggling with the question "Why legal services?" may seem embarrassing from an organization whose job it is to support those sevices. The reality is, however, that the Legal Services Corporation was created with relatively little attention to that issue. For understandable reasons, it was assumed during the congressional debates on the 1974 Act that a legal services program was necessary, and primary attention was focused on the form of the organization that would support it. The Corporation must now attempt to develop fuller answers to the question "Why legal services?" and—even more important—a better understanding of the implications of those answers for the role of the Corporation.

The Corporation's Board of Directors has discussed these matters among themselves and with members of the Corporation staff, clients, and legal services lawyers. Many ideas were explored at a two-day meeting in July, which provided a basis for future consideration of the issues of purposes and priorities. Here is a brief sketch of various answers proposed to the question "Why legal services?"

"Because they are needed." Is that not a sufficient answer? Poor people have a disproportionate number of legal problems that involve basic issues of survival; they need help in handling them. But why is this need—as opposed to the other needs of society in general and poor people in particular—to be met by public funds? And is it to be met for all legal problems of all poor people, or only for some of those problems? In short, "Because they are needed," is undeniably true—but it does not answer the question of purpose. "Needed for what?" must be explained, as well as the rationale for using public funds.

A logical starting point for such an inquiry is the Act that created the Legal Services Corporation. The introductory section to that Act contains congressional findings regarding the need for a federally-funded legal services program.

Congress declared that "there is a need to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances." This statement recognizes the reality that law weighs most heavily upon poor people, and legal assistance can help minimize that burden. The similarly of that language to the words of the First Amendment suggests a congressional determination that poor people should have access to *all* the institutions with primary responsibility for making laws.

A 64-year old Mexican-American from California tried for four years to obtain pension benefits from the lumber company for which he had worked. Each year the trustees of the pension fund said they would take it up at their annual meeting; each year he was told the matter was still pending. A legal services attorney learned that a decision to deny benefits to the man had been made years

earlier. After a lawsuit was filed, the trustees conceded that they had wrongfully withheld the benefits. The client wept when the attorney handed him a check for four years worth of benefits.

Congress also declared that "providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice." This provision expresses the judgment that society as a whole has a stake in all of its members' having access to the legal system. Society's economic and other arrangements will work as they are intended to work only if everyone can enforce the rules.

This conclusion is reinforced by the declaration that "for many of our citizens, the availability of legal services has reaffirmed faith in our government of laws." This suggests that one purpose of the legal services program is to help keep public officials faithful to the laws they administer—to assure that the legislature's purposes are not frustrated by the bureaucratic maze—and underscores the need for the Corporation's independence from the Executive Branch. The importance of reaffirming faith in our government of laws also makes the point that citizens cannot be expected to live under the law unless they have access to the legal system and some opportunity to use it.

Perhaps most significant, Congress declared that "there is a need . . . to continue the present vital legal services program." Passage of the Legal Services Corporation Act after years of bitter political struggle and controversy was a tribute to the efforts of those who worked so hard in support of the bill; even more, it was a tribute to thousands in legal services throughout the country who had achieved so much in such a brief time. Just as the efforts of civil rights lawyers redefined the equal protection clause of the Constitution, legal services lawyers breathed new life into the due process clause. Through the efforts of legal services lawyers, the promises made by health and welfare programs became a reality for millions of Americans. Through their dedicated and vigorous repesentration of the poor, those lawyers established an unequaled standard of professional responsibility.

In combination, these statements provide some insights into the question "Why legal services?" but they are by no means dispositive. Most obviously, they do not determine priorities for allocating resources that—for the foreseeable future—will be inadequate to make equal access to justice a reality for all citizens.

Another approach is to build upon the statutory framework, and to develop a set of basic responses to the question "Why legal services?" At the July meeting the Board discussed the four responses that have been most frequently advanced:

Legal services are an effective means to ameliorate the effects of poverty. The issue is disputed, and it assumes that the questions of what causes poverty can be answered. A compelling case can be made, nonetheless, that over the past decade legal services lawyers have removed degradations of poverty by forcing the implementation of social welfare legislation and protecting the rights of the poor. In this basic sense, at least, legal services are a means to alleviate poverty.

Legal services for the poor are essential because the hurdles imposed by the legal system should not be insurmountable because of poverty. The government requires everyone to use the legal system in some situations: When one is sued, for example, or when one wants a divorce, or receives an eviction notice. That requirement should carry with it the means—court fees and lawyers, if necessary—to ensure that the poor are not precluded from this use of the legal system.

Many of the substantive rules of law and the institutions that apply them affect the poor unfairly. It may be that more empirical evidence is needed on the issue, but those who have considered the matter do not have any question about its validity. It is at least clear that many poor people must rely upon government to help obtain the basic necessities of life, and government generally acts through law. Substantative rules of law developed to govern commercial transactions in a market economy do not always take account of the thin economic margins and lack of bargaining power of poor people. In short, the legal system often places distinctive, heavier, and unfair burdens on the poor.

Access to the legal system is an inherent right of citizenship. That system is the chief mechanism for ordering and adjusting the affairs of individuals and society. As part of government, it belongs to all citizens regardless of their means. A premise of this approach is that if political liberty means any-

thing, it must mean the opportunity to use and influence the law. A related premise is that individuals can hardly be asked to live under and respect the law unless they have an opportunity to use it. Society as a whole has a substantial stake in making the legal system available to all citizens, not just to some.

Those four propositions are not the only ones that can be advanced as purposes of legal services, and they are by no means mutually exclusive. Each of the four, however, suggests a somewhat different ordering of priorities for allocating scarce resources.

If the purpose of legal services is to fight poverty, for example, it follows that the program should focus upon substantive areas with the most direct economic impact on the poor—such as welfare, housing, and consumer law. If legal services should be primarily concerned with eliminating the unfair burdens placed on poor people by the legal system, then distinctive "poverty law" problems should receive priority. If legal services are a means of implementing every citizen's inherent right to use the legal system, then the possessors of that right—the poor themselves—should decide how to allocate limited resources among the substantive areas in which there are demands for service.

A prolonged bus drivers' strike in New Jersey meant no school for 512 mentally and physically handicaped children in one city. Legal services attorneys negotiated with the striking drivers, other private bus companies, state agencies, and local police departments—and five weeks before the strike ended, 14 buses were in service, transporting the children to and from school.

Inextricably related to the issues of purpose and priorities are questions of how and by whom priorities are to be set. When clients pay for legal services, cost is an important factor in determining both which problems are taken by lawyers and the amount of lawyering that is committed to a particular problem. When there are no economic costs associated with the delivery of legal assistance, it becomes necessary to consider alternative mechanisms for and controls upon the allocation of limited resources.

One approach would be to develop minimum standards of legal care for each individual—the counterpart of those being considered in the health field. It might be agreed, for example, that there are certain basic necessities of life that are protected or dispensed by the law; legal assistance should be available whenever an individual is threatened with the loss of those necessities.

A second dimension of the problem is to determine the level—national or local—at which priorities should be set. Obviously, some priority-setting is necessary on the national level, if only to guide the Corporation in making funding decisions. The sense of the July meeting, however, was that priorities are essentially a local matter, to be determined in light of local experience and the needs of particular client communities. The Corporation therefore, requires each legal services program to articulate both its priorities and the processes by which they were established, including the extent of client involvement.

The Corporation endorses, in other words, the opinion of the American Bar Association Committee on Ethics and Professional Responsibility, stating:

"It is possible that, in order to achieve the goal of maximing legal services, services to individuals may be limited in order to use the program's resources to accomplish law reform in connection with particular legal subject matter. The subject matter priorities must be based on a consideration of the needs of the client community and the resources available to the program. They may not be based on considerations such as the identity of the prospective adverse parties or the nature of the remedy ('class action') sought to be employed."

In the longer run, the purposes and priorities of the legal services movement must be developed in light of evolving views on the legal system generally, and on the role of lawyers in that system. The Corporation should not commit itself to a single strategy for dealing with institutions that affect poor people's lives, and continue with that strategy for the indefinite future. In appropriate situations it must, for example, respond to ideas for simplifying legal institutions and rules to reduce the needs for legal services. In the interim, it must continue to focus both on the immediate need to increase funding for legal services, and the purposes and priorities of those services.

The first year has been a promising one for the years ahead.

A Tennessee widow on Social Security received a notice of foreclosure on her home from a bank claiming a $7,500 loan of which she had no knowledge. The local legal services program obtained a temporary restraining order against the foreclosure, and, by use of depositions, interrogatories, and a handwriting expert, proved that the loan was not the widow's. Her home was saved.

APPENDIX A

Fiscal Year 1976 Annual Funding Levels of Continuing Legal Services Programs

Field programs

Program	*Annual funding[1] level, 1976*
Alabama:	
Legal Aid Society of Birmingham, Birmingham	$184,300
Legal Aid Society of Madison County, Huntsville	123,310
Alaska: Alaska Legal Services Corporation, Anchorage	808,018
Arizona:	
Pinal and Gila Counties Legal Aid Society, Coolidge	148,500
Coconino County Legal Aid, Flagstaff	63,250
Maricopa County Legal Aid Society, Phoenix	331,545
Legal Aid Society of Pima County Bar Association, Tucson	278,090
Arkansas:	
Legal Aid Bureau of Pulaski County, Little Rock	139,600
Jackson County Legal Services Program, Newport	42,600
California:	
Greater Bakersfield Legal Assistance, Bakersfield	113,990
Berkeley Neighborhood Legal Services, Berkeley	124,190
Regents of the University of California (National Economic Development Law Project), Berkeley	200,862
Regents of the University of California (National Housing Law Project), Berkeley	433,076
Southeast Legal Aid Center, Compton	203,760
Fresno County Legal Services, Fresno	153,375
Legal Aid Foundation of Long Beach, Long Beach	432,300
Legal Aid Foundation of Los Angeles, Los Angeles	1,289,035
Regents of the University of California (National Health Law Program), Los Angeles	382,522
University of Southern California (National Senior Citizens Law Center), Los Angeles	302,943
Western Center on Law & Poverty, Los Angeles	851,290
Merced County Board of Supervisors (Merced Legal Services Association), Merced	88,990
Stanislaus County Legal Assistance, Modesto	116,380
Napa County Legal Assistance Agency, Napa	90,200
Legal Aid Society of Alameda County, Oakland	917,070
Legal Aid Association of Ventura County, Oxnard	127,630
San Fernando Valley Neighborhood Legal Services, Pacoima	292,680
Legal Aid Society of Pasadena, Pasadena	307,080
Shasta County Legal Aid Society, Redding	56,650
Legal Aid Society of San Mateo County, Redwood City	337,700
Contra Costa Legal Services Foundation, Richmond	311,630
Community Legal Services of Riverside County, Riverside	179,760
Legal Aid Society of Sacramento County, Sacramento	326,810
Legal Aid Society of San Diego, San Diego	335,000
California Rural Legal Assistance, San Francisco	2,266,000
San Francisco Neighborhood Legal Assistance, San Francisco	1,139,490
Youth Law Center, San Francisco	149,380
Youth Law Center, (Western States Project), San Francisco	108,000
Legal Aid Society of Santa Clara County, San Jose	363,000
Legal Aid Society of Marin County, San Rafael	73,700
Legal Aid Society of Orange County, Santa Ana	122,900
Legal Aid Society of Monterey County, Seaside	124,220
Legal Aid Society of San Joaquin County, Stockton	180,600
Tulare County Legal Services Association, Tulare	120,590
Legal Services Foundation of Mendocino & Lake Counties, Ukiah	68,200
Solano County Legal Assistance Agency, Vallejo	94,050
Legal Aid Society of Santa Cruz County, Watsonville	101,530
Colorado:	
Native American Rights Fund (Indian Law Support Center), Boulder	180,000
Pikes Peak Legal Services, Colorado Springs	115,200
Colorado Rural Legal Services, Denver	581,900
Legal Aid Society of Metropolitan Denver, Denver	405,900
Pueblo County Legal Service, Inc, Pueblo	114,400

[1] The annual funding level is the cost of funding for 12 months as approved by the Corporation.

APPENDIX A

Fiscal Year 1976 Annual Funding Levels of Continuing Legal Services Programs

Field programs

Program	*Annual funding level, 1976*
Connecticut:	
Fairfield County Legal Services, Bridgeport	$442,800
Community Renewal Team of Greater Hartford (Neighborhood Legal Services, Inc.), Hartford	231,000
Community Action for Greater Middletown, Middletown	71,500
New Britain Human Resources Agency, New Britain	66,000
New Haven Legal Assistance Association, New Haven	436,954
Thames Valley Council for Community Action (Legacy, Inc), Norwich	151,800
New Opportunities for Waterbury (Waterbury Legal Aid & Reference Service Inc.), Waterbury	126,500
Tolland-Windham Legal Assistance Program, Willimantic	164,100
Delaware: Community Legal Aid, Wilmington	143,600
District of Columbia:	
Antioch School of Law, Washington, D.C	360,000
Bureau of Social Science Research (Legal Action Support Project), Washington, D.C	224,000
Migrant Legal Action Program, Washington, D.C	407,000
National Clients Council, Washington, D.C	383,000
Neighborhood Legal Services Program, Washington, D.C	1,199,700
Florida:	
Volusia County Legal Services, Daytona Beach	138,800
Florida Rural Legal Services, Homestead	618,000
Duval County Legal Aid Association, Jacksonville	205,000
Legal Services of Greater Miami, Inc., Miami	671,600
Law, Inc. of Hillsborough County, Tampa	167,500
Georgia:	
Atlanta Legal Aid Society, Atlanta	757,600
Georgia Legal Services Program, Atlanta	678,000
Hawaii: Legal Aid Society of Hawaii, Honolulu	380,600
Idaho: Idaho Legal Aid Services, Inc., Boise	215,000
Illinois:	
Cook County Legal Assistance Foundation, Chicago	404,293
Legal Assistance Foundation of Chicago, Chicago	1,966,500
Greater Peoria Legal Aid Society, Peoria	77,218
Land of Lincoln Legal Assistance Foundation, Springfield	733,554
Lake County Community Action Project (Legal Referral Bureau of Lake County), Waukegan	100,319
Indiana:	
Legal Aid of Fort Wayne, Fort Wayne	125,159
Lake County Economic Opportuity Council (Legal Aid Society of Gary), Gary	174,206
Legal Services Organization of Indianapolis, Indianapolis	412,807
Legal Services-Legal Education Program, South Bend	102,028
Iowa:	
Legal Aid Society of Polk County, Des Moines	308,000
Dubuque Area Legal Services Agency, Dubuque	75,900
Hawkeye Legal Services Society, Iowa City	77,880
Black Hawk County Legal Aid Society, Waterloo	99,000
Kansas:	
Wyandotte County Legal Aid Society, Kansas City	128,700
Legal Aid Society of Topeka, Topeka	78,300
Legal Aid Society of Wichita, Wichita	146,050
Kentucky:	
Legal Aid Society of Louisville, Louisville	287,500
Northeast Kentucky Legal Services, Morehead	128,400
Appalachian Research & Defense Fund, Prestonsburg	453,981
Louisiana:	
Legal Aid Society of Baton Rouge, Baton Rouge	202,975
Southwest Louisiana Legal Services Society, Lake Charles	122,187
New Orleans Legal Assistance Corporation, New Orleans	498,000
Caddo-Bossier Legal Aid Society, Shreveport	121,250
Delta Legal Services, Inc., Tallulah	48,100

APPENDIX A

Fiscal Year 1976 Annual Funding Levels of Continuing Legal Services Programs

Field programs

Program	*Annual funding[1] level, 1976*
Maine: Pine Tree Legal Assistance, Inc., Portland	$605, 857
Maryland: City of Baltimore Urban Services Agency (Legal Aid Bureau), Baltimore	591, 600
Massachusetts:	
Council of Elders, Boston	134, 200
Action for Boston Community Development (Greater Boston Legal Services, Inc.), Boston	1, 101, 846
Voluntary Defenders Committee, Inc., Boston	317, 141
National Consumer Law Center, Boston	425. 251
Cambridge & Sommerville Legal Services, Cambridge	269, 500
President & Fellows of Harvard (Harvard Center for Law & Education), Cambridge	419, 459
North Suffolk Legal Assistance Association, Chelsea	89, 100
Community Action Committee of Cape Cod & Islands (Legal Services for Cape Cod & Islands), Hyannis	139, 302
Merrimack Valley Legal Services, Lowell	176, 000
Neighborhood Legal Services, Inc., Lynn	106, 205
OnBoard, Inc. (OnBoard Legal Services, Inc.), New Bedford	125, 723
Western Massachusetts Legal Services, Northampton	384, 959
Central Massachusetts Legal Services, Worcester	244, 200
Michigan:	
Washtenaw County Legal Aid Society, Ann Arbor	136, 483
Calhoun County Community Action Agency (Legal Aid Society of Calhoun County), Battle Creek	95, 109
Michigan Legal Services, Detroit	241, 000
Wayne County Neighborhood Legal Services, Detroit	1, 311, 035
Legal Services of Eastern Michigan, Flint	337, 220
Legal Aid & Defender Association of Kent County, Grand Rapids	227, 907
Greater Lansing Legal Aid Bureau, Lansing	132, 599
Macomb County Legal Aid Bureau, Mount Clemons	125, 534
Muskegon Oceana Community Action Against Poverty (Muskegon-Oceana Legal Aid Bureau), Muskegon	89, 900
Oakland County Legal Aid Society, Pontiac	173, 165
Berrien County Legal Services Bureau, St. Joseph	84, 770
Upper Peninsula Legal Services, Sault St. Marie	263, 487
Micronesia: Micronesian Legal Services Corporation, Saipan	660, 000
Minnesota:	
Legal Aid Society of Minneapolis, Minneapolis	234, 759
Legal Assistance of Ramsey County, St. Paul	227, 700
Mississippi:	
Coahoma Legal Aid, Inc., Clarksdale	80, 000
Central Mississippi Legal Services, Jackson	480, 000
North Mississippi Rural Legal Services, Jackson	560, 000
Missouri:	
Legal Aid & Defender Society of Greater Kansas, Kansas City	473, 500
Legal Aid Society of the City & County of St. Louis, St. Louis	744, 300
St. Louis University (National Juvenile Law Center), St. Louis	212, 355
Montana: Montana Legal Services Association, Helena	520, 700
Nebraska:	
Legal Aid Society of Lincoln, Lincoln	90, 400
Legal Aid Society of Omaha/Council Bluffs, Omaha	277, 700
Panhandle Legal Services, Scottsbluff	66, 000
Nevada:	
Clark County Legal Services Program, Las Vegas	113, 660
Washoe County Legal Aid Society, Reno	89, 760
New Hampshire: New Hampshire Legal Assistance, Manchester	442, 084
New Jersey:	
Cape Atlantic Legal Services, Atlantic City	139, 854
Camden County Council on Economic Opportunity (Camden Regional Legal Services, Inc.), Camden	611, 731
Union County Legal Services Corporation, Elizabeth	188, 250
Bergen County Legal Services Association, Hackensack	115, 000

APPENDIX A

Fiscal Year 1976 Annual Funding Levels of Continuing Legal Services Programs

Field programs

Program	*Annual funding[1] level, 1976*
New Jersey—Continued	
Hudson County Legal Services Corporation, Jersey City	$289,605
Essex-Newark Legal Services Corporation, Newark	791,869
Middlesex County Legal Services Corporation, New Brunswick	298,120
Passaic County Legal Aid Society, Paterson	253,274
Somerset-Sussex Legal Services, Somerset	105,600
Ocean-Monmouth Legal Services, Toms River	232,100
Mercer County Legal Aid Society, Trenton	237,775
New Mexico:	
Legal Aid Society of Albuquerque, Albuquerque	258,100
Sandoval County Legal Services, Bernalillo	51,700
Northern New Mexico Legal Services, Santa Fe	203,500
New York:	
Legal Aid Society of Albany, Albany	249,412
Orleans Legal Aid Bureau, Albion	66,756
Broome Legal Assistance Corporation, Binghamton	80,586
Legal Aid Bureau of Buffalo, Buffalo	278,675
Chautauqua County Legal Services, Dunkirk	67,676
Chemung County Neighborhood Legal Services, Elmira	61,691
Nassau County Law Services Committee, Hempstead	356,131
Legal Aid Society of Rockland County, New York City	98,881
Center on Social Welfare Policy & Law, New York City	423,638
Community Action for Legal Services, New York City	6,325,161
National Employment Law Project, New York City	241,152
Niagara County Legal Aid Society, Niagara Falls	64,997
Monroe County Legal Assistance Corporation, Rochester	748,754
Onondaga Neighborhood Legal Services, Syracuse	292,600
Legal Aid Society of Oneida County, Utica	74,722
Westchester Legal Services, Inc., White Plains	422,330
North Carolina:	
Legal Aid Society of Mecklenburg County, Charlotte	149,033
Durham Legal Aid Society, Durham	156,334
Legal Aid of Winston-Salem & Forsyth County, Winston-Salem	137,633
North Dakota: Society for Legal Aid, Fargo	52,800
Ohio:	
Summit County Greater Akron Committee Action Council, Akron	129,476
Stark County Legal Aid Society, Canton	112,522
Community Action Commission of the Cincinnati Area (Legal Aid Society of Cincinnati), Cincinnati	256,203
Council for Economic Opportunities in Greater Cleveland (Legal Aid Society of Cleveland), Cleveland	1,006,500
Columbus Metro Area Community Action Organization (Legal Aid & Defender Society of Columbus), Columbus	196,034
Ohio State Legal Services Association, Columbus	179,000
Montgomery County Community Action Agency (Legal Aid Society of Dayton), Dayton	107,500
Legal Aid Society of Lorain County, Elyria	98,129
Butler County Community Action Commission (Butler County Legal Assistance Association), Hamilton	85,067
Allen County Legal Services Association, Lima	54,684
Licking County Legal Aid Society, Newark	52,116
Harcatus Tri-County Community Action Organiaztion (Tuscarawas Valley Legal Services Association), New Philadelphia	56,852
Scioto County Legal Aid Association, Portsmouth	79,293
Economic Opportunity Planning Association of Greater Toledo (Advocates for Basic Legal Equality), Toledo	82,200
Economic Opportunity Planning Association of Greater Toledo (Toledo Legal Air Society), Toledo	82,200
Youngstown Area Community Action Council (Mahoning County Legal Assistance Association), Youngstown	131,833

APPENDIX A

Fiscal Year 1976 Annual Funding Levels of Continuing Legal Services Programs

Field programs

Program	*Annual funding[1] level, 1976*
Oklahoma:	
Southwest Oklahoma Legal Air Council, Altus	$58,000
Delaware & Adair Counties Legal Services, Jay	70,000
Legal Aid Society of Oklahoma County, Oklahoma City	217,005
Tulsa County Legal Aid Society, Tulsa	155,250
Oregon:	
Lane County Legal Aid Service, Eugene	102,063
Legal Aid Service-Multnomah Bar Association, Portland	309,089
Marion-Polk Legal Aid Service, Salem	98,849
Pennsylvania:	
Delaware County Legal Assistance Association, Chester	149,500
Bucks County Legal Aid Society, Doylestown	89,100
Cambria County Office of Legal Aid, Johnstown	73,400
Central Pennsylvania Legal Services, Lancaster	253,200
Community Legal Services, Inc., Philadelphia	1,076,800
Neighborhood Legal Services Association, Pittsburgh	483,000
Lackawanna County Legal Aid & Defender Association, Scranton	81,100
Southwest Pennsylvania Legal Services, Washington	72,300
Luzerne County Legal Services Association, Wilkes-Barre	96,500
Puerto Rico:	
Puerto Rico Legal Services, Inc., Hato Rey	1,873,015
San Juan Legal Services, Inc, San Juan	477,263
Rhode Island: Rhode Island Legal Services, Providence	506,000
South Carolina:	
Neighborhood Legal Assistance Program, Charleston	170,200
Legal Aid Service Agency, Columbia	130,800
Legal Services Agency of Greenville County, Greenville	138,000
South Dakota: Black Hills Legal Services, Rapid City	74,800
Tennessee:	
Legal Aid Society of Chattanooga, Chattanooga	110,000
University of Tennessee Legal Aid Clinic, Knoxville	97,600
Memphis & Shelby County Legal Services, Memphis	357,500
Legal Services of Nashville, Inc., Nashville	181,000
Texas:	
Legal Aid & Defenders Society of Travis County, Austin	162,050
Legal Aid Society of Nueces County, Corpus Christi	102,000
Dallas Legal Services Foundation, Dallas	414,000
El Paso Legal Assistance Society, El Paso	212,000
Tarrant County Legal Aid Foundation, Fort Worth	145,288
Houston Legal Foundation, Houston	590,400
Laredo Legal Aid Society, Laredo	104,200
Bexar County Legal Aid Association, San Antonio	442,800
Waco-McLennan County Legal Aid, Waco	107,500
Texas Trial Lawyers Association (Texas Rural Legal Aid, Inc.), Weslaco	328,125
Utah: Legal Services, Inc., Salt Lake City	308,300
Vermont: Vermont Legal Aid, Inc., Burlington	354,672
Virgin Islands: Legal Services of the Virgin Islands, Christiansted	130,600
Virginia:	
Charlottesville-Albemarle Legal Aid Society, Charlottesville	92,100
Smyth-Bland Legal Aid Society, Marion	80,000
Neighborhood Legal Aid Society, Richmond	172,200
Legal Aid Society of Roanoke Valley, Roanoke	189,500
Washington:	
Northwest Washington Legal Services, Everett	165,000
Seattle-King County Legal Services, Seattle	649,000
Spokane Legal Services Center, Spokane	158,420
Puget Sound Legal Assistance Foundation, Tacoma	143,750
West Virginia:	
Appalachian Research & Defense Fund, Charleston	367,100
West Virginia Legal Services Plan, Charleston	854,450
Legal Aid Society of Charleston, Charleston	199,750
North Central West Virginia Legal Aid Society, Morgantown	107,600

APPENDIX A

Fiscal Year 1976 Annual Funding Levels of Continuing Legal Services Programs

Program	*Annual funding[1] level, 1976*
Field programs	
Wisconsin:	
Milwaukee Legal Services, Inc., Milwaukee	$666,937
Wisconsin Judicare, Wausau	323,921
Wyoming:	
Legal Aid Services, Inc., Casper	74,100
Legal Services for Laramie County, Cheyenne	56,100
Native American programs	
Arizona:	
Papago Tribe of Arizona (Papago Legal Services), Sells	82,661
DNA—Peoples Legal Services, Window Rock	1,111,770
California: California Indian Legal Services, Oakland	378,950
Minnesota: Leech Lake Legal Services Project, Cass Lake	92,527
New Mexico: Zuni Legal Aid & Defender Society, Zuni	66,000
North Dakota: North Dakota Legal Services (Devils Lake Legal Aid Program), New Town	68,765
South Dakota: South Dakota Legal Services (Black Hills Legal Services), Rapid City	290,758
Wyoming: Wind River Legal Services, Washakie	79,200
Migrant programs	
Arizona: Maricopa County Legal Aid Society (Migrant Division), Phoenix	106,000
Colorado: Colorado Rural Legal Assistance (Migrant Division), Denver	70,000
Connecticut: Community Renewal Team of Greater Hartford, (Neighborhood Legal Services—Farmworkers Division), Hartford	50,000
Illinois: Legal Assistance Foundation of Chicago (Will County Legal Assistance Program), Joliet	82,000
Michigan: Michigan Migrant Legal Assistance Project, Berrien	100,000
New York: Monroe County Legal Assistance Corporation (Mid-Hudson Migrant Division), Rochester	75,000
Ohio: La Raza Unida de Ohio, Bowling Green	50,000
Puerto Rico: Puerto Rico Legal Services (Migrant Division), Hato Rey	250,000
South Carolina: Neighborhood Legal Assistance Program (Migrant Division), Charleston	30,000
Wisconsin: Milwaukee Legal Services, Inc. (Migrant Division) Milwaukee	50,000
Former community action agency programs	
California:	
Butte County Legal Services, Chico	110,000
Welfare Education and Legal Assistance Center, Watsonville/Santa Cruz	15,000
Family Legal Services Plan (Mexicare), Sacramento	35,000
Rio Hondo Legal Services, Pico Rivera	67,000
Tulare County Legal Services (Divorce Unit), Tulare	41,000
San Fernando Valley Legal Services (Divorce Unit), Pacoima	48,000
Legal Aid Society of Santa Clara County, San Jose	15,000
Colorado: Boulder County Legal Services, Boulder	5,000
Florida: Florida Legal Services, Tallahassee	126,000
Idaho: Idaho (5th Judicial District, 8 counties), Twin Falls	4,610
Illinois: Will County Legal Assistance Program, Joliet	41,000
Kentucky:	
Northern Kentucky Legal Aid Society, Covington	57,000
Legal Aid Society of Louisville, Louisville	86,500
Massachusetts:	
Neighborhood Legal Services of Meriden, Meriden	25,000
Brockton Legal Services Project, Brockton	22,000
Southwest Community Center (Housing Law Project), Quincy	25,500
South Shore Volunteer Legal Services, Plymouth	15,000
Haverhill Community Action Committee, Haverhill	19,320
South Middlesex Opportunity Council, Framingham-Marlboro	96,000

APPENDIX A

Fiscal Year 1976 Annual Funding Levels of Continuing Legal Services Programs

Field programs

Program	*Annual funding[1] level, 1976*
Massachusetts—Continued	
Legal Assistance Association, Chelsea	$5,000
Western Massachusetts Legal Services, Northampton	10,000
Western Massachusetts Legal Services (Greenfield Branch), Greenfield	1,650
Nevada: Nevada Indian Legal Services, Stewart	30,000
New Mexico:	
San Juan County Economic Opportunity Council, Farmington	48,000
Legal Aid Society of Albuquerque, Albuquerque	25,058
New York:	
Legal Aid Society of Schenectady County, Schenectady	15,000
Cattaraugus County Legal Services (Part of Southern Tier Legal Services, a component of Monroe County Legal Assistance Corporation), Orlean	20,000
Newburgh Office of Mid-Hudson Legal Services (A component of Monroe County Legal Assistance Corporation), Newburgh	27,000
Kingston Office of Mid-Hudson Legal Services (A component of Monroe County Legal Assistance Corporation), Kingston	15,000
Mid-Hudson Legal Services (A component of Monroe County Legal Assistance Corporation), Middletown	25,000
North Dakota: Devils Lake Legal Aid Program, Devils Lake	14,000
Ohio: Ashland-Wayne Legal Aid Society, Wooster	17,500
Oklahoma: Legal Aid Society of Oklahoma County, Oklahoma City	25,000
Oregon: Clackamas County Legal Aid Society, Oregon City	56,501
Klamath County Legal Services, Klamath Falls	5,310
Malheur County Legal Services, Ontario	6,756
Mid-Columbia Legal Air Association, The Dalles & Hood River	28,410
6th Judicial District Legal Air Society, Pendleton	19,314
Linn-Benton Legal Aid Service, Albany & Corvallis	51,672
Columbia County Legal Services, St. Helens	30,025
Washington County Legal Services, Hillsboro	20,606
Coos-Curry Counties Legal Aid Association, North Bend	63,745
Oregon Legal Services Corporation, Portland	162,974
Texas:	
Legal Aid Society of Nueces County, Corpus Christi	20,000
Tarrant County Legal Aid Foundation, Fort Worth	58,014
Abilene Community Action Program, Abilene	20,000
Washington:	
Asotin County Legal Services Office, Clarkston	12,000
Legal Aid Office of Walla Walla, Garfield and Columbia, Walla Walla	7,200
Tri-County Legal Services, Coville & Republic	22,164
Ben Franklin Legal Aid Association, Richland & Pasco	55,151
Grant-Adams County Legal Services Center, Moses Lake	22,644
Yakima County Legal Aid Society, Yakima & Granger	80,120
Kittitas County Legal Services, Ellensburg	19,205
Kitsap Legal Services Program, Bremerton	48,463
Olympic Legal Services, Port Townsend & Port Angeles	49,530
Spokane Legal Services Center, Spokane Housing Unit, Spokane	35,700

Other programs

District of Columbia:	
Antioch School of Law (Study Contract), Washington, D.C.	251,000
Howard University School of Law (Reginald Heber Smith Fellowships), Washington, D.C.	4,400,000

APPENDIX B

Delivery systems study programs

Judicare:	
Charles Houston Bar Association, Oakland, Calif	$100,000
California Lawyers Service, Inc., Siskiyou County, Calif	74,000
Georgia Legal Services Programs, Dalton and Whitfield Counties, Ga	55,000
Rock Island County Legal Referral, Henry and Mercer Counties, Ill	75,000
Judicare of Anoka County, Inc., Anoka County, Minn	97,000
Northwest Minnesota Legal Services Corporation, Northwestern Minnesota	100,000
Multnomah County Bar Association, Portland, Oreg	60,000
Utah Legal Services, Southern Utah	76,160
Prepaid Legal Insurance:	
Barnett, Jones, Seymour & Weldon, Norwalk, Calif	60,000
Midwest Mutual Insurance Co. with Virginia State Bar Association, two Virginia counties	200,000
Prepaid Legal Services of Kans., Southwestern Kans	150,000
Group Legal Services, Los Angeles, Calif	56,000
Contracts With Law Firms:	
Volusia County Legal Services, Flagler County, Fla	17,720
Colorado Rural Legal Services, Northwestern Colorado	75,600
Monterey County Legal Services, Monterey County, Calif	16,930
Crittenden & Still with Birmingham, Legal Aid Society, Birmingham, Ala	40,000
Legal Services of Nashville, Inc., Nashville, Tenn	60,000
Vouchers: Windham Region Community Council, Windham County, Conn	75,000
Pro Bono Clinic: Boston Bar Association, Boston, Mass	110,000
Total grants	1,498,410

LEGAL SERVICES CORPORATION,
Washington, D.C., January 21, 1977.

HON. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Committee of the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: On behalf of the Board of Directors of the Legal Services Corporation, I am transmitting copies of the Corporation's Budget Request for Fiscal Year 1978 that was submitted this date to the Speaker of the House of Representatives.

Copies have been provided to the Director of the Office of Management and Budget for review and comment in accordance with Section 1005(e)(2) of the Legal Services Corporation Act of 1974.

As you know, the Corporation's current authorization under the Legal Services Corporation Act expires on September 30, 1977. A Fiscal Year 1978 authorization of approximately $217 million would be required for our budget request. It covers the second year of the Corporation's short-term plan to provide minimal access to legal services for all poor persons. For Fiscal Year 1979, the third year of the short-term plan, an authorization of at least $275 million would be necessary.

We are prepared to appear at your Subcommittee's convenience to testify on these and other matters regarding extension of the Act.

Cordially,

THOMAS EHRLICH.

Enclosures.

LEGAL SERVICES CORPORATION BUDGET REQUEST FOR FISCAL YEAR 1978

CONTENTS

THE NEED

Congress has charged the Legal Services Corporation with ensuring that all poor persons have equal access to legal services in civil matters. The Corporation has the opportunity and the obligation, under its statutory charter, to present to Congress its plans and the resources required to meet that mandate. But in performing this function, the Corporation is only the agent for the real parties in interest—those who are poor and need access to the system of justice.

A better witness than any Corporation official to the urgent need for legal services would be a 45-year old Massachusetts woman, an epileptic, who was terminated from the State's welfare program, had no other income or resources, owed two months' back rent, and was enrolled in job rehabilitation program. Applying for food stamps at the local welfare office, she was told that she would be mailed a "top priority" stamp authorization card in a few days.

Three weeks passed while the woman's case was lost in the welfare department's computers. She prevailed on friends for a few meals; when she could impose no longer, she ate only cereal and skipped every other meal.

A legal services program took her case and brought an action in federal court on behalf of the woman and others in her plight. The lawyers argued that the Food Stamp Act required over-the-counter issuance of cards in cases of dire need. The court agreed and issued an injunction requiring welfare offices to issue cards immediately in all emergency cases to prevent hunger and malnutrition.

Another effective spokesperson would be an 83-year old crippled woman in the State of Washington: Her home was unheated, and she paid a home repairman $280 for an electric room heater. The repairman—who later said he thought he could get away with it, as "I don't figure she'll last through the winter"—installed an unsafe heater without a required permit, and the city ordered the fixture removed. When a legal services attorney threatened court action, the woman obtained a speedy refund from the repairman.

Or the Tennessee widow on Social Security who received a notice of foreclosure on her home for failing to pay a $7,500 loan of which she had no knowledge. The local legal services program obtained a temporary restraining order against the foreclosure, and, by use of depositions, interrogatories, and a handwriting expert, proved that the loan was not the widow's. Her home was saved.

Or the 64-year old Mexican-American from California who tried for four years to obtain pension benefits from the lumber company for which he had worked. Each year the trustees of the pension fund said they would take it up at their annual meeting; each year he was told the matter was still pending. A legal services attorney learned that a decision to deny benefits to the man had been made years earlier. After a lawsuit was filed, the trustees conceded that they had wrongfully withheld the benefits. The client wept when the attorney handed him a check for four years worth of benefits.

Or the seven Native American tenants in South Dakota—including a disabled war veteran with one leg, two mothers with their children, and an elderly person with no income—who were given three days notice to vacate their cabins so that the landlord could sell the land. Black Hills Legal Services obtained an injunction within 12 hours preventing the landlord from evicting the tenants for the 30 day period required by state law. The additional time enabled the tenants to find other housing.

Or the woman with six children who was served with an eviction notice from an Arizona public housing project. The project officials refused to listen to her claim that the notice was wrongfully issued. A legal services lawyer sought and obtained a court order that due process requires the opportunity for a hearing in such situations. A hearing was held and the woman—again represented by the legal services program—won a favorable ruling and kept her home.

But for every one of the witnesses who could speak eloquently of the difference a legal services lawyer has made in his or her life—of income restored, food made available, medical care provided, eviction forestalled, of remedies for every sort of life crisis imaginable—there exist an abundance of rebuttal witnesses.

The good fortune of the individuals just described was that they had access to a legal services program. Millions of poor persons, however—persons whose situations are every bit as desperate as those described—do not have access to legal assistance. Recent studies estimate that, for every person served by legal services programs each year, there are six other poor persons who experience legal problems that go unattended.

Their testimony in support of more resources for legal services would begin the same way: with the recitation of a pressing problem that seemed insoluble without legal assistance. It is the ending that would differ: private attorneys or referral services declining to help without fee, a legal services program unable to help because of its crushing caseload, or a letter—perhaps from the Legal Services Corporation—regretting that "we do not now have a legal services program serving your area." The result would be eviction, loss of a car or job, failure to obtain medical care, or an inadequate diet.

The legal problems of the poor, with a few exceptions, are as many and varied as the legal problems of the population at large. Consider the kinds of problems legal services attorneys deal with at the rate of one million a year:

Adoption	Parental rights
Employment	Licensing
Credit	Social welfare benefits
Right to fair hearing	Attachment
Execution	Exemptions
Financial responsibilities	Liens
Repossessions	Truth in lending
Bankruptcy	Black lung benefits
Civil rights	Collection practices
Consumer protection	Divorce
Small- and minority-business	Bilingual education
Expulsion from school	Rights of the handicapped
Affirmative action plans	Back pay
Garnishment	Environmental law
Rent disputes	Housing repairs
Eviction	Surplus food programs
Public hospitals	Mental health law
Nursing home regulations	Disaster relief
Tax law	Medicare/medicaid
Supplemental Security Income	Social Security
Residency	Migrant wages and conditions
Pension law	Individual privacy
Estates	Public housing
Utilities	Relocations
Retirement	Revenue sharing
Age and sex discrimination	Unemployment compensation
Workmen's compensation	Indian law
Zoning	Eminent domain
Prisoner rights and conditions	Homestead laws

All lawyers, of course, deal with similar areas of the law. But for legal services lawyers there is a crucial difference. When a busy private attorney turns away a paying client, she or he does so in the knowledge that another lawyer will handle the case. When an indigent client comes to a legal aid office, the program attorneys know that if they do not provide help, no one will: the client undoubtedly will never be served.

The result is that legal services lawyers—whose salaries are far below those of other public service attorneys, not to mention their colleagues in the private sector—take on caseloads that private lawyers, out of consideration for their clients and their own mental and physical limits, would never consider handling.

Without increased funding from the Legal Services Corporation and other sources, these programs are unable to add attorneys and support staff to meet the demand. The result is that the poor, even those living in areas nominally served by legal services programs, are shortchanged once again. In order to bring caseloads within manageable levels, the programs are forced to slow intake and establish priorities so that the most desperate problems—such as evictions, the threat of violence in family situations, malnourishment, or repossession—can be handled at once. The poor who have problems that do not qualify as "emergencies," such as many consumer or domestic problems, must go without the kind of legal help available to those able to pay.

The surroundings in which legal services are provided to poor people also provide a dramatic contrast with the private sector. Lawyers burdened with heavy caseloads work long hours in crowded offices. Privacy in which to discuss major personal problems in confidence is often at a minimum: waiting rooms are crowded and lawyers in many offices must consult with clients in open cubicles. Some offices lack up-to-date libraries and reference materials, copying and dictating equipment, modern typewriters and other necessities that private lawyers take for granted—and that paying clients assume their lawyers will have.

For underfunded programs, it is often impossible to help even the clients who come to their offices. Reaching out to bring services to those who cannot make the trip—such as the elderly, the disabled, or poor people in rural or mountain

areas—is beyond the budgets of these programs. To expand service into areas that have never had legal services is out of the question.

These, then, are the true witnesses to the need for an immediate effort to expand federally-funded legal services throughout the nation: the persons whom legal services lawyers have helped in times of crisis; the millions of persons for whom legal services are unavailable; and the lawyers and paralegals themselves, who render superb service to their clients despite low pay and conditions that most members of the legal profession would consider intolerable. It is on their testimony that the Legal Services Corporation rests its case for the budget request that follows. That request necessarily discusses the issue of access to justice for poor people in statistical terms; behind those statistics are the human costs and needs of the case just presented.

Access to the legal system is an inherent right of every American regardless of financial resources. If individual liberty in this country means anything, it must mean that. All citizens are required to live under the law, regardless of their wealth or poverty; all citizens are entitled to use the law as well. That right can be realized for those who are poor only through a federally-funded legal services program. This was the judgment of Congress in the Legal Services Corporation Act of 1974. Congress created the Corporation and charged it to provide access to justice for all who are poor. That responsibility can and will be fulfilled, but only if the resources requested in this submission are provided.

Legal Services Corporation Budget Request for Fiscal Year 1978

I. BACKGROUND AND SUMMARY

A. The Short-term Goal: Minimum Access to Legal Services

In its Fiscal Year 1977 budget request, the Corporation outlined a plan to provide all poor persons with access to legal services. As a first step toward that goal, the Corporation has undertaken a short-term program to provide the equivalent of at least two lawyers per 10,000 poor persons nationwide. Based on the accumulated experience of the legal services program, that level of service is the absolute minimum consistent with the Corporation's Congressional mandate to provide "equal access to the system of justice in our Nation" for all individuals.

The bare-minimum nature of the plan to provide two lawyers for each 10,000 poor persons is illustrated by the fact that there are 11.2 attorneys per 10,000 persons in the private sector. 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 is, however, an essential first step.

Last year, the Corporation demonstrated graphically the task that it faces by maps showing the location, county-by-county, of existing legal services programs, and the vast areas where no programs existed. At that time, 11.7 million poor persons lived in the latter areas, and consequently had no access to legal services.[1]

Approximately 17.2 million poor persons lived in areas where legal services programs did exist, but there were wide differences in the levels of service that those programs were capable of providing. Less than one-tenth of the 17.2 million persons lived in areas where programs had a ratio of two attorneys per 10,000 poor or better; over 10 million lived in areas where the ratio was less than one attorney per 10,000. The high caseloads carried by lawyers in such programs and the few offices that they are able to maintain make them inaccessible to most persons who are eligible for their services. The reality is that, for the vast majority of poor people, the practical consequence of living in an area "covered" by a legal services program and in one that is not "covered" is the same: They do not have even minimum access to the system of justice in our Nation.

As a result, millions of poor persons will lose jobs, homes, medical care, food—necessities and benefits that legal representation might secure. The Corporation's immediate goal, and the premise of this budget request for Fiscal Year 1978, is to continue the steps taken in 1977 toward changing that reality.

[1] The population figures in this request are drawn from 1970 Census data, the most recent available. Although numbers of poor people may have changed in each state, the changes do not affect the validity of the overall approach.

The average annual cost of funding one legal services attorney with supporting staff and facilities is at least $35,000, based on 1976 figures.[2] The Corporation's short-term plan to provide the equivalent of two lawyers per 10,000 poor people, therefore, requires average funding of at least $7 per poor person ($35,000×2÷10,000). This standard of funding can be used as a rough measure of a legal services program's progress toward providing minimum access to the poor people who reside within its area of geographical coverage. By dividing the program's annual grant from the Corporation by $7, an estimate can be made of the number of poor people for whom at least minimum services are and, more important, are not available.

The Appalachian Research and Defense Fund, for example, is charged with serving a 37-county area in Eastern Kentucky. Approximately 289,000 poor persons live in those 37 counties. The program received a grant of $424,000 from the Corporation in Fiscal Year 1976. In terms of the Corporation's short-term goal, only 60,500 poor persons—21 percent of the eligible population—had minimum access to the Appalachian Kentucky program's services in 1976 ($424,000÷$7); 228,500 persons, though eligible for service, were denied that access.

Based upon the number and percentage of those without access to the services of the Appalachian Kentucky program, it received additional funds in Fiscal Year 1977, increasing its grant to more than $707,000. Although this increase makes the program available to an additional 41,000 poor persons, 65 percent of the eligible clients are still without minimum access.

In national terms, only 9,200,000 of the nation's 29,000,000 poor persons were provided minimum access to legal services programs funded by the Corporation in 1976. Nearly 20,000,000 or 67.5 percent, were without minimum access to those programs. Allocations of funds in Fiscal Year 1977 will add 3,800,000 persons to the number having minimum access to legal services; 16,000,000—or 54.2 percent—will still be without that minimum level of assistance.

It is the Corporation's intention to provide minimum access to legal services for the remaining 16 million poor persons in the next two years.

B. The Timetable for Achieving Minimum Access

When the Corporation began operations, we estimated that four years would be required to complete the necessary arrangements to provide minimum access to legal services nationwide. As the Fiscal Year 1977 budget request was being prepared, 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 258 programs for which it had assumed responsibility. Because there had been no expansion of legal services in more than six years, the programs could not predict their ability to recruit new personnel or manage substantially increased funding. Long-range plans for geographical expansion of legal services were preliminary at best.

[2] This figure is based on the cost of supporting one attorney in a six-attorney office, which is close to the average office size. The figure consists of the following items:

Attorney	$12,333
Paralegal	3,500
Supervision and management	2,333
Clerical and office staff	6,250
Fringe at 15 percent	3,663
Other expenses	6,921
Rent	1,467
Maintenance	300
Consumables	600
Equipment purchase and rental	1,433
Library maintenance	450
Telephone	660
Postage	300
Insurance (general, surety and malpractice)	125
Organizational dues	67
Travel	800
Litigation costs	386
Miscellaneous	83
Total	35,000

The $35,000 figure is almost certainly too low. It includes, for example, fewer paralegal specialists than most offices consider necessary to provide adequate service. The salaries are below what they should be. The figure is also based upon 1975–76 costs, and should be adjusted from time-to-time to compensate for inflation. The study described at p.40, infra, will enable the Corporation to allocate funds according to the actual cost of delivering legal services in various parts of the country.

Developments in the past year have made clear, however, that expansion to the level of minimum access can and should be phased over three rather than four years, as originally planned. The Corporation has established a structure and assembled a staff that will enable it to administer and monitor the use of the increased appropriations. 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 have received substantial increases in Fiscal Year 1977, and they have had no difficulty developing sound plans to use the additional funds and recruiting new personnel.

The planning for use of expansion funds in areas not covered by existing legal services programs has 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 minimum access 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.

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.

The Corporation is seeking funds in Fiscal Year 1978 to ensure that all but eleven existing programs will have the capability to provide minimum access to all of the poor people in their service areas, and to reduce by approximately 58 percent the number of poor persons who live outside of areas served by legal services programs. It will request additional funds for Fiscal Year 1979 to provide the equivalent of at least two attorneys for each ten thousand poor persons nationwide; the necessary programs should be operating early in that fiscal year. If the Corporation receives the necessary funding, the goal of minimum access to legal services for all poor people will be achieved at that time.

In fiscal year 1978

1. We request $40 million to provide legal services for 5,610,000 of the persons who reside outside areas served by legal services programs. We plan both to expand the geographical areas served by existing programs and programs newly funded in 1977, and to start new programs. The funds will be distributed according to a formula that takes into account the location of the approximately 9.6 million poor persons who, at the end of 1977 will live in completely unserved areas, and the capabilities of programs started in that fiscal year. Each grant will be made only after the Corporation is satisfied that the grantee will serve the largest possible number of people by the most efficient means. This process of geographical expansion—at the minimum level of the equivalent of two attorneys per 10,000 poor—should be completed in early 1979.

2. We request $37.345 million to provide an additional 4,986,000 persons with access to legal services in areas where existing programs operate, but where more than 6.4 million persons are now denied minimum access because those programs are underfunded. These funds will ensure that all but eleven of the existing programs provide that access to all poor persons who reside in the programs' service areas. Each of the remaining eleven programs has more than 100,000 persons without minimum access, and would need to hire at least twenty new attorneys to close the gap. These programs will, therefore, be brought up to full capability over a two-year period to reduce the burden of recruiting and absorbing new personnel. As in Fiscal Year 1977, funds will be distributed to existing programs only after each potential recipient has been carefully evaluated and the Corporation is fully satisfied that its plans for use of the additional money are sound.

We emphasize that the plan to provide two attorneys per ten thousand poor persons nationwide is the Corporation's immediate response to a critical need; unless substantially supplemented, that plan will not provide adequate service. Achieving the goal of that plan will, however, provide minimum access—often after a long waiting period—to legal services for all poor people.

Against this background and summary, the details and justifications for the Corporation's budget request for Fiscal Year 1978 follow. The justifications in-

clude both an analysis of what the Corporation has done to begin to meet the mandate of the Legal Services Corporation Act of 1974, and its plans for Fiscal Year 1978.

II. DETAILS OF BUDGET FOR FISCAL YEAR 1978

A. Appropriation Language

Legal Services Corporation

Fiscal year 1978:	
Congressional appropriation for 1977	125,000,000
1978 Budget estimate	217,053,000

Legal Services Corporation

Payment to the Legal Services Corporation

[To enable the Department of the Treasury to make] *For* payment to the Legal Services Corporation to carry out the purposes of the Legal Services Corporation Act of 1974 [(P.L.) 93-355] *as amended* [$125,000,000] *$217,053,000.* (Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1977).

Explanation of Language Changes

The reference to the Department of the Treasury in the 1977 appropriation marked a clear distinction from the 1976 appropriation that referred to the Community Services Administration as the conduit for the Corporation's federal payment. Because the Department of the Treasury is the normal conduit for federal payments, a specific designation is unnecessary in the 1978 appropriation.

The authorization provisions of the Legal Services Corporation Act (42 U.S.C. 2996i) will expire on September 30, 1977. The Act has not yet been subject to amendment.

B. Program and Financing

1. Introduction

The Legal Services Corporation Act established the Corporation as a private nonmembership, nonprofit corporation in the District of Columbia (Section 1003(a)). The Act specifies in Section 1005(e)(1) that the Corporation shall not be considered a department, agency, or instrumentality, of the Federal Government, and that except for personnel compensation and benefits, officers and employees of the Corporation shall not be considered officers and employees of the Federal Government.

The Corporation accounts for appropriated funds, after their transfer from the Treasury Department to the Corporation's accounts with commercial banks, in conformity with generally accepted accounting principles applicable to nonprofit corporations. The Corporation controls these funds in a separate account.

Balances on hand in the Corporation's bank accounts are invested subject to limitations established by the Board of Directors. The Corporation credits investment income as a revenue source and budgets it for purposes authorized by the Act.

Fiscal Year 1976 and the Transition Quarter marked the transition of the legal services program from the Community Services Administration to the Legal Services Corporation, and from a federal agency to a private nonprofit corporation. Appendix A: summarizes the changes in financial management during those periods, including the establishment of investment policies; the arrangements in effect during Fiscal Year 1977; and the Corporation's financial management intentions for Fiscal Year 1978.

2. Program and financing schedules for appropriations

Program and financing schedules for appropriations are shown in federal obligation and outlay classifications. Schedules for total funds available to the Corporation are shown in nonprofit organization classifications.

The appropriation schedules for Fiscal Years 1977 and 1978 reflect full obligations and outlays in the accounts of the United States upon Treasury Department transfer of the federal payment to the Corporation.

LEGAL SERVICES CORPORATION

PROGRAM AND FINANCING FOR FEDERAL APPROPRIATIONS

[In thousands of dollars]

	1976 actual	Transition quarter actual	1977 estimate	1978 estimate
Program by activities:				
Total direct program	92,330	24,630	125,000	217,053
Total program costs funded—obligations	92,330	24,630	125,000	217,053
Financing: Budget authority—Appropriation	92,330	24,630	125,000	217,053
Relation of obligations to outlays:				
Obligations incurred, net	92,330	24,630	125,000	217,053
Obligated balance start of period		27,143	4	
Obligated balance transferred, net	19,447			
Obligated balance end of period	27,143	4		
Outlays	84,634	51,769	125,004	217,053

8. Program and financing schedules for total funds available to the Corporation

The following summary statement of sources and uses of funds summarizes the Corporation's finances as a private non-membership, nonprofit corporation in the District of Columbia. Appendix B. contains detailed statements for each Fiscal Year that account separately for the federal appropriation and identify the sources of fund balances.

LEGAL SERVICES CORPORATION

SUMMARY STATEMENT OF SOURCES AND USES OF FUND [1]

FISCAL YEAR 1976 AND THE TRANSITION QUARTER, AND FISCAL YEARS 1977 and 1978

[In thousands of dollars]

	1976 and transition quarter (actual)	1977 estimate	1978 estimate
Support and revenue:			
Federal appropriations	116,960	125,000	217,053
Donated services [2]	245	50	50
Interest income	14	4,500	8,700
Total support and revenue	117,219	129,550	225,803
Fund balances at beginning of fiscal year:			
Federal appropriations		4,308	
Interest income		14	4,514
Total fund balances		4,322	4,514
Total funds available		133,872	230,317
Expenses:			
Program activities:			
Grants and contracts [3]	109,706	120,679	203,292
Program service	892	4,925	9,089
Total program activities	110,598	125,604	217,381
Supporting activities:			
Management and administration	1,965	3,427	4,170
Transition period [4]	202		
Total supporting activities	2,167	3,427	4,170
Property and equipment	132	327	66
Total expenses	112,897	129,358	221,617
Excess of funds available over expenses	4,322	4,514	8,700
Fund balances at close of fiscal year	4,322	4,514	8,700

[1] The Corporation records revenue and expenses in conformity with the accrual-basis of accounting.

[2] Donated services represent the value of services contributed to the Corporation. The value of these services is based upon the difference between the fee normally charged by the donors rendering the services and the pro bono publico rate charged to the Corporation. Donated services are recognized as support and expenses in the Corporation's financial statements.

[3] Liabilities and expenses related to grants and contracts are recorded when the awarding document is signed.

[4] Expenses for the 90-day transition period from July 14 (inception) to Oct. 13, 1975, provided by Congress for the transfer of legal services activities from the Community Services Administration to the Corporation.

C. Appropriation Request in Relation to Total Funds Available

[In thousands of dollars]

1. Total funds available in 1977

Funds carried forward from 1976 and transition quarter appropriations	4,308
Delivery system study	1,500
Information systems and evaluation	1,553
Program support functions	510
Administrative expenses	745
Interest income accrued during the transition quarter on unexpended 1976 and transition quarter balances for allocation in 1978	14
Appropriation 1977	125,000
Estimated interest income accrued during 1977 for allocation in 1978	4,500
Donated services	50
Total available in 1977	133,872

2. Request for 1978: Summary of changes

	1978 request	
	Positions	Amounts
Appropriation, 1977	181	125,000
Adjustments to base and built-in changes:		
Management and administrative expenses—salary increases, consulting, travel, office rents, printing and reproduction, equipment, supplies and insurance, net		+791
Increases in headquarters staffing	+18	+423
Full year cost of the Research Institute on Legal Assistance	+4	+175
Subtotal, adjustments to base and built-in changes	+22	+1,389
Program changes:		
Program expansion into unserved areas		+41,000
Expansion of access to existing programs		+37,845
Other adjustments for field programs	+18	+2,524
Program support functions	+20	+5,460
Delivery system study projects and related activities		+1,800
Information systems		+865
Evaluation		+1,020
Program development and experimentation		+150
Subtotal, program changes	+38	+90,664
Total increase requested	+60	+92,053
Total appropriation requested for 1978		217,053

3. Total Funds available in 1978

Funds carried forward from 1977 appropriation	
Estimated interest income accrued during the transition quarter and 1977 and carried forward for allocation in 1978	$4,514
Requested appropriation 1978	217,053
Estimated interest income accrued during 1978 for allocation in 1979	8,700
Donated services	50
Total available in 1978	230,317

D. Explanation of Changes

1. Adjustments to base and built-in changes

Fiscal Year 1977 was the first year of the full-scale Corporation operations. The increase of $1,389,000 will support full year costs of staff recruited during 1977, salary increases, increased costs of basic services, the addition of eighteen management and administration positions, the first full year of activity of the Research Institute on Legal Assistance, and four additional positions required by the Institute to carry out research activities authorized by the Legal Services Corporation Act of 1974.

2. Program changes

Program expansion into unserved areas.—An increase of $41,000,000 is needed for the second year of the Corporation's short-term plan to meet the Congressional requirements in the Legal Services Corporation Act to provide minimum access to legal services for the 9.6 million poor persons who, at the end of Fiscal Year 1977, will reside outside geographical areas served by legal service programs. The increase will extend minimal access to 5.6 million persons.

Expansion of access to existing programs.—An increase of $37,845,000 is needed for the second year of the short-term plan to strengthen the ability of underfunded existing legal services programs to extend access to 6.4 million poor persons in their service areas. The increase will extend minimal access to an additional 4.9 million persons, but will fall 1.4 million persons short of the goal of serving all in existing service areas who will not have access at the end of Fiscal Year 1977.

Other field program adjustments.—An increase of $2,524,000 is needed to expand the operations of the National Clients Council; to increase the number of Reginald H. Smith fellowships for field program attorneys from 144 to 250; to meet increased regional office operating costs, and to add eighteen regional positions to carry program expansion monitoring and evaluation workloads.

Program support functions.—The Legal Services Corporation Act authorizes the Corporation to undertake training, technical assistance, clearinghouse, and recruitment activities when they are not part of assistance provided to actual clients. An increase of $5,460,000 is needed to improve the efficiency of legal services programs through management technical assistance activities; to provide adequate training opportunities for attorneys and paralegals recruited for new programs; to permit the first national recruiting program for legal services personnel; to expand clearinghouse operations; and to add twenty program support personnel to meet program expansion workloads.

Delivery system study projects and related activities—The increase of $1,800,000 is needed to continue service in the 40 areas selected for Delivery System Study demonstration grants awarded pursuant to Section 1007(g) of the Legal Services Corporation Act.

Information system.—An increase of $865,000 will permit operation and improvement of systems initiated during Fiscal Years 1976 and 1977 to support both the Delivery System Study and the Corporations' program management and evaluation activities. Total funds available for information systems activities will decrease by $438,000 from 1977 to 1978, because 1977 allocations included appropriated funds carried forward from 1976.

Evaluation.—An increase of $1,020,000 will support the costs of expanded direct Corporation monitoring of new field programs and comparative studies of field program effectiveness.

Program development and experimentation.—An increase of $150,000 will permit a limited number of experiments with improved delivery system techniques indicated by the Delivery System Study.

LEGAL SERVICES CORPORATION

APPROPRIATION EXPENSES BY ACTIVITY—1977 AND 1978

[Dollar amounts in thousands]

	1977 funds carried forward from 1976 and the transition quarter		1977 appropriation		1977 adjusted (base for 1978) as requested		1978 request	
	Positions	Amount	Positions	Amount	Positions	Amount	Positions	Amount
Management and administration		$745	75	$2,945	93	$4,159	93	$4,159
Program activities		3,563	106	122,055	110	122,230	148	212,894
Total		4,309	181	125,000	203	126,389	241	217,05

EXPENSES FROM ALL SOURCES BY ACTIVITY AND OBJECT CLASS—FISCAL YEARS 1977 AND 1978 [1]

[In thousands of dollars]

Object class	Management and administration		Program activities		Total		
	1977	1978	1977	1978	1977	1978	Change
Salaries and benefits	1,675	2,166	2,170	3,305	3,845	5,471	+1,627
Consulting	247	282	491	897	738	1,179	+446
Travel	399	458	2,013	4,291	2,412	4,749	+2,331
Rent and communications	422	482	57	162	479	644	+165
Material and supplies	92	103	25	73	117	176	+59
Printing and reproduction	135	156	83	174	218	330	+112
Other services	407	473	86	187	493	660	+167
Total	3,377	4,120	4,925	9,089	8,302	13,209	+4,907
Property and equipment	313	39	14	27	327	66	−261
Donated services	50	50			50	50	
Grants and contracts			120,679	208,292	120,679	208,292	+87,613
Total expenses	3,740	4,209	125,618	217,408	129,358	221,617	+92,259

[1] Sources of funds:

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

EXPENSES FROM ALL SOURCES FOR PROGRAM ACTIVITIES BY SPECIFIC FUNCTIONS AND OBJECT CLASS FISCAL YEARS 1977 AND 1978

[In thousands of dollars]

Object class	Field operations		Support operations		Research		Evaluation		Total		Change
	1977	1978	1977	1978	1977	1978	1977	1978	1977	1978	
Salaries and benefits	1,132	1,677	830	1,279	208	349			2,170	3,305	+1,135
Consulting			491	897					491	897	+406
Travel	130	331	1,091	2,880	42	60	750	1,020	2,013	4,291	+2,278
Rent and communications	27	68	30	94					57	162	+105
Materials and supplies	11	30	14	43					25	73	+48
Printing and reproduction	11	30	72	144					83	174	+91
Other services	11	28	75	143		16			86	187	+101
Total	1,322	2,164	2,603	5,480	250	425	750	1,020	4,925	9,089	+4,164
Property and equipment	7	14	7	13					14	27	+13
Donated services											
Grants and contracts	120,284	205,330	395	2,462				500	120,679	208,292	+87,613
Total expenses	121,613	207,508	3,005	7,955	250	425	750	1,520	125,618	217,408	+91,790

BUDGET SUMMARY—FISCAL YEARS 1977 AND 1978

[In thousands of dollars]

	1977	1978	Change
Field services	116,660	202,543	+85,883
Appropriation	116,660	198,029	+81,369
Interest income (estimated)		4,514	+4,514
II. Program support	3,005	7,955	+4,950
Appropriation	2,945	7,955	+5,460
Funds carried forward from previous year	510		−510
III. Research Institute on Legal Assistance	250	425	+175
Appropriation	250	425	+175
IV. Demonstration projects and evaluation	5,453	6,085	+632
Appropriation	2,400	6,085	+3,685
Funds carried forward from previous year	3,053		−3,053
V. Program development and experimentation	250	400	+150
Appropriation	250	400	+150
VI. Management and administration	3,740	4,209	+469
Appropriation	2,945	4,159	+1,214
Funds carried forward from previous year	745		−745
Donated services	50	50	
Total all sources of funds	129,358	221,617	+92,259
Appropriation	125,000	217,053	+92,053
Funds carried forward from previous year	4,308		−4,308
Interest income (estimated)		4,514	+4,514
Donated services	50	50	

Note: App. C contains a summary of activities in the same order as this budget summary.

III. DELIVERY OF LEGAL ASSISTANCE

In Fiscal Year 1977, $116,660,000—or more than ninety percent of the Corporation's total appropriation—was allocated to support programs providing legal services directly to the poor. That amount will again be necessary in 1978 to maintain the present, grossly inadequate, level of service. The Corporation will need an additional $81.3 million in 1978 to continue its plan to provide minimum access to legal services for the nearly 16 million poor persons who do not have that access. $40 million of those funds will be used to expand service in areas where legal services programs did not exist prior to 1977; $37.3 million will be used to expand the capabilities of existing programs that are accessible only to a small proportion of the poor persons within their service areas, and to ensure that all but eleven [3] of those programs are capable of providing minimum access to all of the persons who are eligible for their services.

These amounts are the absolute minimum that the Corporation needs to move toward fulfillment of its mandate from Congress.

This section describes the steps the Corporation has already taken to implement its short-term plan to provide minimum access to legal services for all poor people, its plans to continue those efforts in Fiscal Year 1978, and the special programs undertaken by the Corporation in delivering legal assistance.

A. Expansion Into Unserved Areas

A recent study of resource distribution among legal services programs throughout the country pointed out that: "[T]he initial funding of the early Legal Services projects was based neither on demographic nor geographic consideration * * *. The result of this was to fund those areas in which a recognized

[3] Each of these eleven programs will have more than 100,000 persons without minimum access to its services at the end of 1977; each will receive funds sufficient to close 50 percent of that gap in 1978 and the remainder in 1979.

group already existed which could apply for and then use [Office of Legal Services] funds."

There was virtually no funding of new programs after that major initial effort. As a result, the 258 legal services programs for which the Corporation assumed responsibility when it began operations in 1975 were distributed unevenly throughout the country and without regard to need. Some areas, such as California, New England, New York, and New Jersey, had relatively heavy concentrations of legal services programs; others, most notably Appalachia, the South, and the Southwest, had almost none despite large populations of poor people.

As stressed in the Corporation's 1977 budget request, however, it is no answer to correct this imbalance by reallocating existing resources. Programs in areas with even the heaviest concentration of legal services funds carry caseloads ranging in excess of 500 per year for an individual attorney, and are able to function at all only by restricting intake to emergency cases or by turning away all new requests for service for some period of time. Such programs are inaccessible to a large number of poor people within their areas of geographical coverage.

It is only by obtaining additional funds that the imbalance in the distribution of legal services programs can be corrected. In Fiscal Year 1977, the increase in the Corporation's appropriation enabled it to undertake the first significant expansion into previously unserved areas. $15 million was allocated for this purpose. A formula was developed to divide $14 million among the states in proportion to the number of poor people living in completely unserved areas. The remaining $1 million was used to expand Native American and migrant programs, and to strengthen small programs formerly supported by local Community Action Agencies with funds provided by the Community Services Administration.

By the end of Fiscal Year 1977, the Corporation will have made geographical expansion grants through new or existing programs in 40 states. As a result of these grants, 2,142,000 poor persons who live in areas where legal services were previously not available will have obtained minimum access to such services. 9.6 million poor persons, however, will still be without any access in those areas.

$40 million of the funds requested for Fiscal Year 1978 will be used to continue this geographical expansion following the Corporation's short-term plan to provide the equivalent of at least two lawyers for each 10,000 poor persons. These funds will enable the Corporation to reach approximately 58 percent of the 9.6 million poor persons who have no access to legal services because they live outside of areas covered by existing programs.

As in 1977, the funds will be allocated to states and areas having the largest number of poor persons living in areas without legal services programs. As in 1977, expansion grants will be awarded both to existing programs, including those started in the previous year, and to establish new ones. Again, the Corporation will make these grants only after thorough investigation and evaluation to establish that the potential grantees will provide effective service to the largest number of people in the most efficient manner possible.

In its 1977 budget request, the Corporation described the large number of proposals and other requests it had received for grants to provide legal services in uncovered areas. All of the groups that had submitted such a request, and other groups identified by the Corporation's regional directors, were invited to make formal application for expansion funds. Those applications are being reviewed in light of four primary policies:

Priority is given to those states and areas within states where the largest number of poor persons reside in areas not covered by legal services programs.

Within any given state, priority is given to funding through administrative units that provide service to the largest number of eligible clients (including those in rural areas) in the most efficient manner.

Where the provision of service in new areas can be accomplished by expanding geographic coverage of existing Corporation-funded programs of proven effectiveness, those existing programs are given priority.

In making grants, the Corporation requires a grantee to limit its geographical area, so that it has the capability of providing minimum access (at the level of two lawyers per 10,000 poor persons) to at least 70 percent of the persons eligible for its services.

There are wide variations in the proposed use of expansion funds in Fiscal Year 1977 to provide the most efficient and effective service according to these policies. In some areas, statewide corporations are being organized to expand the

service areas of existing Corporation-funded programs and to open additional offices in areas not previously served. In other areas geographical expansion can best be accomplished through regional programs, often using existing Corporation-funded programs as a base. Some existing programs of proven effectiveness will expand their service areas rather than create new administrative structures. In almost every area, however, there will exist by the end of Fiscal Year 1977 well-conceived plans for completing expansion according to the Corporation's short-term goal.

In North Carolina, for example, a new statewide program is absorbing five small legal aid programs that had been supported by other funds. The three large Corporation-funded programs will be expanded to include new territory, and the five smaller offices will be strengthened to provide more effective services. In all, ten offices will be operating and minimum access will be given to 156,166 poor persons who live in areas not previously served by Legal Services Corporation programs.

The North Carolina program currently plans to expand minimum access to an additional 438,000 persons in Fiscal Year 1978. Six new offices will be established. Service will be strengthened in the new areas first served in 1977, and the central office will be expanded to include specialist attorneys and training. Current plans for 1979 are to expand the capabilities of the existing offices to provide minimum access to all poor persons within their service areas, establish three more offices, and strengthen the support capability of the central office.

In Texas, Fiscal Year 1977 funds are being used to establish a new program in previously-unserved areas of East Texas, to expand the territory served by Texas Rural Legal Aid in the extreme southern portion of the state, to expand the Fort Worth program into five new counties, including the cities of Lubbock and Amarillo, and to expand the Houston program into several counties to the southeast.

These expansion grants will provide minimum access to legal services for 210,000 poor persons in previously-unserved areas; approximately 845,000 persons remain without that access because they live in parts of Texas in which there are no legal services programs. Current plans for Fiscal Year 1978 would provide minimum access to 500,000 of these persons by expanding existing programs into nearby counties that they logically should serve.

Two existing programs in Michigan were expanded in Fiscal Year 1977 to serve new areas. Upper Peninsula Legal Services changed its name to Legal Services of Northern Michigan, and is serving ten additional counties in the northern part of the Lower Peninsula. Over 18,000 poor persons will have access to that program's services for the first time. Legal Services of Eastern Michigan used expansion funds to add three attorneys to its Midland office in order to serve five surrounding counties that had not previously been in its service area. Service will be delivered to those counties with the assistance of local Community Action Agencies to do outreach, and the use of a WATS telephone line from each new service location to the Midland office.

Geographical expansion plans for Fiscal Year 1978 call for Legal Services of Eastern Michigan to provide minimum access to an additional 68,000 poor persons living in five counties in the Thumb area and in three other contiguous counties. Legal Services of Northern Michigan will continue its coverage of the Lower Peninsula and is expected to extend service to four additional counties in that area. An additional 23,700 poor persons will for the first time have access to legal services when the Kent County program expands into three counties to the southwest and two counties to the west.

New Mexico's expansion money was used to fund a new program, Southern New Mexico Legal Services, to provide service in five counties with a total poverty population of nearly 72,000. The funds available in Fiscal Year 1977, however, were sufficient to make the program accessible to only 27,700 of these persons. In Fiscal Year 1978, New Mexico Legal Services plans to complete its coverage of those five counties at the level of two lawyers for each 10,000 poor persons.

The development of a minimum standard of funding of $7 per poor person provides a measure of progress toward the short-term goal of the equivalent of two lawyers per 10,000 poor persons. But costs of providing legal services may vary among different parts of the country and among rural and urban areas. In recognition of that fact, a study is now underway by the Corporation to identify the cost variables involved in delivering legal assistance and the impact of those variables on costs in programs. Based on that study, the Corporation will be able to allocate the Fiscal Year 1978 funds in the most equitable way possible in light of the actual needs of poor persons for legal services in different areas.

B. Expansion of Access to Existing Programs

For the vast majority of poor people, there is little practical difference between living in an area that has a legal services program and living where no such program has ever existed. The inadequate funding levels of most legal services programs makes them accessible to only a small portion of the poor living within their nominal areas of coverage.

This situation—which has existed throughout the history of the legal services program—was exacerbated during the Fiscal Year 1972–1975. The legal services budget was frozen for that period, despite the fact that costs increased more than 30 percent due to inflation. As a result, nearly one-third of the legal services offices that existed in 1971 were closed, and the number of legal services attorneys decreased by more than 300. Although the willingness of dedicated attorneys to carry crushing caseloads and the creativity of some programs in developing mass delivery techniques counteracted some of the effects of these cutbacks, the reality is that existing programs are less accessible to clients than they were in 1970.

Presently, although some 17.2 million poor persons live in areas "covered" by legal services programs nationwide, less than 2 million live in areas where a program is funded at the minimal level of two attorneys per 10,000 poor. Put another way, existing programs handle approximately 1 million matters each year, but their servicese are not available to help in another 3 million matters for poor persons who need them within the programs' areas of coverage. These figures represent the witnesses to the need for legal services described earlier: individuals and families with legal concerns that relate to unsound housing, improper health care, unfair commercial practices, requirements for child support, inadequate diets, and scores of other such matters—matters for which legal assistance is essential.

There is no justification for this situation. The existing programs have been evaluated and found to be operating efficiently with their limited resources. Plans for expanding the capabilities of those programs have been made. The experience of the past two years—in which significant increases in the budgets of legal services programs were possible for the first time in this decade—demonstrates that those programs will have little difficulty recruiting and absorbing new personnel.[4] In Fiscal Year 1978, therefore, the Corporation intends to take a large step toward increasing the ability of existing programs to serve clients.

1. 1978 appropriation request

The Corporation will require $37.345 million in Fiscal Year 1978 to bring all but eleven existing programs up to the minimum level of two attorneys for each 10,000 poor people who are eligible for their services. We plan that the eleven programs, each of which has more than 100,000 persons without even minimum access to its services, will receive funds sufficient to close 50 percent of that gap in 1978 and the remainder in 1979. The 1978 increases will reduce by 78 percent the number of poor persons who live in areas "covered" by existing legal services programs, but for whom minimum accress is not available due to inadequate funding.

The bulk of the 1978 increase will be devoted to strengthening the programs that are least well-funded in terms of dollars per poor person within their service areas. As with geographical expansion, these programs have developed orderly plans for using these funds.

The Appalachian Kentucky program, for example, plans to open three additional offices, with four attorneys and two paralegals in each. Additional paralegals will be hired to ride circuit into smaller counties where they will screen, on a preliminary basis, persons requesting service. An estimated additional 93,000 poor persons will be given minimum access to legal services by this expansion.

The Atlanta Legal Aid Society plans to use 1978 expansion funds to increase the staff of its Gwinnett County office from one part-time attorney to three full-time attorneys and supporting staff. It also plans to re-open an office in a public housing project on the north side of Atlanta, open a new office in Clayton County, and provide permanent support for its elderly unit, which is now staffed by Vista lawyers.

The Legal Aid Society of Oklahoma County has 25,680 eligible poor persons who are without minimum access to its service. It plans to close this gap by

[4] Of the 177 existing programs that currently have fewer than two attorneys per 10,000 poor people within their service areas, 117 would be brought up to that level by the addition of five or fewer attorneys. The difference that those attorneys would make in the programs' service capabilities is substantial.

strengthening its northeast office and opening a new office in the southeast area of the city.

In order to provide minimum access to the 164,000 poor persons without that access in its area, the Legal Assistance Foundation of Chicago plans to open a Loop office staffed by nine attorneys. The program also plans to strengthen its existing offices and open two new neighborhood offices, one of which will serve the south shore area.

The St. Louis, Missouri program has approximately 55,000 persons in its service area who are without minimum access to legal services. In 1978, the program plans to open a new office on the south side of the city, and to increase the number of attorneys in all other offices.

The Georgia Legal Services Programs, a statewide program that is among the most poorly funded in the county, plans to use increased funding in two ways: first, it will open six new offices in Valdosta, Conyers, Dublin, Statesboro, Warner-Robbins, and Cairo. Each office will have a managing attorney, at least four staff attorneys, a paralegal, and three secretaries. Second, the program will establish a unit to specialize in legal problems of the elderly, and an additional paralegal will be placed in each office to concentrate in that area.

In addition to grants such as those described to the most severely underfunded programs, each program will be eligible for a payment to offset actual increases in the cost of doing business. A program funded at less than the equivalent of three attorneys per 10,000 poor persons ($10.50 per person), will receive this increase unless the program is evaluated as unable to use it for efficient and effective service. A program funded at more than this level will not receive the increase unless it demonstrates a special need.

A third category of funds will be available to meet special needs of existing programs. A portion of these funds will be used to continue the process begun in 1977, in which legal service programs could apply on a competitive basis for small grants that would enable them to improve significantly service to their clients. In addition, the special needs category gives the Corporation flexibility to deal with the problems of certain groups. There are unique problems, for example, in providing service to migrant farmworkers. The Corporation is gathering information regarding the needs of migrants, and the special needs funds will be available to respond to them. The elderly are another group to whom delivering service is often difficult, and special needs funds can be used to address their problems as well.

2. Review of 1977 activities.

The planned allocation of funds to expand access to existing programs in 1978 essentially follows the approach taken in Fiscal Year 1977. The Corporation received $13,435,000 for that purpose this year. Of that amount, $7 million was allocated to provide additional money for the most seriously underfunded and understaffed programs. The funds were distributed according to a formula that provided larger payments to the least well-funded programs, and lesser increases to programs with per capita funding levels just below the 1977 national average. One hundred-thirty of the existing programs were eligible for those funds.

The equalization increases were not granted until the Corporation's Office of Field Services completed careful field evaluations of the eligible programs, and analyzed their plans for use of the additional funds. In each case, the payments were made only after the Corporation was fully satisfied that they would be used effectively.

The amounts distributed under the formula varied from more than $800,000 to the Georgia statewide program, to a few thousand dollars to programs with a limited service area. Programs receiving larger allocations generally used the money to hire additional staff and open new offices in their service areas. In other situations, where staff salaries were seriously low and turnover was a recurring problem, a major part of the equalization money was used for salary adjustments.

In addition to the payments made to strengthen some programs, each program funded by the Corporation received a 5.5 percent increase in its grant to compensate partially for the dramatic cost increases between 1972 and 1976. These payments, which totalled $4,635,000, became effective on October 1, 1976. The reduction in this category from the $7 million included in the 1977 budget request should not be interpreted as a lack of need by all programs for additional money to re-established the level of service provided in 1970. It was based, rather, on

the judgement that the Corporation's first priority should be to bring the poorest-funded programs closer to comparability with the others.

The third category of expansion payments to existing legal services programs in 1977 included $1.8 million for distribution among all programs on a competitive basis. The Corporation established guidelines requiring this money to be used for special projects that would significantly improve service to clients for relatively small payments. Allocations of these funds were made to establish domestic relations units, hire housing and consumer law specialists, and contract out bookkeeping services when a program's budget could not justify a full-time bookkeeper. As in Fiscal Year 1976, some programs received funds from this category to add another lawyer to a one-attorney office. Programs have requested that this special needs category be continued in future years because it enables them to make creative changes that are not possible under their already tight budgets.

Refunding dates for field programs were staggered in Fiscal Year 1977 to permit completion of field evaluations. The Corporation's staff has since been strengthened, and we are implementing a program of frequent evaluations, almost continual monitoring, and technical assistance when necessary. Staggered refunding dates will, therefore, not be needed for evaluation purposes after the end of Fiscal Year 1977. All existing programs will be carried to a common refunding date of January 1, 1978. The funds required to be reallocated as a result of this procedure will be distributed on a competitive basis as special needs funds in Fiscal Year 1977, thus enabling programs to make much-needed improvements that were not possible for the past five years.

3. Investment income

On October 1, 1976, the Corporation received its appropriation for Fiscal Year 1977. The amount not required for immediate use is invested, with the aid of independent investment counsel carefully selected by the Board of Directors, pursuant to conservative guidelines adopted by the Director to assure the integrity of the funds: at least 90% of the available funds must be invested in obligations issued or insured or fully-guaranteed by the United States or one of its agencies; the balance may be invested in commercial money market instruments carrying the highest available rating. The Board Committee on Appropriations and Audit meets periodically with the Corporation's investment counsel to review its portfolio and investment policy.

The Corporation anticipates income approximating $4 million from its investments during Fiscal Year 1977. Those funds will not be used until Fiscal Year 1978, when they have been actually earned and credited. At that time, the funds will be used for two pressing priorities that will expand the capability of legal services programs to serve clients, but do not depend upon a certain level of funding in future years: first, investment funds will be used to improve the opportunities for the best attorneys and paralegals to extend their careers in legal services so legal aid offices will have the benefit of their experience and abilities; second, grants will be made to legal services programs for extraordinary but essential capital expenditures. A few words about each of these priority needs may be helpful.

Lawyers, like people in most occupations and professions, improve their skills and efficiency with experience. Every law office, including a legal services office, needs some experienced lawyers to guide the young attorneys. Some problems require the attention of seasoned lawyers. There are clear indications that legal aid offices have not been able to retain attorneys long enough to provide the right mix of youth and energy with experience and judgment. Inflation and the static budgets of legal services programs for so many years made it impossible for many attorneys to stay.

The Corporation is certain that legal services clients would be served better if every office could retain a cadre of experienced and able lawyers and paralegals. We have, therefore, commenced a study to determine the best ways to attract and retain outstanding legal aid personnel. The study will examine what attracts the best young lawyers and paralegals to come to work in legal services offices; why so many leave after too few years; and what we can do to retain more of the best personnel.

In Fiscal Year 1978, the Corporation will use part of the funds earned through investment for those benefits of employment and for training that will provide the most effective means for legal services programs to retain attorneys and paralegals. The precise types of benefits and training will be identified on the basis of the study described above, and the amount available

for this purpose will be determined after the investment income is earned and credited.

The Corporation is also convinced that the quality of legal services dispensed by its programs could be improved by improving the facilities available to those programs. We have already described tse need for basic equipment in many legal services programs. Other programs argue persuasively that they could improve their service substantially through techniques such as word processing systems. Budgets in the past have been too thinly spread to accomodate such expendiures.

Part of the Corporation's investment income will, therefore, be used for unique capital expenditures by programs. Those funds will be allocated on a competitive basis, with need and the soundness of the proposals being the primary criteria for selection. Again, the precise amount devoted to this purpose will not be known until the Corporation's income from investment is actually earned and credited, and the study of attorney and paralegal turnover is completed.

C. Other Activities Related to the Delivery of Legal Assistance

In addition to the activities described above, the Corporation funds a variety of other activities directly related to providing legal assistance to poor people.

First, the Corporation has contracted with thirteen support centers that provide specialized legal assistance for legal services offices. Most problems faced by such offices—like those encountered in private practice—do not establish important precedents or change the law. For some complex problems, however, it is not possible for an individual attorney—faced with hundreds of cases each year—to respond adequately without specialized help. The Corporation has, therefore, entered into contracts with thirteen support centers to provide that assistance with respect to particular matters being handled by local programs.

Most of the support centers specialize in substantive areas of the law. The National Housing Law Center in California, for example, concentrates upon housing problems and programs that affect poor people. Other centers, such as the National Senior Citizens Law Center or the Migrant Legal Action Project, specialize in the unique legal problems of discrete groups.

In Fiscal Year 1977, the support centers were funded at the level of $4.3 million. Support centers will be substantially affected by expansion of field programs in Fiscal Year 1978. Referred cases and requests for specialized assistance in complex litigation will certainly increase, particularly from new programs, and strain the capabilities of the present support centers. $4.8 million will, therefore, be required for this purpose in Fiscal Year 1978.

Second, the Corporation funds a number of programs that concentrate on the problems of special groups. More attention must be paid to these programs in the future. For example, Corporation-funded programs presently serve only a fraction of the 289 federally-recognized Indian Reservations and communities in the country, and are meeting less than 25 percent of the estimated demand for service. A recent study suggests, moreover, 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. $2.6 million was allocated for nine Native American projects in Fiscal Year 1977; $3.28 million will be required to continue them in 1978 and begin to reduce the gap in service to this group.

Similarly, 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 migrants 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 ten migrant projects received $1.2 million in Fiscal Year 1977. $1.55 million is allocated for such projects in 1978. Some of the 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 programs.

Third, the Corporation funds the Reginald Heber Smith program, which provides fellowships to recent law graduates to serve in legal services programs. That program serves a dual purpose: it has been the major national recruiting effort for legal services, particularly with respect to minority attorneys, and it is an important vehicle for supplementing the staffs of overworked programs. The Reginald Heber Smith grant, which is administered through Howard University, currently provides 326 attorneys to legal services programs: there are 144 of these Fellows in their first year, 131 in their second year, and 51 funded for a third year. The total amount of the grant was $4.4 million in Fiscal Year 1977. The request of $6.033 million for Fiscal Year 1978 will permit an increase in the number of first-year Fellows to 250, and is necessary because of the accelerated pace of expansion. This allocation would not, of course, preclude improvements in the Reginald Heber Smith program or changes in its structure to make it compatible with the recruiting program being developed by the Office of Program Support, described in Part IV. A., infra.

Finally, the Corporation is continuing funding for some projects, originally established as experiments, that have proven effective. The National Clients' Council, for example, helps ensure that clients play a meaningful role in determining the general direction and priorities of legal services programs. Among other things, the Council helps educate client communities regarding their role in legal services, and provides information and training to client members of the governing bodies of local programs. The Council also provides a valuable perspective that aids the Corporation in its operations on the national level. Such client participation is fundamental in legal services, and is mandated by the 1974 Act. The Corporation will continue funding for the National Clients' Council through its Office of Field Services.

The cost of funding the National Clients' Council was $383,000 in Fiscal Year 1977; $425,000 will be needed to continue it in Fiscal Year 1978 to accommodate increased demands for assisting client board members and communities as programs are established in areas that have no previous experience with legal services.

D. Field Management

An essential part of the Corporation's plan to provide minimum access to legal services for all poor people is its commitment to ensuring that its funds are used efficiently and effectively. The Corporation's Office of Field Services has, therefore, been organized and staffed to provide management review and assistance to the programs that it funds. Through field evaluation and monitoring visits at least four times a year, and through the project reporting system (described in more detail at Part IV. C., infra), the Office of Field Services will have detailed knowledge about each program, how it operates, and whether it needs technical assistance.

The staff of each of the Corporation's Regional Offices now includes a management specialist. This specialist is primarily concerned with the programs' internal controls and management methods and procedures. He or she will have the capability to provide immediate assistance, or arrange for long-term technical assistance where appropriate. Further specialized assistance is available through the Corporation's Office of Program Support, which can dispatch consultants to work out problems that may require more time to solve, and the Comptroller's Office, which has developed manuals and procedures to assist programs with problems of financial management.

A field evaluation and management review checklist has been prepared for use by regional offices in assessing the effectiveness and efficiency of each program during evaluation and monitoring visits. Formal reports of each such visit are prepared and sent to the Corporation's Washington Office to aid it in assessing needs and providing management assistance. The Corporation has also developed sample manuals for use by the programs. These manuals illustrate methods of handling particularly difficult personnel and procedural problems. Field Service staff members are also working with the Office of Program Support to develop management training courses that are responsive to the observed needs of the programs.

The key to all of these efforts is the Corporation's plan to provide for frequent visits to and communications with each program that it funds. The Corporation intends to continue that process, thereby maintaining an ability to anticipate problems and to provide assistance before problems become acute.

IV. PROGRAM EVALUATION AND SUPPORT

In the Legal Services Corporation Act of 1974, the Congress stressed that poor people are entitled to high quality legal assistance, and charged the Corporation with ensuring "the maintenance of the highest quality of service and professional standards * * *."

To this end, the Corporation provides the programs that it funds with training, management assistance, substantive research in broad areas of the law that affect the poor, clearinghouse services to share experience and expertise on common problems, and help in recruiting and keeping the most competent lawyers and other personnel. The Corporation is also conducting full and systematic evaluations of each legal services program that it funds, and is undertaking a careful study of those programs as well as alternative and supplemental methods of legal services delivery. The combination of these efforts will ensure that legal services programs provide assistance of the highest caliber and do so in the most effective ways possible.

In the past, support activities of this type were conducted by grantees of the Office of Economic Opportunity Office of Legal Services or of the Community Services Administration. Section 1006(a)(3) of the Legal Services Corporation Act, however, requires that these services be provided by the Corporation directly if they are not part of assistance rendered to actual clients. The Corporation has, therefore, established two new divisions—the Office of Program Support and the Research Institute on Legal Assistance—that have primary responsibility for ensuring that the mandate to provide high quality legal services is met. The Act also requires the Corporation to evaluate every program it supports and to conduct a study of both the existing staff programs and, through demonstration projects, alternative and supplemental methods of legal services delivery. These functions are handled within the Office of Field Services.

This section describes the Corporation's efforts in those areas over the past year, and its plans for Fiscal Year 1978.

A. The Office of Program Support

The Office of Program Support is the backbone of the Corporation's effort to ensure that legal services clients receive the highest quality of assistance. It began its first full year of operations in Fiscal Year 1977, and provides legal, paralegal, and management training, management and technical assistance, and recruiting and clearinghouse services to each program funded by the Corporation.

During Fiscal Year 1977, the Office of Program Support is continuing the level of training provided under separate grants in the past years, and increasing that level in the areas of management training and the training of paralegals on a national scale. Some management assistance is also being provided directly to legal services programs. The cost of these efforts will be $1,910,000 in this fiscal year.

53 separate training events are being held for lawyers and paralegals during 1977. These include sessions for lawyers who are new to legal services in skills such as interviewing, negotiating, taking depositions, and trial work; programs for more experienced lawyers in substantive areas of the law and federal practice; training sessions in both skills and substantive areas for paralegals currently working in legal services offices; sessions in general management techniques for program directors; workshops on specific management problems; sessions for the managing attorneys of branch offices; and substantive seminars on current problems and recent changes in the law that affect attorneys in the field.

The Office of Program Support has also planned sessions to aid legal services programs in using training materials and in providing training at the local level. It will also provide funds to support local training, particularly skills training that may involve a large number of instructors or the use of videotape equipment. The Office is working with the Corporation's Comptroller to provide training for local controllers and chief accountants, and with the Office of Field Services to provide one training event each for the Corporation's Regional Directors and management specialists in the Regional Offices. The Office of Program Support also offers some management and technical assistance directly to legal services programs. This assistance is provided in response to specific requests or problems, and is coordinated with the activities of the Corporation's Regional Offices.

In Fiscal Year 1978, the Office of Program Support will continue this intensive training for lawyers, paralegals, and management personnel, and expand its training to include areas that could not be covered in the past. There has never been, for example, a national training program dealing with the special substantive and delivery problems of legal services programs in rural areas. Training regarding the problems of reaching the elderly poor has also never been available. These are some of the areas that the Office will address in 1978. In addition, management training will be expanded to include office managers and secretaries, persons who have not generally been included in national training in the past.

The Office of Program Support's training activities in 1978 must also be increased in response to the expansion of legal services programs during Fiscal Years 1977 and 1978. The funds provided by Congress for expansion will increase the number of attorneys and paralegals by at least twenty percent during the coming years, and those persons will be ready for training in 1978. In addition, although many of the new staff attorneys hired with expansion funds will not receive training from the Corporation until 1979, there will be an immediate need to train persons assuming management responsibilities for the first time.

The combination of these factors will require a substantial increase in the amount of training in lawyering skills, substantive law, and management provided by the Office of Program Support, and special training and assistance to enable new programs to deal with problems of financial and personnel management. $3,797,000 will be required for increased training and management assistance in Fiscal Year 1978.

During Fiscal Year 1977, the Office of Program Support will establish a major national program to assist legal services projects with recruiting, job placement, and career development, including a job exchange program for experienced lawyers and paralegals. Plans for this program include a computerized placement service and hiring seminars to be conducted at law schools and other locations around the country. The Office of Program Support also administers the Corporation's grant to Howard University for the Reginald Heber Smith Fellowship Program, described in Part III. C., *supra*.

We expect these efforts, as well as more intensive training, the salary increases now possible for the first time in many years, and the employee benefit programs to be funded with investment income to go a long way toward attracting highly qualified lawyers and paralegals to legal services work and retraining some experienced lawyers to serve the poor. The need for such incentives has been discussed earlier. The recruiting program will assume central importance in Fiscal Years 1978 and 1979 as the number of persons employed by legal services programs is doubled to achieve nationwide expansion of minimum access. The Office of Program Support will spend $184,000 on recruiting in Fiscal Year 1977, excluding the Reginald Heber Smith grant, $2,498,000 will be needed for recruiting incentives in Fiscal Year 1978 in light of the increased demand for legal services attorneys and paralegals due to expansion.

Finally, the Office of Program Support acts as a clearinghouse for cases and materials of general interest to legal services programs, and distributes information through a monthly publication, the Clearinghouse Review. The Office has conducted a survey of the programs for suggestions regarding how the Review could be improved to help them in their operations. The clearinghouse activities will continue in 1977 and 1978, with some modifications that will be made as a result of the survey. $621,000 was allocated for clearinghouse activities in Fiscal Year 1977; $1,070,000 is required for the purpose in 1978 in light of increases in the cost of doing businesses and increased demands for these services due to expansion.

B. The Research Institute on Legal Assistance

The Research Institute on Legal Assistance employs research associates and fellows from legal services, the academic community, and the private bar to undertake policy analysis and legal research on long-range substantive legal developments relating to the poor.

The Institute has conducted an analysis of the research previously done or currently planned by other organizations on legal problems of the poor. Based upon that survey, the Institute has determined that its resources can best be utilized by focusing on four major activities: (1) preparation of articles and materials analyzing areas of substantive poverty law that are not currently

developed; (2) analysis of problems and legal developments that have the most serious consequences for poor people; (3) suggesting ways to improve the procedures of and delivery of services by administrative agencies that provide benefits to poor people; and (4) researching new and alternative methods of avoiding controversy and resolving disputes involving the poor.

In Fiscal Year 1977, the Corporation allocated $250,000 for the Institute. These funds are being used to hire a director, an assistant, secretarial support, and a group of two or three full-time research associates and six to eight part-time research fellows. The total staff is the equivalent of nine full-time positions. Because these persons will be hired over the course of Fiscal Year 1977, however, personnel costs will be proportionately lower during that year. In addition to implementing its research plan in Fiscal Year 1977, the Institute will hold a series of seminars to bring together legal services staff, the research fellows, and members of the private bar and legal academic community.

Fiscal Year 1978 will be the Institute's first year of operations with a full staff. Further seminars and conferences will be held, and the Institute will begin distributing its research product to legal services programs and lawyers representing the poor. The Institute will be evaluated in 1978 to determine whether it has been effective in analyzing and stimulating substantive poverty law developments, and assisting in the effort to provide higher quality legal services to the poor. $425,000 will be required for these activities.

C. Demonstration Projects and Evaluation

In its 1976 supplemental request, the Corporation described plans for carrying out the Congressional mandate to conduct an independent study of staff attorney programs and, through demonstration projects, of alternative and supplemental methods of delivering legal services to the poor. That study is now underway, and it has been integrated with the Corporation's continuing evaluation program.

$1.5 million from the suplemental appropriation was used to fund 19 demonstration projects in 14 states that will employ a variety of delivery methods, including judicare, contracts with private lawyers, prepaid legal insurance, vouchers, and a pro bono legal clinic. The models to be tested and the projects themselves were developed with extensive participation of the legal community, and selected with the assistance of an advisory panel that includes persons from legal services programs, client groups, the private bar, and the academic and research communities. Eleven of the projects will provide a full range of services, and therefore answer questions regarding methods of delivery that are alternatives to the existing staff programs. The remainder will test ways of supplementing staff programs with members of the private bar to provide better overall service.

Each demonstration project 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 client community as a whole. An additional $1.5 million from the 1977 appropriation will be used to fund a second round of demonstration projects to analyze delivery methods that could not be fully examined in the first round, ensure the validity of the information obtained in the first round, and test other delivery approaches that have been suggested. $3.3 million will be neeeded to continue both rounds of demonstration projects in Fiscal Year 1978.

The Corporation is instituting a project reporting system to obtain detailed information on both the demonstration projects and the existing staff attorney programs. This system will serve a dual purpose: it will generate such of the data for the Corporation's study efforts and also provide the basis for a management information system to be used both by the Corporation and the programs that it funds.

Following a small field test in Fiscal Year 1977, the project reporting system will be installed in both the first and second rounds of demonstration projects for the delivery systems study, and a sample of staff attorney programs. Data will be collected on each matter handled by each of those programs, including demographic information on clients, the types of problems encountered, the services rendered, and the disposition of each matter. Additional data will be col-

lected regarding the attorneys and paralegals who provide service in the selected projects, as well as information regarding grant size, operating costs, and sources of funding other than the Corporation.

The results of this first phase of data collection will be analyzed, and the project reporting system will be streamlined and expanded to include each Corporation-funded program by mid-1977. The Corporation will thus be able to conduct the first in-depth study of legal services programs and their caseloads, a study that has not been possible in recent years. By early 1978 the Corporation will have determined what information is needed on a regular basis for its management and for the management of local programs. The necessity for such management information was described in the budget request for Fiscal Year 1977, and the project reporting system will be simplified during Fiscal Year 1978 so as to collect only that essential data.

The cost of these data collection efforts in Fiscal Year 1977—as well as other activities necessary for the projects included in the delivery system study, such as attorney and client interviews—was primarily covered by funds from the 1976 appropriation. $1,265,000 will be necessary to continue them during Fiscal Year 1978.

As described in Part III. D. of this budget request, the Corporation's Office of Field Services is also implementing a plan to visit each program funded by the Corporation at least four time a year for purposes of monitoring and evaluation. These visits are the Corporation's principal method of ensuring that programs comply with the 1974 Act and the Corporation's regulations, and that the funds from the Corporation are used efficiently and effectively. $1,020,000 will be required for these field evaluations in Fiscal Year 1978.

Development of the performance measures for the delivery systems study—cost, quality, client satisfaction, and impact—will also provide insights regarding ways to evaluate all of the programs that the Corporation funds. Beginning in 1978 we will begin to use those measures to conduct special studies of the staff attorney programs and suggest improvements in delivery techniques. $500,000 will be required for this purpose.

V. OPERATIONS

The Corporation is committed to the absolute minimum possible operating costs. Staff has been hired slowly and carefully, so that needs could be fully assessed and persons found with the necessary skills. As a result, the Corporation's operating budget has remained low, and it has increased at a rate considerably less than that of the total appropriation. These trends will continue in Fiscal Year 1978.

When the Corporation began operations in October, 1975, it had a staff of twenty-five persons formerly employed by the Office of Legal Services of the Community Services Administration. In view of the major recruiting effort required to complete that staff, the Corporation's Board of Directors concluded that employment in the following fiscal year would be limited to the personnel needed for urgent program studies and evaluation, and the minimum staff required for internal management and program review.

In early 1976, the Corporation hired most of the necessary senior staff, continued to execute its responsibilities for program review and internal management with limited personnel, and began planning its staff and resource requirements for Fiscal Year 1977. Some persons were hired during 1976 in response to immediate needs. The initial staffing plan was expanded, however, in light of the Corporation's conclusion that it is required by statute to provide some support activities directly, rather than by grant or contract as had been done in the past.

By the end of 1976, the Corporation had determined its operational responsibilities and internal structure, completed its staffing plan, and allocated its operating funds for Fiscal Year 1977. As a result of these efforts, the direct operating costs of the Corporation's headquarters, regional offices, and support activities were set at $8,679,000 in 1977, or 6.7 percent of estimated total expenditures (including funds carried over from 1976) for that year.

The Corporation's direct operating costs for Fiscal Year 1978 are $13,325,000, an increase of $4,646,000 over the preceding year. This figure comprises, however, only 6.0 percent of estimated total expenditures of $217,053,000, a decrease of

0.7 percent. This reduction reflects the Corporation's philosophy of not increasing staffing and related costs in direct proportion of its funding base.

The Corporation's management and administration cost ratio for Fiscal Year 1978 is considerably less, and compares favorably with those of large private foundations. The average administrative ratio among the 56 foundations analyzed in the May 1976 edition of Philanthropy Monthly was 4.9 percent. The Corporation's corresponding rates were 2.9 percent for Fiscal Year 1977, and 1.9 percent for Fiscal Year 1978.

The Corporation's increase in direct operating costs of $4,646,000 over 1977, reflects increased personnel costs of $1,626,000 and $3,020,000 in increases for other administrative services. The details are as follows:

Personnel costs (including benefits)

1. Increased Staffing.—As the Corporation expands its activities relating to the delivery of legal assistance, additional staff will be needed to discharge the Corporation's increased responsibilities for management, monitoring, and evaluation. Thirty-six positions must be added in Fiscal Year 1978 for this purpose, primarily in the Corporation's Regional Offices, the Comptroller's Office, and the Office of Administration. Twenty positions will be required to carry out greatly expanded Program Support activities. The Research Institute on Legal Assistance will need four additional positions. These increases reflect a 33 percent growth over Fiscal Year 1977, and will require an additional $1,188,000.

2. *Salary Adjustments.*—Although the Corporation does not provide automatic within-grade salary advances, some adjustment in salaries will be necessary to offset cost of living increases and enable the Corporation to remain competitive in the labor market. An average increase of 8 percent has been included for all positions falling below Level V in Fiscal Year 1978, at a cost of $438,000.

Other direct operating costs

The Corporation's budget for Fiscal Year 1978 allows for a 5 percent inflation adjustment and other built-in increases in operating costs such as consulting, travel, office rental, printing and document reproduction, equipment, supplies, and insurance. This adjustment will cost $3,020,000.

CONCLUSION

It is appropriate that this presentation end as it began, by stressing that the Legal Services Corporation's mandate to provide equal access to justice for all poor people recognizes the human and societal costs of having a legal system available only to those able to pay. As the cases of the Massachusetts woman, the Tennessee widow, and the California pensioner illustrate, society's arrangements work as they are intended to only if all persons—public and private—follow the rules. As nearly 16 million poor persons to whom legal assistance is unavailable could testify, the economic and other consequences of being denied access to the legal system are crushing.

The Corporation's short-term plan to provide bare-minimum access to legal services for all poor people is an essential step toward fulfilling its Congressional mandate. The funds sought and the expenditures described in this Budget Request are the absolute minimum required to continue that plan in Fiscal Year 1978.

APPENDIX A: FINANCIAL MANAGEMENT SUMMARY

1. Fiscal year 1976 and the transition quarter

Appropriations for 1976 and the Transition Quarter provided that the Community Services Administration would serve as the conduit for the Corporation's federal payments which totalled $116,960,000.

The Community Services Administration performed the conduit function by establishing a letter of credit for the Corporation with the Treasury Department.

Operating under this mechanism, the Corporation periodically requested the Treasury Department to transfer funds to Corporation bank accounts for payments to grantees, contractors, other vendors and employees. The Community Services Administration accounted for these transfers as simultaneous federal obligations and outlays. On September 24, 1976, at the Corporation's request, the Treasury Department transferred all remaining Fiscal Year 1976 and Transition Quarter balances to the Corporation's bank accounts, except for $4,047 required to liquidate an obligation incurred directly by the Community Services Administration. With this exception, the Fiscal Year 1976 and Transition Quarter appropriations were then fully obligated and outlayed in the accounts of the United States.

The balances transferred to the Corporation's accounts on September 24, 1976, totalled $25,504,764. Previously, on September 17, 1976, the Board of Directors of the Corporation had authorized the President to retain the firm of Smith, Barney, Harris, Upham and Company as independent investment counsel for Fiscal Year 1977; and adopted the following resolution regarding investments:

"Resolved, Corporation funds on hand from time to time shall be invested, subject to the following limitations: At least 90 percent of the available funds (including the interest account) must be invested in obligations issued or fully-insured or guaranteed by the United States or any United States Government agency. The balance of the available funds may be invested in commercial paper carrying the highest available rating by a reputable rating firm. The Committee on Appropriations and Audit shall review the portfolio periodically to monitor the investments made, recommend necessary changes in policy, and make decisions regarding investment of the funds available for investment in commercial paper."

Of the transferred funds, $25,000,000 was converted into interest bearing Federal Government obligations. The Corporation is liquidating its investments as required to make payments against liabilities incurred during Fiscal Year 1976 and the Transition Quarter, and during Fiscal Year 1977 in the case of $4,308,337 of federal payment funds carried forward to that year.

2. Fiscal year 1977

The appropriation for 1977 provided that the Treasury Department would serve as the conduit for the federal payment to the Corporation.

On October 1, 1976, at the Corporation's request, the Department transferred the full payment of $125,000,000 to the Corporation's bank accounts. The entire appropriation was then fully obligated and outlayed in the accounts of the United States. The funds were invested in interest bearing Federal Government obligations with the advice of the Corporation's investment counsel, according to the policy established by the Board of Directors on September 17, 1976.

On November 4, 1976, the Board of Directors directed the President of the Corporation to make no allocations of investment income during Fiscal Year 1977, and to include investment income accrued during the Transition Quarter and Fiscal Year 1977 with the Corporation's proposed budget allocations for Fiscal Year 1978.

3. Fiscal year 1978

The Corporation intends to request the Treasury Department to transfer to bank accounts the full amount of the appropriation on the date it becomes effective. The funds will be invested, and interest will accrue and be reserved for allocations to further the purposes of the Legal Services Corporation Act, in accordance with the policies established by the Board of Directors. Under present Board policy, the Corporation will include interest income accrued during Fiscal Year 1978 with proposed budget allocations for Fiscal Year 1979.

STATEMENT OF SOURCES AND USES OF FUNDS (ESTIMATED)[1] FISCAL YEAR 1978

[In thousands of dollars]

	General	Federal appropriation	Total
Support and revenue:			
Federal appropriations		217,053	217,053
Donated services[2]	50		50
Interest income (estimated)	8,700		8,700
Total support and revenue	8,750	217,053	225,803
Fund balances at beginning of fiscal year:			
Federal appropriations			
Interest income (estimated)	4,514		4,514
Total fund balances	4,514		4,514
Total funds available	13,264	217,053	230,317
Expenses:			
Program activities:			
Grants and contracts[3]	4,514	203,778	208,292
Program services		9,089	9,089
Total program activities	4,514	212,867	217,381
Supporting Activities: Management and administration (total supporting activities)	50	4,120	4,170
Property and equipment		66	66
Total expenses	4,564	217,053	221,617
Excess of funds available over expenses	8,700		8,700
Fund balances at close of fiscal year	8,700		8,700

[1] The Corporation records revenue and expenses in conformity with the accrual basis of accounting.
[2] Donated services represent the value of services contributed to the Corporation. The value of these services is based upon the difference between the fee normally charged by the donors rendering the services and the pro bono publico rate charged to the Corporation. Donated services are recognized as support and expenses in the Corporation's financial statements.
[3] Liabilities and expenses related to grants and contracts are recorded when the awarding document is signed.
[4] Expenses for the 90-day transition period from July 14, 1975 (inception) to Oct. 13, 1975, provided by Congress for the transfer of legal services activities from the Community Services Administration to the Corporation.

APPENDIX C: SUMMARY OF ACTIVITIES

I. ACTIVITY: FIELD SERVICES

[In thousands of dollars]

	1977	1978	Change
Total support	116,660	202,043	+85,383
Appropriation	116,660	198,029	+81,369
Interest income (estimated)		4,514	+4,514

The Corporation provides funds to furnish legal assistance to eligible clients through 267 local legal services programs, including nine Native American programs, ten migrant programs, and 13 specialized national programs. Funds are provided by grant or contract to qualified programs in all 50 states, Puerto Rico, the Virgin Islands and Micronesia.

In Fiscal Year 1977, $116,660,000—or more than ninety percent of the Corporation's total appropriation—was allocated in support of programs providing legal services directly to the poor. The Corporation will use $78.8 million of the requested appropriation increase in 1978 to continue its short-term plan to provide access to legal services—at the bare-minimum level of the equivalent of two attorneys per ten thousand poor—for the nearly 16 million poor persons who do not have that access. $41 million of these funds will be used to expand service into areas where legal services programs do not exist; $37.845 million of these funds will be used to expand the capabilities of existing programs that are severely underfunded. The estimated $4.5 million in interest income accrued during the Transitional Quarter and Fiscal Year 1977 will be fully allocated during Fiscal

Year 1978 to meet critical special needs that cannot now be reached by regular program allocations.

Although most legal services programs provide legal representation and counseling in all civil matters, some specialize in law affecting discrete groups or in discrete areas of the law, and others concentrate on aspects of legal services delivery.

Native American programs

The Corporation funds nine Native American legal services programs that reach 67 of the 289 federally recognized Native American reservations and communities in the country. There are an estimated 80 to 100 Native American tribes and groups that currently have no access to legal assistance. These include tribes and groups living on state reservations, those that have been federally terminated, and those without trust land. The nine Native American programs that the Coporation funds serve predominantly reservation populations. Where possible, regular field programs attempt to reach non-reservation Native Americans residing in their service areas. The nine programs provide legal assistance to Native Americans in a variety of different areas including treaty rights, the preservation of tribal existence, the protection of tribal resources, taxation, discrimination, and the proper use of federal monies intended for Native American people.

Migrant programs

Migrant legal services programs concentrate on issues that most effect migrant farmworkers, such as wages, employment conditions, immigration, recruitment contracts, workmen's injuries and compensation, housing, welfare, discrimination, and food stamps. The ten migrant programs provide legal assistance to some 60,000 migrant workers.

Specialized national programs

Thirteen support centers assist local field programs and Native American and migrant programs in delivering specialized legal assistance to eligible clients. These 13 centers are: Center on Social Welfare Policy and Law, Center for Law and Education, National Consumer Law Center, National Employment Law Project, National Health Law Program, National Housing Law Project, National Economic Development Law Project, Legal Action Support Project, Indian Law Support Center, Migrant Legal Action Program, National Juvenile Law Center, Juvenile Rights Litigation Project, and National Senior Citizens Law Center.

The Reginald Heber Smith Fellowship Program, administered by Howard University, recruits the best qualified law school graduates, and provides them with fellowships to work in severely understaffed local legal services programs, generally for a period of up to two years. The program makes special efforts to recruit qualified graduates from minority groups. During Fiscal Year 1977 the program will support approximately 285 fellows. In Fiscal Year 1978 the number of fellows will increase to 395. A full review of the program will be underway in Fiscal Year 1977.

The National Clients Council helps to educate client communities regarding their role in legal services and provides information and training to client members of the governing boards of local legal services programs.

A. Subactivity: Program Expansion into Unserved Areas

Appropriation:	
1977	15,000
1978	41,000
Increase relative to 1977 level	+26,000

To meet the statutory requirement that legal services be provided to those otherwise unable to afford it, the Corporation set out in its Fiscal Year 1977 budget request a short-term plan to provide the equivalent of at least two lawyers per 10,000 poor persons nationwide. By contrast, there are currently 11.2 attorneys per 10,000 persons in the private sector. This extension of access to legal services—the absolute minimum effort consistent with the Corporation's Congressional mandate—will require substantial expansion into areas currently without any legal services for the poor.

The $41 million requested for geographical expansion in Fiscal Year 1978 will extend access to an additional 5,610,000 eligible persons.

B. Subactivity: Expansion of Access to Existing Programs

	1977	1978	Increase relative to 1977 level
Total support	13,435	42,359	+28,924
Appropriation	13,435	37,845	+24,410
Investment income		4,514	+4,514

The Corporation's short-term plan also provides for expanding the capabilities of existing programs to serve poor persons within their areas of nominal coverage. Most existing programs are seriously underfunded, and are accessible to only a small proportion of the poor in their service areas. The $37.845 million requested for strengthening existing programs in 1978 will extend minimum access to 4,986,000 eligible persons, and will reduce by 78 percent the number of poor persons in areas served by legal services programs for whom minimum access is not available due to inadequate funding.

The $4.5 million allocation of interest income, the full amount accrued during the Transition Quarter and 1977, will go to local programs to support expansion efforts by providing funds to retain lawyers and paralegals and for essential capital expenditures.

C. Subactivity: Field Operations

Appropriation:	
1977	$1,329
1978	2,178
Change	+849

The $2,178,000 requested for 1978 will support operations of the Corporation's nine regional offices in Boston, New York City, Philadelphia, Northern Virginia, Atlanta, Chicago, Denver, San Francisco, and Seattle. The $849,000 increase will permit the addition of eighteen positions and increases in related expense categories. The increase is needed mainly to meet larger monitoring and evaluation workloads due to program expansion.

The following table shows the distribution of total support proposed for Field Services, including increases of $42,000 for the National Clients Council and $1,633,000 for the Reginald H. Smith fellowship program. These two programs are not included in the three subactivities, above. The appropriation is the source of funds, except where interest income is specifically indicated.

II. ACTIVITY: PROGRAM SUPPORT

LEGAL SERVICES CORPORATION—FIELD SERVICES

[In thousands of dollars]

	Fiscal year 1976	Fiscal year 1977				Total level 1977	Fiscal year 1978				Total level 1978
		Past inflation adjustment 5.5 percent	Equalization	Special needs	Expansion		Access [1] existing	Expansion new	Other changes	Interest income [2]	
Basic field programs	74,985	4,144	7,000	1,700	14,580	102,409	37,345	40,000		4,514	184,268
(Sec. 221 programs)	(1,970)	(94)	(290)	(290)	(580)	(2,862)					
Native American	2,174	125		65	250	2,613		665			3,278
Migrant	863	142		35	170	1,210		335			1,545
13 support centers	4,091	225				4,316	500				4,816
Subtotal	82,113	4,635	7,000	1,800	15,000	110,548	37,845	41,000		4,514	193,907
National Clients Council	308			75		383			42		425
Regional Heber Smith Fellowships	4,400					4,400			1,633		6,033
Field operations						1,329			849		2,178
Total	86,221	4,635	7,000	1,875	15,000	116,660	37,845	41,000	2,524	4,514	202,543

[1] Allocations include cost of business adjustments for basic field, Native American, and migrant programs, and support centers.
[2] Interest income allocations will be made among grant programs according to need and the pruposes specified for distribution.

	1977	1978	Change
Total support	3,005	7,955	+4,950
Appropriation	2,495	7,955	+5,460
Funds carried forward from previous year	510		−510

The Legal Services Corporation Act stresses that poor people are entitled to receive high quality assistance, and authorizes the Corporation to undertake directly, and not by grant or contract, training, technical assistance, and clearinghouse services. The $5,460,000 increase will expand support services to substantive areas and personnel not previously covered, assure adequate training for attorneys, paralegals and managers recruited for expansion programs, permit a major national recruiting program to attact the best lawyes and other personnel to legal services work, support a program to keep the more experienced lawyers and paralegals in legal services, and provide for an increase of 20 Corporation positions for program support functions.

A. Subactivity: Training

	1977	1978	Change
Total support	1,352	2,709	+1,357
Appropriation	842	2,709	+1,867
Funds carried forward from previous year	510		−510

The Corporation offers a variety of training programs for legal services attorneys and paralegals. Training provided includes new lawyer and paralegal skills training; substantive training in such areas as housing, health, and migrant law; federal practice training for experienced staff attorneys; and a series of seminars on various substantive areas. The Corporation also provides technical assistance and funds to programs for conducting training on a local level. The $2,709,000 requested for 1978 will permit increases in the types and frequency of training programs in response to field program expansion.

B. Subactivity: Management Assistance

Appropriation:	
1977	588
1978	1,088
Change	+530

The Corporation provides direct management and technical assistance to legal services programs to help resolve management problems and to establish a planning process, and provides management training for project directors, managing attorneys and project accountants and controllers. The requested increase of $530,000 will enable the Corporation to extend services to new field programs.

C. Subactivity: Clearinghouse

Appropriation:	
1977	621
1978	1,070
Change	+449

The Corporation's Clearinghouse Unit enables legal services programs to exchange experience and expertise by publishing a monthly journal on poverty law and case developments; by maintaining a library of pleadings, opinions and legislation; and by printing and distributing manuals and handbooks. In addition, the Corporation supports, through purchase from the Commerce Clearing House, the publication and distribution to local legal services programs of 2,000 copies

monthly of the Poverty Law Reporter. The requested increase of $449,000 will enable the Corporation's Clearinghouse Unit to keep pace with field program expansion plans and with increasing activity in the field of poverty law.

D. Subactivity: Recruitment

Appropriation:	
1977	184
1978	2,498
Change	+2,314

The Corporation operates a comprehensive recruiting program for legal services personnel and assists them with job placement. The $2,498,000 requested will support a greatly accelerated national recruiting effort to assist new field programs in obtaining qualified attorneys and paralegals. This effort will include the provision of incentives to attract and retain the best qualified attorneys. The Reginald Heber Smith Fellowship Program, administered by Howard University, is an important component of the Corporation's recruitment program. (See I, Field Services, above).

E. Subactivity: Administration and Production

Appropriation:	
1977	290
1978	590
Change	+300

The $590,000 requested for 1978 will support the Corporation's costs of organizing and directing the four subactivities listed above.

III. ACTIVITY: RESEARCH INSTITUTE ON LEGAL ASSISTANCE

Appropriations:	
1977	250
1978	425
Change	+175

Section 1006(a)(3) of the Legal Services Corporation Act authorizes the Corporation to undertake, directly and not by grant or contract, research relating to the delivery of legal assistance. The Research Institute on Legal Assistance employs research associates and fellows from legal services, the academic community, and the private bar to undertake scholarly research on long-range substantive legal developments relating to the poor. This activity is distinct from the case-oriented research conducted by the 13 support centers (See I, Field Services, above), and from research on the methods of delivering legal services (See IV, Demonstration Projects and Evaluation, below). The Institute's areas of concentration include family law, housing, public assistance, employment, health, consumer law and legal problems of the elderly poor. The $175,000 increase requested for Fiscal Year 1978 will permit the Institute, which was organized during Fiscal Year 1977, to undertake its first full year of activity. The increase will permit full staffing with the equivalent of 13 full-time positions.

IV. ACTIVITY: DEMONSTRATION PROJECTS AND EVALUATION

	1977	1978	Change
Total support	5,453	6,085	+632
Appropriation	2,400	6,085	+3,685
Funds carried forward from previous year	3,053		−3,053

The Corporation's activities in this area concentrate on finding the most effective ways of delivering legal services to the poor and on assuring through evaluation that existing programs are functioning as effectively as possible.

A. Subactivity: Demonstration Projects for the Delivery System Study

	1977	1978	Change
Total support	3,000	3,300	+300
Appropriation	1,500	3,300	+1,800
Funds carried forward from previous year	1,500		−1,500

Section 1007(g) of the Legal Services Corporation Act requires that the Corporation conduct a study of existing staff attorney programs and, through demonstration projects, of alternative and supplemental methods of delivering legal services to eligible clients. The legislation identifies judicare, vouchers, prepaid legal insurance, and contracts with law firms as methods to be included in the study. The Corporation views this as a continuing effort to expand knowledge regarding feasibility and practicality of different service delivery models in various community settings, and to generally improve the delivery of legal services to the poor. The first series of 19 demonstration projects was selected in September 1976 and supported with supplemental appropriation funds carried forward from Fiscal Year 1976. A second series of demonstrations will be initiated during Fiscal Year 1977 with funds appropriated for that year. The $3.3 million appropriation request for Fiscal Year 1978 will renew grants for the two series of demonstration projects.

B. Subactivity: Information Systems

	1977	1978	Change
Total support	1,703	1,265	−438
Appropriation	400	1,265	+865
Funds carried forward from previous year	1,303		−1,303

As part of the Delivery Systems Study, the Corporation is conducting a number of special data collections and analyses. In addition, the Corporation is designing and installing a computerized Project Reporting System to produce reliable data on the operations of existing legal services programs and the demonstration projects. The $1,265,000 requested for Fiscal Year 1978 would continue information collection and analysis and system development activities largely initiated and sustained with funds carried forward from Fiscal Year 1976.

During Fiscal Year 1977 the Project Reporting System will be improved on the basis of experience with the Delivery System Study, and then integrated with other Corporation information systems serving financial and grant management purposes to form a single management information system. This system will supply information and statistics needed by local programs for their internal management and by the Corporation for planning, budget and management purposes. The $1,265,000 requested for Fiscal Year 1978 would support operations and continuing improvements of the system.

C. Subactivity: Evaluation

	1977	1978	Change
Total support	750	1,520	+770
Appropriations	500	1,520	+1,020
Funds carried forward from previous year	250		−250

Section 1007(d) of the Legal Services Corporation Act requires the Corporation to ensure that grantees and contractors comply with the by-laws of the Corporation and applicable rules, regulations and guidelines. The Corporation also ensures the management capability of programs by monitoring and evaluating their internal methods and procedures for management and control. Of the total re-

quested for Fiscal Year 1978, $1,020,000 would cover the costs of on-site field evaluations, including evaluations of new programs started with Fiscal Year 1977 expansion funds. In addition, as a result of the Delivery System Study and field evaluations, the Corporation will develop during Fiscal Year 1978 studies of field program effectiveness at an estimated cost of $500,000. Similar studies are being conducted during Fiscal Year 1977 in connection with the Delivery System Study.

V. ACTIVITY: PROGRAM DEVELOPMENT AND EXPERIMENTATION

Appropriation:	
1977	250
1978	400
Change	+150

Section 1006(a)(1)(B) of the Legal Services Corporation Act authorizes the Corporation to make grants and contracts for purposes other than providing direct assistance to qualified programs furnishing legal services to eligible clients. These funds are used for such proposes as improving grantee efficiency and effectiveness through the development and application of model systems for the handling of high volume, repetitive types of cases. The $400,000 requested for Fiscal Year 1978 would support a limited number of new activities.

VI. ACTIVITY: MANAGEMENT AND ADMINISTRATION

	1977	1978	Change
Total support	$3,740	$4,209	+$469
Appropriations	2,945	4,159	+1,214
Funds carried forward from previous year	745		−745
Donated services	50	50	

These funds support the operations of the Corporation's central office in Washington, D.C. for the planning, direction, support and evaluation of the activities described above. The $1,214,000 appropriation increase would finance built-in costs and eighteen additional permanent positions for the Corporation's headquarters office. Details on total Corporation staffing are contained in the following tables.

LEGAL SERVICES CORPORATION, STAFF DISTRIBUTIONS, FISCAL YEARS 1977 AND 1978 [1]

Offices	Fiscal year 1977 Total	Fiscal year 1978 total	Salary ranges: $5,000 to $9,999		$10,000 to $14,000		$5,000 to $19,999		$24,000 to $24,999		$25,000 to $29,999		$30,000 to $34,999		$35,000 to $35,000 plus	
			1797	1978	1977	1978	1977	1978	1977	1978	1977	1978	1977	1978	1977	1978
Office of the President	10	11			4		1		2		1	2			2	
Office of Equal Opportunity	2	3					1	2			1					
Budget Office	3	3					1		1						1	
Office of Program Planning	3	3			1				1						1	
Office of General Counsel	[2] 7	[2] 8	2		1				2	3			1		1	
Office of Field Services	11	15		2	5		2			2	3				1	
Delivery Systems Study	6	6			2				2		2					
Boston Regional Office	6	8	1		1		2	3	1	2			1			
New York Regional Office	6	8	1		1		1	2		1	1		2			
Philadelphia Regional Office	6	8	2				2	3	1	2	1					
Atlanta Regional Office	6	8	1		1		2	3		1	2					
Chicago Regional Office	6	8	1		1		1	2	1	2	1		1			
Virginia Regional Office	6	8	1		1		1	2	1	2			2			
Denver Regional Office	7	9			2		1	2	2	3	2					
San Francisco Regional Office	6	8			2		1	2	1	2	1		1			
Seattle Regional Office	6	8	1		1		1	2	1	2	2					
Office of Program Support	4	4			2						1				1	1
Clearinghouse Office	12	14	4	6	5		2				1					
Management Delivery	7	8			2		4			1			1			
Training and Development	6	13			2	4	2		1	6			1			
Administration and Production	9	17	1		5	13	2				1					
Recruitment and Staff	4	6			1	2	2		1	2						
Office of Administration	15	22	7	9	4		1	3	2		1					
Office of the Comptroller	12	16			5		4	6	2	4			1			
Office of Government Relations	3	3			1		1						1		9	
Office of Public Affairs	3	3			1						1		1			
Research Institute	[3] 3	[3] 7			1	2	1			2		1	1			
Total	175	235	22	28	52	67	36	50	22	45	22	25	14	14	7	7

[1] Numbers appear in the fiscal year 1978 columns only where changes from the fiscal year 1977 levels are projected. A number in the 1978 column includes the 1977 level. For example, a "2" in the 1978 column opposite a "1" in the 1977 column indicates continuation of one 1977 position and the addition of one position in 1978.

[2] Includes 1 part-time position.

[3] Does not include 6 full-time equivalent research Fellows.

LEGAL SERVICES CORPORATION COMPARATIVE SURVEY OF WOMEN AND MINORITY EMPLOYEES, JULY 1, 1976–JANUARY 1, 1977

This survey of the Legal Services Corporation covers a six-month period from July 1, 1976 to January 1, 1977. Its purpose is to show the employment status of women and minority employees at the Corporation.

I. Total Workforce (Headquarters and Regional Offices)

Between July 1, 1976 and January 1, 1977, the workforce of the Corporation increased from 93 employees to 134 employees, a 44 percent increase. During this period, the minority workforce increase from 42 to 65, a 55 percent increase. On January 1, minority employees represented 43 percent of the workforce.

During the same period, women employees increased from 52 to 78, a 50 percent increase. As of January 1, women constituted 58 percent of the workforce.

II. Corporation Headquarters

The Corporation experienced a 32 percent increase in headquarter's personnel between July 1, 1976 and January 1, 1977. The minority workforce at headquarters increase from 32 to 44, a 38 percent increase, and minority employees represented 49 percent of the headquarter's workforce. Women employees increased from 41 to 57, a 39 percent increase, and as of January 1, they constituted 63 percent of the headquarter's workforce.

III. Corporation Regional Offices

Between July 1, 1976 and January 1, 1977, the workforce of the Regional Offices increased from 25 employees to 44 employees, a 76 percent increase. The minority workforce in the regions increased from 10 to 21, a 110 percent increase and minority employees represented 47 percent of the Regional Office workforce. Women employees increased from 11 to 21, a 91 percent increase, and as of January 1, they constituted 48 percent of the Regional Office workforce.

The following table contains a breakdown of the Corporation workforce for the period July 1, 1976–Janary 1, 1977.

JOB CLASSIFICATION

I. STATISTICAL SUMMARY: HEADQUARTERS AND REGIONAL OFFICES

	Executive			Administrative			Professional			Paraprofessional			Clerical			Totals		
	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1977	Jan. 1, 1977	Percent	July 1, 1976	July 1, 1977	Jan. 1, Percent	1976	July 1, 1977	Jan. 1, Percent	1976	July 1, 1977	Jan. 1, Percent
Total	12	13		20	22		16	45		14	12		31	42		93	134	
Male	9	10	78	17	19	86	8	23	51				7	4	10	41	56	42.0
Female	3	3	23	3	3	14	8	22	49	14	12	100	24	38	90	52	78	58.0
White	8	9	69	13	13	59	13	27	60	7	5	42	10	14	36	51	69	51.0
Black	2	2	15	5	6	27	3	13	29	6	6	50	19	21	50	35	48	36.0
American Indian								1	2								1	0.7
Asian American													1	2	5	1	2	1.0
Hispanic American	2	2	15	2	3	14	4	9		1	1	8	1	4	10	6	14	10.0

II. STATISTICAL SUMMARY: CORPORATION HEADQUARTERS

	Executive			Administrative			Professional			Paraprofessional			Clerical			Totals		
	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1977	Jan. 1, 1977	Percent	July 1, 1976	July 1, 1977	Jan. 1, Percent	1976	July 1, 1977	Jan. 1, Percent	1976	July 1, 1977	Jan. 1, Percent
Total	12	13		6	6		15	30		11	11		24	30		68	90	
Male	9	10	77	5	5	83	8	14	47				5	4	13	27	33	37
Female	3	3	23	1	1	17	7	16	53	11	11	100	19	26	87	41	57	63
White	8	9	69	3	3	50	12	19	63	6	5	45	7	10	33	36	46	51
Black	2	2	15	3	3	50	3	9	30	4	5	45	15	17	57	27	36	40
American Indian																		
Asian American													1	1	3	1	1	1
Hispanic American	2	2	15				2	7		1	1	9	1	2	7	4	7	8

III. STATISTICAL SUMMARY: REGIONAL OFFICES

	Executive			Administrative			Professional			Paraprofessional			Clerical			Totals		
	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1977	Jan. 1, 1977	Percent	July 1 1976	July 1, 1977	Jan. 1, Percent	1976	July 1, 1977	Jan. 1, Percent	1976	July 1, 1977	Jan. 1, Percent
Total				14	16		1	15		3	1		7	12		25	44	
Male				12	14	88		9	60				2			14	23	52
Female				2	2	13	1	6	40	3	1	100	5	12	100	11	21	48
White				10	10	63	1	8	53	1			3	5	42	15	23	52
Black				2	3	19		4	27	2	1	100	4	4	33	8	12	27
American Indian								1	7								1	2
Asian American														1	8		1	2
Hispanic American				2	3	19		2	13					2	17	2	7	16

LEGAL SERVICES CORPORATION,
Washington, D.C., February 1, 1977.

HON. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Judiciary Committee, U.S. House of Representatives, Washington, D.C. 20515

DEAR MR. CHAIRMAN: On behalf of the Board of Directors of the Legal Services Corporation, I am submitting herewith a set of proposed technical or clarifying amendments to the Legal Services Corporation Act, with explanatory material. The Board recommends that these amendments be included in legislation extending the Act.

You will recall that on April 27, 1976, in accordance with requirements of the Budget Control Act, the Corporation submitted to the Speaker of the House of Representatives a request for extension of authority to appropriate such sums as may be necessary for the purposes of the Act, for a minimum period of three years.

We look forward to working with you and members of the Subcommittee as you consider extension of the Act and are prepared to provide any information or technical assistance you may desire.

Cordially,

THOMAS EHRLICH.

Enclosures.

PROPOSED AMENDMENTS TO THE LEGAL SERVICES CORPORATION ACT, APPROVED BY THE BOARD OF DIRECTORS OF THE CORPORATION [1]

SEC. 1006(b)(1). The Corporation shall have *exclusive* authority to insure the compliance of recipients and their employees with the provisions of this title and the rules, regulations, and guidelines promulgated pursuant to this title, and to terminate, after a hearing in accordance with section 1011, financial support to a recipient which fails to comply.

SEC. 1006(e)(2). Employees of the Corporation *and staff attorneys* shall be deemed to be State or local employees for purposes of chapter 15 of title 5, United States Code.

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—

(6) insure that all attorneys engaged in legal assistance activities supported in whole or in part by the Corporation refrain, while so engaged, from—

(A) any political activity, or

(B) any activity to provide voters or prospective voters with transportation to the polls or provide similar assistance in connection with an election (other than legal advice and representation), or

(C) any voter registration activity (other than legal advice and representation).

[and insure that staff attorneys refrain at any time during the period for which they receive compensation under this title from the actiivties described in clauses (B) and (C) of this paragraph and from political activities of the type prohibited by section 1502(a) of title 5, United States Code, whether partisan or nonpartisan;]

SEC. 1007(b). No funds made available by the Corporation under this title, either by grant or contract, may be used—

(1) . . . to provide legal assistance with respect to any criminal proceeding, *except to provide assistance to a defendant charged with an offense involving hunting, fishing, trapping, or gathering fruits of the land, when the defense asserted involves rights arising from a treaty with Native Americans, or to a person charged with a misdemeanor or lesser offense in an Indian tribal court;*

(10) to provide legal assistance with respect to any case, matter or proceeding in which a legal services attorney has been appointed by a court, unless the appointment was made pursuant to a statute, rule or practice applied generally to all lawyers in the jurisdiction.

SEC. 1009(a)(3). The report for the annual audit shall be filed with the General Accounting Office, and shall be available for public inspection during business hours at the principal office of the Corporation *for a period of three years.*

[1] New language is underscored; provisions to be deleted are lined through.

SEC. 1009(b)(2). Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audit; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files and other papers or property of the Corporation shall remain in the possession and custody of the Corporation *for a period of three years.*

EXPLANATION OF PROPOSED AMENDMENTS TO THE LEGAL SERVICES CORPORATION ACT, APPROVED BY THE BOARD OF DIRECTORS OF THE CORPORATION

1. Amendment to 1006(b)(1) to provide that the Corporation shall have *exclusive* authority to insure the compliance of recipients and their employees with the provisions of the Act and regulations issued pursuant thereto.

The purpose of this provision is to prevent opposing parties from making, and courts from considering, challenges to a client's eligibility for free legal services, or other challenges based on the Act or Corporation Regulations, that are irrelevant to the legal issues in a client's case. We believe the Corporation has exclusive jurisdiction now, but explicit language would eliminate repetitive litigation of the issues, and would avoid the possibility of having different courts adopt conflicting interpretations of the Act before the Corporation has had an opportunity to make its own views known. The provision is consistent with Section 1007(a)(1), that requires the Corporation to insure "the protection of the adversary process from impairment in furnishing legal assistance to eligible clients", and with Part 1618 of Corporation Regulations, adopted by the Board at its November meeting, that, to insure consistent application of the Act, prescribes a uniform procedure of enforcement. The provision does not prevent an aggrieved person or entity from obtaining judicial review of any provision of the Act or regulations, or of a Corporation ruling.

Attachment "A" is a letter prepared by the Corporation for submission to a court by a legal services program confronted by the problem addressed by this amendment.

2. Amendment to 1006(e)(2) to expand coverage under the Hatch Act to staff attorneys of recipients as well as to Corporation employees, accompanied by an amendment to 1007(a)(6) to eliminate prohibitions against political activities of staff attorneys on their own time that go beyond the restrictions of the Hatch Act.

While it is important to insure that Corporation funds are not used to support any political activity, restrictions on the personal activities of staff attorneys that go beyond the restrictions on federal, state and local employees appear to be unnecessary.

3. Amendment to 1007(b) 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 defense asserted involves rights flowering from a treaty with Native Americans."

The Conference Report shows that the Congress intended to permit representation of Indians charged with misdemeanor offenses in tribal courts, and Corporation Regulation 1613 so provides. Until they were prohibited by Corporation Regulation 1613 from doing so, legal services programs with special expertise also represented Native Americans in local and state courts on issues arising out of treaty rights, and there are persuasive reasons for allowing them to resume doing so. The proposed amendment would give statutory weight to the Regulation allowing representation in tribal courts, and would cure the apparent oversight that prevents representation in the cases specified.

4. Addition of new subsection 1007(b)(10) to provide that a court may appoint an attorney employed by a recipient to represent an indigent client only if the court appointment is made pursuant to a policy applied generally to all lawyers practicing in the jurisdiction. The amendment would require that legal services lawyers receive the same compensation as private lawyers of the local rule or practice is to compensate private lawyers, and would prevent exclusive reliance on legal services lawyers if there is no provision for compensation. (Corporation Regulations require that all fees awarded to legal services lawyers be turned over to the program, and used for Corporation purposes.)

The purpose of this amendment is to prevent courts from depleting recipient funds and undermining their attempts to implement rational priorities by routinely appointing legal services lawyers without compensation. Again, we believe the provision is declaratory of existing law but necessary, because with increasing frequency, judges are appointing legal services lawyers without compensation in cases in which local law provides for attorneys' fees. We believe that the Congress intended funds appropriated to the Corporation to supplement, and not to substitute for, local funds previously allocated for legal representation of the poor. The amendment is consistent with 1007(b)(1) that prohibits the use of Corporation funds in fee-generating cases, with provisions of the Act and the regulations requiring that programs set priorities, and with Corporation policy that encourages involvement of the private Bar in the representation of low-income persons.

Attachment "B" is a letter prepared by the Corporation for submission to a court by a legal services program confronted by the problem addressed by this amendment.

5. Section 1009(a)(3), dealing with audit reports, and Section 1009(b)(2), dealing with financial books and records, should be amended to provide that such reports and records need not be maintained by the Corporation longer than three years. At present the Act does not state how long records and reports must be maintained by the Corporation. Section 117(b) of the Budget and Procedures Act of 1950, 31 U.S.C. 67(b) gives the Comptroller General authority to require federal agencies to retain their records for a period up to ten years, but the Corporation has been advised informally by the General Accounting Office that the three year provision would be satisfactory.

ATTACHMENT "A"

You have asked for the opinion of the Legal Services Corporation on the question whether any provision of law authorizes opposing counsel, judges, or opposing parties to inquire into the financial eligibility of legal services clients. In the view of the Corporation, there is none.

As you know, the Legal Services Corporation Act does not itself set eligibility standards; Section 1007(a)(2), 42 U.S.C. 2996f, requires the Corporation to establish eligibility guidelines. These are embodied in Part 1611 of our Regulations.

In the Legal Services Corporation Act the Congress specified the means by which alleged violations of the Act or Legal Services Corporation Regulations should be investigated, and gave the Corporation the authority and responsibility to investigate such complaints and to prescribe remedies in cases where violations are found. Section 1004(f) of the Act, 42 U.S.C. 2996c, provides for the establishment of State Advisory Councils, with authority to notify the Corporation of any apparent violation of the Act or our Regulations. Section 1006(b)(1) of the Act, 42 U.S.C. 2996e, gives the Corporation authority to insure compliance with the Act and Regulations, and to terminate, after a hearing in accordance with Section 1011 of the Act, 42 U.S.C. 2996j, financial support to a recipient which fails to comply.

To insure uniform interpretation and application of the Act and Corporation Regulations, every alleged violation should be handled in the manner prescribed by Part 1618 of Corporation Regulations.

Courts in several jurisdictions have been asked to rule on a legal services client's eligibility for representation. The cases have been uniform in holding that the issue is not a proper one for judicial determination. See, e.g., *Ingram* v. *Justice Court*, 69 Cal.2d 832, 447 P.2d 650 (1968); *Budget Finance Plan, Inc.* v. *Staley*, Civil No. GS 19245-65 (D.C. Ct. Gen. Sess., June 9, 1966); *Florida ex rel. T.J.M.* v. *Carlton*, No. 75-245 (Fla. Dist. Ct. App., June 1975) 9 Clearinghouse Rev. 209 (July 1975); *Brednenner* v. *Brednenner*, (Penn. C. P. Luzerne Co., June 10, 1975) 9 Clearinghouse Rev. 277 (August 1975). In *Carlton*, the court said:

No authorization, either state or federal, permits judicial inquiry into a client's eligibility for representation in a Florida court by an attorney who is a member of the Florida Bar in good standing who has been designated by the client. Where the federal government makes legal services available under Congressional authority, eligibility for rendering and receiving such legal services is a matter [to be resolved] by the federal agencies which make such services available. Slip Opinion at 2-3."

The legislative history of the Legal Services Corporation Act supports our view that Congress intended the Corporation to have sole authority to enforce com-

pliance with the Act. The original legal services bill, S. 1815, 93rd Cong. 1st Sess. (May 15, 1973) and H.R. 7824, *id.*, contained a provision that would have given private citizens the right to seek enforcement of the Act in federal court. The provision was deleted, and in the Senate debates it was specifically noted by Senator Nelson, a floor manager of the bill, that "Any violation of the bill's restrictions [is] to be enforced by the Corporation." 120 Cong. Rec. 12923 (Daily Ed., July 18, 1974). The legislative history thus confirms our view that the Congress did not intend to create a private right to remedy a violation of the Act. Nor did the Corporation intend to create a private cause of action for violation of its regulations.

A closely analogous question was decided recently in *Guesnon* v. *McHenry*, —— F.2d —— (5th Cir., October 4, 1976). The Court held that no relief could be granted on a claimed violation of a regulation of the Department of Housing and Urban Development unless HUD itself stated that it did intend to create a private cause of action. See also *Gardner* v. *Nashville Housing Authority*, 468 F.2d 480 (6th Cir. 1972); *Boles* v. *Greenville Housing Authority*, 468 F.2d 476 (6th Cir. 1972).

Aside from Corporation Regulations, which only the Corporation is entitled to enforce, there is no legal or ethical constraint that prevents a legal services program from providing assistance to a person whose income exceeds the maximum established by the program pursuant to Corporation Regulations. See, e.g., ABA Committee on Ethics and Professional Responsibility Formal Opinion 259 (1943); Informal Opinions 1339 (1975) and 889 (1965).

Numerous opinions rendered by the ABA Committee on Ethics and Professional Responsibility, and by state and local Bar associations, have ruled that financial eligibility information furnished by a client in order to obtain free legal services is protected by the attorney-client privilege. Section 1006(b)(3) of the Act, 42 U.S.C. 2996e, requires the Corporation to insure that legal services activities funded by the Corporation are carried out in a manner consistent with the ABA Code of Professional Responsibility. Consistent with that mandate and with the opinions on the subject rendered by the ABA, Section 1611.6(c) of our Regulations prohibits a legal services program from disclosing to any person who is not employed by the program financial eligibility information furnished by a client, in a manner that permits identification of the client, unless the client expressly consents to disclosure in writing.

Section 1009(d) of the Act, 42 U.S.C. 2996h, states that "neither the Corporation nor the Comptroller General [of the United States] shall have access to any reports or records subject to the attorney-client privilege." Congress thus weighed accounting needs against the value of protecting the attorney-client privilege and made a considered judgment that necessary accountability could be achieved without requiring disclosure of confidential information. We agree with the Congressional judgment that the confidences of legal services clients are entitled to the same protection as those of private lawyers' clients, and see no loss of accountability resulting from our lack of access to information protected by the attorney-client privilege.

Consistent with the directives of the Legal Services Corporation Act, Section 1611.6(a) of Corporation Regulations requires every legal services program to preserve financial eligibility information, in a manner that prevents identification of clients, for audit by the Corporation. That audit permits the corporation to determine whether a legal services program is properly applying eligibility standards.

Section 1007(a)(1), 42 U.S.C. 2996f, requires the Corporation to insure "the protection of the integrity of the adversary process from any impairment in furnishing legal assistance to eligible clients." To help implement this Congressional policy, a local court should decline to inquire into the question of a legal services client's eligibility for representation.

Very truly yours,

ALICE DANIEL
General Counsel.

ATTACHMENT "B"

You have asked whether it is a violation of the Regulations promulgated by the Legal Services Corporation pursuant to the Legal Services Corporation Act, 42 U.S.C. 2996, for legal services lawyers to accept appointment without compensation in cases in which state law provides for compensation of private attorneys.

First, it should be noted that a person might be entitled to appointed counsel under state law and still have an income above the maximum established by the Corporation or by the program, pursuant to Part 1611 governing financial eligibility for legal assistance. In that event, it would violate Part 1604, governing outside practice of law, for the program to accept appointment, except according to a rule or practice applied equally to all attorneys practicing in the jurisdiction.

As you know, Section 1007(b)(1) of the Legal Services Corporation Act, 42 U.S.C. 2996f, prohibits the use of Corporation funds to provide legal assistance with respect to any fee-generating case, except in accordance with guidelines promulgated by the Corporation. The definition of a "fee-generating case" in Section 1609.2 of Corporation Regulations includes every case or matter in which a private counsel reasonably would expect to receive compensation. Accordingly, a statute authorizing a court to appoint and compensate counsel converts a case into a fee-generating one, and Section 1609.4(c) prohibits a legal services attorney from accepting appointment except pursuant to a statute or a court rule or practice applied equally to all attorneys in the jurisdiction.

If the usual practice is to appoint private lawyers without compensation, legal services lawyers may accept appointment on the same terms; but if the practice is to compensate private attorneys, legal services lawyers should not serve without compensation. For them to do so would be a form of unfair competition with the private Bar that the Congress intended to prevent by enactment of Section 1007(b)(1) of the Act.

Moreover, the legislative history of the Legal Services Corporation Act makes clear that Congress did not intend to have Corporation funds used to relieve states and counties of their lawful obligations to provide legal counsel for the poor. Funds appropriated to the Corporation are meant to supplement, and not to substitute for, state funds.

Further, a legal services program should decline to accept appointment if its heavy workload would prevent it from devoting adequate time to a case. In so doing, legal services lawyers would be adhering to the ABA Code of Professional Responsibility (Disciplinary Rule 6–101), which requires an attorney to decline to undertake representation in a case to which she or he will not be able to devote adequate time. Section 1006(b)(3) of the Act, 42 U.S.C. 2996e, requires the Corporation to insure that legal services activities are carried out in a manner consistent with attorneys' professional responsibilities as set forth in the ABA Code.

In Informal Opinion 1359 (1976), the ABA Committee on Ethics and Professional Responsibility said that a legal services program should establish priorities if necessary to avoid violating Disciplinary Rule 6–101. At present, the Legal Services Corporation has inadequate financial resources to provide any legal services program with enough funds to serve all the financially eligible persons within its service area. For that reason, Section 1620 of our regulations requires legal services programs to establish caseload control priorities for the allocation of their resources.

If a court sought to appoint a legal services program to provide representation in a category of cases in which the program has previously determined, as a matter of resource allocation, not to provide, or to limit, assistance, that determination of priorities would be a sufficient reason for a program to decline appointment, except according to a rule applied equally to all lawyers within the jurisdiction.

We agree with the resolution adopted by the ABA in 1976, declaring that "it is the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal service . . . without fee or at a substantially reduced fee . . ." The responsibility for representing the indigent should be shared by all lawyers; a legal services lawyer has no greater legal or ethical obligation to accept appointment without fee than any other lawyer.

For these reasons, Corporation Regulations require legal services lawyers to decline appointment except according to a rule or practice applied equally to all attorneys practicing in the jurisdiction.

If you have any other questions, please do not hesitate to call upon me.

Very truly yours,

ALICE DANIEL,
General Counsel.

MEMORANDUM—LEGAL SERVICES CORPORATION

Date: January 6, 1977.
To: The Board of Directors.
From: Thomas Ehrlich.
Subject: Authorization Extension and Amendments to the Legal Services Corporation.

This memorandum has been reviewed by the Committee on Rules and Regulations and was revised in light of that review. The recommendations made in the memorandum will be presented to the Board by the Committee at the New Orleans meeting for discussion and action.

Legislation extending authority to appropriate funds to the Corporation must be enacted before the end of Fiscal Year 1977 (September 30, 1977). The Congressional Budget Act requires that new authorizing legislation be reported by both House and Senate Committees no later than May 15, 1977. Staff members of the House Judiciary Committee have indicated that they intend to hold hearings to consider extension of the Act, with amendments, early in the 95th Congress. The Senate Labor and Public Welfare Committee, which may undergo significant reorganization in the new Congress, probably will move more slowly.

At these hearings, the Corporation will present a strong and affirmative call for legal services to the poor and the needs that must be met. Naturally, a dominant part of those needs is financial—increased appropriation are essential. As part of the overall effort to prepare for the hearings, however, a number of legislative issues should also be included.

On April 27, 1976, the Corporation submitted a request for extension of open-ended authorization of appropriations for a minimum of three years, as approved by the Board. The Board should decide whether to make any recommendations to the Congress for substantive changes in the authorizing legislation. In addition, the Board should consider how we should respond to the substantive changes (both positive and negative) that may be proposed by others. Since Congress may begin work on this legislation as early as the first of February, these decisions should be made at the Board's meeting on January 14 and 15.

We anticipate that amendments will be proposed, some by supporters of legal services seeking to improve the current law, and possibly others by critics who may advocate greater restrictions and controls on the Corporation and its recipients.

We recommend that the Board approve a set of basic principles by which the Corporation should be guided in considering any changes in the Act that may be proposed by any source. Those principles will provide direction, not just for the Corporation, but perhaps for the Congress as well, and they will preserve the Corporation's options to work for the best possible piece of legislation. A draft set of principles is included as Attachment A.

In addition to these principles, we propose that the Board specifically recommend a set of amendments to the Congress. Some of these are technical, to clarify ambiguities that have arisen during the past year. Others seek substantive changes in the statute, involving matters of importance to the effective delivery of legal services to the poor. Efforts to accomplish these changes are not likely to succeed without the Corporation's support and leadership. A list of proposed amendments is included as Attachment B.

ATTACHMENT A

PROPOSED GUIDELINES FOR CONSIDERATION OF THE LEGAL SERVICES CORPORATION ACT AND AMENDMENTS THERETO

1. The values and principles expressed in the preamble to the Legal Services Corporation Act of 1974—particularly the need for high quality, professional legal services delivered on an efficient, effective basis and independent of partisan politics—have proved of vital importance and must be maintained

2. Legal services clients should have the same rights to advice and representation in civil matters as other clients. As long as resources are inadequate to provide full representation of all eligible clients, priorities must be set, but those

priorities should be established through an assessment of the needs and requests of clients.

3. To ensure that legal services are accountable to and responsive to the needs of eligible clients, those clients should be represented in the decision-making processes of local legal services programs and of the Corporation.

4. The Corporation should have maximum flexibility to carry out the basic purpose of the Legal Services Corporation Act—to provide financial support for legal assistance in noncriminal matters to persons financially unable to afford that assistance.

5. In representing and advising clients, legal services lawyers should be subject only to those restrictions imposed on all attorneys by the applicable code of professional responsibility and the rules of procedures of the courts.

6. Legal services attorneys should not be subject to restrictions on their personal activities unless those restrictions are necessary to carry out their obligations, and the obligations of their programs, to provide legal assistance to eligible clients, or to maintain public confidence in the integrity and independence of the program.

ATTACHMENT B

PROPOSED CHANGES IN THE LEGAL SERVICES CORPORATION ACT TO BE SUBMITTED TO THE CONGRESS BY THE CORPORATION

Technical amendments

1. Amendment to 1007(b) 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 defense asserted involves rights flowing from a treaty with Native Americans."

This amendment, proposed by legal services programs involved in representation of Native Americans, deals with an apparent Congressional oversight. Congress provided an exception to the prohibition on criminal representation that allows representation of Indians charged with misdemeanor offenses in tribal courts. Until they were prohibited by Corporation Regulation 1613 from doing so, legal services programs with special expertise also represented Native Americans in local and state courts on issues arising out of treaty rights, and there are persuasive reasons for allowing them to resume doing so. The Regulations Committee already has indicated its support of such an amendment.

2. Amendment to 1006(b)(1) to provide that the Corporation shall have *exclusive* authority to insure the compliance of recipients and their employees with the provisions of the Act and regulations issued pursuant thereto.

The purpose of this provision is to prevent opposing parties from making, and courts from considering, challenges to a client's eligibility for free legal services, or other challenges based on the Act or Corporation Regulations, that are irrelevant to the legal issues in a client's case. We believe the Corporation has exclusive jurisdiction now, but explicit language would eliminate repetitive litigation of the issues, and would avoid the possibility of having different courts adopt conflicting interpretations of the Act before the Corporation has had an opportunity to make its own views known. The provision is consistent with Section 1007(a)(1), that requires the Corporation to insure "the protection of the adversary process from impairment in furnishing legal assistance to eligible clients", and with Part 1618 of Corporation Regulations, adopted by the Board at its November meeting, that, to insure consistent application of the Act, prescribes a uniform procedure for enforcement.

Legislative history will make clear that the provision does not prevent an aggrieved person or entity from obtaining judicial review of the statute or regulations, or a Corporation ruling.

3. Addition of new subsection 1006(g) to provide that a court may appoint an attorney employed by a recipient to represent an indigent client only if the court appointment is made pursuant to a policy applied generally to all lawyers practicing in the jurisdiction, and to prevent appointment of legal services lawyers without compensation if the local rule or practice is to compensate private lawyers.

The purpose of this amendment is to prevent courts from depleting recipent funds and undermining their attempts to implement rational priorities, by routinely appointing legal services lawyers without compensation. Again, we believe the provision is declaratory of existing law but necessary, because, with increasing frequency, judges are appointing legal services lawyers without

compensation in cases in which local law provides for attorneys' fees. We believe that the Congress intended funds appropriated to the Corporation to supplement, and not to substitute for, local funds previously allocated for legal representation of the poor. The amendment is consistent with 1007(b)(1) that prohibits the use of Corporation funds in fee-generating cases, with provisions of the Act and the regulations requiring that programs set priorities, and with Corporation policy that encourages involvement of the private Bar in the representation of low-income persons.

4. Section 1009(a)(3), dealing with audit reports, Section 1009(b)(2), dealing with financial books and records, and Section 1005(g), dealing with records subject to the Freedom of Information Act, should be amended to provide that such reports and records need not be maintained by the Corporation longer than five years. At present the Act does not state how long records and reports must be maintained by the Corporation. A period of five years seems appropriate because that is the period for which the Corporation is required by Section 1009(c)(1) to maintain grantee audit reports, and is required by Section 1008(b) to maintain evaluation reports. Our tax attorney says that five years would be sufficient for IRS purposes. (According to Section 117(b) of the Budget and Procedures Act of 1950, 31 U.S.C. 67(b), the Comptroller General has authority to require federal agencies to retain their records for a period up to ten years.) We are contacting the General Accounting Office to assure its concurrence in this proposal.

Substantive amendments

1. Amendment to 1006(a)(3) to permit the Corporation to fund by grant or contract, as well as to undertake directly, research, training and technical assistance, and clearinghouse activities. This amendment would give the Corporation discretion to fund certain activities by grant or contract when that would be more efficient or effective than adding staff to carry out the activities within the Corporation. For example, a number of state legal services programs have previously carried on excellent training programs in local law and procedure. The Corporation cannot duplicate their efforts in over fifty jurisdictions, and would like to be able to provide the funds needed for them to resume such work.

2. Amendment to 1006(d)(2) to expand coverage under the Hatch Act to staff attorneys of recipients as well as to Corporation employees, accompanied by an amendment to 1007(a)(6) to eliminate prohibitions against political activities of staff attorneys on their own time that go beyond the restrictions of the Hatch Act.

While it is important to insure that Corporation funds are not used to support any political activity, restrictions on the personal activities of staff attorneys that go beyond the restrictions on federal, state and local employees appear to be unnecessary.

3. Amendment to 1010(c) to eliminate restrictions on the use of private funds by recipients. Persons who cannot afford a lawyer should have the same rights to full representation in civil matters as do any fee-paying clients. Neither Congress nor the Corporation should impose restrictions on the manner in which private funds are used to increase access to justice for the poor.

4. Amendments to delete 1007(b)(7), 1007(b)(8), and 1007(b)9. The effect of these amendments is to eliminate the prohibitions against representation of eligible clients in proceedings or litigation relating to school desegregation, in proceedings or litigation that seeks to procure a nontherapeutic abortion or to compel an individual or institution to provide a therapeutic abortion in certain situations, and in proceedings or litigation relating to the Military Selection Service Act or of desertion from the Armed Forces.

These amendments are controversial and passage will be difficult. But the courts have recognized constitutional rights in the first two areas and the restrictions in the Legal Services Corporation Act deny poor persons the opportunity to vindicate them. There is no greater justification for imposing restrictions on representation in any of the three areas than in any other matter that affects low-income persons. Continued precense of the restrictions in the Act not only denies access to justice in these matters, but also sets the precedent for additional restrictions whenever a particular subject becomes controversial or unpopular. The provisions are inconsistent with the basic purpose of the Act, as stated in Section 1001, which is "to provide equal access to the system of justice in our Nation for individuals who seek redress of grievances" but are financially unable to afford adequate legal counsel.

5. One further recommendation is somewhat awkward for the staff to suggest to the Board and for the Board to suggest to the Congress. Nonetheless, we believe that it is of importance.

We recommend support of an amendment to Section 1004(a) to require that the Board of Directors include significant representation by eligible clients or representatives of eligible clients. This amendment would be consistent with the requirement of client representation that the Corporation imposes on the governing bodies of its recipients. The purposes, of course, are to promote involvement of legal services clients in the decisions of the Corporation and accountability of the Corporation to those clients.

The amendment might adopt one of various approaches—increasing total Board membership, phasing-in of client representation, etc.—and we do not suggest that any particular approach is essential. But we do believe that the principle of significant client representation on the Board should be established.

PUBLISHED REGULATIONS

TITLE 45—PUBLIC WELFARE

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1600—DEFINITIONS [1]

Promulgation and Implementation

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"). The Corporation is authorized to promulgate regulations implementing the purposes and provisions of the Act, and it has adopted some regulations, prepared others for public comment, and is preparing additional regulations for future proposal and adoption.

Part 1600 has been redesignated as a "Definitions" section, and when the regulations are complete will include every term that requires definition and is used with a uniform meaning in the regulations. When statutory context or Corporation policy requires that a term be given another meaning in a particular regulation, the special definition will be set forth therein. A uniform definition may also be repeated for convenient reference in a regulation where it is used. A term applicable only to a single regulation will be defined therein.

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[1] See FR Doc. 76-12069 infra.

The following definitions appear in regulations that have been adopted, or proposed for publication thus far.

§ 1600.1 Definitions.

As used in these regulations, Chapter XVI, unless otherwise indicated, the term

"Act" means the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996–2996*l*.

"Appeal" means any appellate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

"Attorney" means a person who provides legal assistance to eligible clients and who is authorized to practice law in the jurisdiction where assistance is rendered.

"Corporation" means the Legal Services Corporation established under the Act.

"Director of a recipient" means a person directly employed by a recipient in executive capacity who has overall day-to-day responsibility for management of operations by a recipient.

"Eligible Client" means a person or group determined to be eligible for legal assistance under the Act.

"Employee" means a person employed by the Corporation or by a recipient.

"Fee Generating Case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

"Legal Assistance" means the provision of any legal services consistent with the purposes and provisions of the Act.

"Outside Practice of Law" means the provision of legal assistance to a client who is not entitled to receive legal assistance from the employer of the attorney rendering assistance, but does not include, among other activities, teaching, consulting, or performing evaluations.

"President" means the President of the Corporation or the President's designee.

"Public Funds" means funds received from a Federal, State, or local government, or any instrumentality of a government, or from an independent organization that expends funds received from a government.

"Recipient" means any grantee or contractor receiving financial assistance from the Corporation under Section 1006(a)(1)(A) of the Act.

"Staff Attorney" means an attorney more than one half of whose annual professional income is received from a recipient that limits its activities to providing legal assistance to clients eligible for assistance under the Act.

"Tribal Funds" means funds received from an Indian tribe, or from a private foundation, for the benefit of an Indian tribe.

(Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996–2996*l*.)

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc.76-12951 Filed 5-4-76;8:45 am]

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1601—BY-LAWS OF THE LEGAL SERVICES CORPORATION

Adoption and Effective Date

Proposed By-laws of Legal Services Corporation, the corporation established by section 1003(a) of the Legal Services Corporation Act (the "Act"), 42 U.S.C. § 2996b, were published in the Federal Register on August 11, 1975 (40 FR 33751–55). The Corporation received both oral and written comments from the public. These comments were considered at meetings of the Committee on By-laws and Regulations held in Washington, D.C. on August 25, September 8, October 4, October 19, and October 20, 1975 and by the full Board of Directors on September 9 and October 4, 1975. At its meeting on October 4, 1975, the Board revised and then adopted the By-laws and directed that as revised they be published in the Federal Register to become effective 30 days after their publication. The By-laws so adopted and published herein contain the following changes (in addition to typographical and clarifying language changes) from the proposed text:

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1. The last section of § 1.01 of the proposed text (now § 1601.1) relating to the status of the Corporation in relation to the United States Government was amended to conform more precisely to section 1005(e)(1) of the Act.

2. A new § 1601.3 was added to consolidate definitions that appeared in various subsequent sections in the proposed by-laws.

3. Section 3.02(c) of the proposed text was deleted because of the definitions of "Director" and "member of the Board" in § 1601.3(d).

4. In § 3.05(a) of the proposed text (now § 1601.11), the capacities in which a Director of the Corporation may serve or may have served another firm or organization for purposes of being disqualified from participating in Board proceedings with respect to matters benefiting such firm or organization were broadened to include consultant, attorney, and agent and any other capacity specified by the Board. The financial or ownership interest in another firm or organization for purposes of such disqualification was broadened by the insertion of the words "direct or indirect." Inclusion of the President in the coverage of this subsection was deleted since he will be governed by the conflict-of-interest provisions under § 6.11 of the proposed text (now § 1601.39). The last sentence of § 3.05(a) of the proposed text (now § 1601.11(a)) was modified to preserve the Corporation's right to have a transaction declared void or voidable and at the same time its right to hold a Director liable for an unfair transaction.

5. Section 3.06(b) of the proposed text (now § 1601.12(b)) was amended to make clear that for purposes of removal on account of non-attendance at meetings, a Director who arrives late at a meeting or is required to leave early is not considered to have been absent.

6. Section 3.06(c) of the proposed text (now § 1601.12(c)) was amended to make clear that whatever the ground for removal of a Director, the process must be instituted by five or more Directors except when the ground is failure to attend the required number or percentage of meetings.

7. Section 3.08 of the proposed text (now § 1601.14). A sentence was added making clear that if the Board authorizes a Director to serve the Corporation in any other capacity, he may not receive compensation in both capacities.

8. In § 4.05 of the proposed test (now § 1601.19), the time for giving of general notice of a Board meeting to the public was changed from "promptly upon" to "concurrently with" the giving of notice to the Directors, and the requirement of general notice was extended to any rescheduling of a meeting.

9. Section 4.07(a) of the proposed text (now § 1601.21(a)) was amended to provide that if the number of Directors in office is seven or fewer, two-thirds of them must be present to establish a quorum.

10. Section 4.08 of the proposed text (now § 1601.22), relating to the holding of public meetings and executive sessions, was published in alternative forms. Most of the public comments received related to this Section. Most of such comments urged that, as proposed in alternative § 4.08 of the proposed text, the By-laws contain a list of the matters which could be discussed in executive session. The Board concluded that it was impossible to prepare a list that would adequately provide for the kinds of matters that might have to be considered in executive session. At the same time, it concluded that criteria should be established for the holding of executive sessions. Accordingly, § 4.08 of the proposed text (now § 1601.22) was amended to include the following:

Subsection (a) provides, in the same language as that of section 1004(g) of the Act, that the determination to hold an executive session must be made by two-thirds of the Directors eligible to vote and must be limited to specific matter "on a specific occasion." If an executive session is held in the course of a public meeting, the chairman of the meeting must announce the subject matter before the executive session is held.

Subsection (b) recites the governing principle that "the public is entitled to the fullest information regarding the decision-making process of the Corporation consistent with the protection of personal privacy or with compelling interests of the Corporation or the public."

11. A new § 1601.23 was added making clear that communications from the public are welcome and that members of the public may address a Board meeting upon invitation of the chairman of the meeting unless the Board otherwise directs.

12. Section 4.10 of the proposed text (now § 1601.25). Choosing between alternatives in the proposed provision for action by the Board without a meeting, the Board decided that such action should require unanimous consent in writing rather than written consent of two-thirds of the Directors.

13. Section 5.01 of the proposed text (now § 1601.26) was amended to make the Chairman of the Board an *ex officio* non-voting member of each committee of the Board.

14. Section 5.02a() of the proposed text (now § 1601.27(a)) was amended to provide that, in the case of a committee having an even number of voting members, the quorum requirement is one-half rather than a majority of the members, and if a voting member is absent, the Chairman of the Board, if present, may be counted for quorum purposes.

15. Section 5.02(b) of the proposed text (now § 1601.27(b)) was amended to include a provision that failure to provide general notice of a committee meeting shall not affect the validity of action taken thereat.

16. In Section 5.02(c) of the proposed text (now § 1601.27(c)), the requirement that two-thirds of the committee members must make the determination to hold an executive session was limited, consistently with section 1004(g) of the Act, to executive sessions held with respect to matter on which a committee had been given the power of the Board to act. In the case of other committees, executive sessions may be held upon a vote of a majority, or one-half if the number of voting members of the committee is even.

17. Section 6.03 of the proposed text (now § 1601.30) was amended to require the vote of a majority of the Directors in office for removal of the President.

18. In § 6.06(a) of the proposed text (now § 1601.33) the rules and regulations promulgated pursuant to the Act were added to the provisions to which the President is subject.

19. A new § 1601.36 was added providing for the office, and specifying the duties, of the Comptroller. In view of this addition, the duty to keep accounts was deleted from the duties of the Treasurer in § 6.08 of the proposed text (now § 1601.35).

20. In Section 6.09 of the proposed text (now § 1601.37), specific authority was given for delegation, to a committee or another officer, of the Board's authority to fix the compensation of officers other than the President or a Vice President.

21. Section 6.11 of the proposed text (now § 1601.39) was amended to provide that the rules and regulations governing outside interests of officers and employees may forbid any participation in certain corporate action, rather than participation "personally and substantially."

22. In § 10.01(b) of the proposed text (now § 1601.43(b)), a clarifying amendment, conforming to subsection (a), provides for indemnification of parties to "completed" as well as threatened and pending actions.

23. Section 11.01 of the proposed text (now § 1601.44) was amended to provide that amendment of the By-laws may be accomplished by vote of a majority rather than 60 percent of the Directors in office.

Accordingly, the By-laws of Legal Services Corporation shall become effective on December 8, 1975, in the following form:

Subpart A—Nature, Powers, and Duties of Corporation; Definitions

Sec.
1601.1 Nature of the corporation.
1601.2 Power and duties.
1601.3 Definitions.

Subpart B—Offices and Agents

1601.4 Principal office.
1601.5 Agent.
1601.6 Other offices and agents.

Subpart C—Board of Directors

1601.7 General powers.
1601.8 Number, terms of office, and qualifications.
1601.9 The chairman of the board.
1601.10 Qualification.
1601.11 Outside interests of directors.
1601.12 Removal.
1601.13 Resignation.
1601.14 Compensation.

Subpart D—Meetings of Directors

Subpart E—Committees

Subpart F—Officers

Subpart G—Deposits and Accounts

Subpart H—Seal

Subpart I—Fiscal Year

Subpart J—Indemnification

Subpart K—Amendments

AUTHORITY: Sec. 1008(e), 88 Stat. 367 (42 U.S.C. 2996g(e)).

Subpart A—Nature, Powers, and Duties of Corporation; Definitions

§ 1601.1 Nature of the corporation.

Legal Services Corporation is the corporation established by section 1003 of the Legal Services Corporation Act, 42 U.S.C. 2996b. The Act establishes the Corporation in the District of Columbia as a private nonmembership, nonprofit corporation for the purpose of providing financial support for legal assistance in noncriminal proceedings or matters to persons financially unable to afford legal assistance. Except as otherwise specifically provided in the Act, the Corporation is not considered a department, agency, or instrumentality of the United States Government.

§ 1601.2 Powers and duties.

The powers and duties of the Corporation are as set forth in the Act. The powers of the Corporation include to the extent consistent with the Act, the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act, D.C. Code Title 29, Chapter 10, other than the power to cease corporate activities.

§ 1601.3 Definitions.

As used in these By-laws, except where the context otherwise requires—

(a) "Act" means the Legal Services Corporation Act, 42 U.S.C. 2996-2996*l*, which was added to the Economic Opportunity Act of 1964 as Title X thereof by an Act of Congress cited as the Legal Services Corporation Act of 1974. Pub. L. 93-355, approved July 25, 1974, 88 Stat. 378;

(b) "Board" means the Board of Directors of the Corporation.

(c) "Corporation" means the Legal Services Corporation established by section 1003 of the Act, 42 U.S.C. 2996b;

(d) "Director" or "member of the Board" means a voting member of the Board of Directors appointed by the President of the United States;

(e) The pronouns "he," "him," and "his" means respectively, "he or she," "him or her," and "his or her";

(f) "Member of the immediate family" means, with respect to any individual, a spouse, child, parent, brother, or sister of such person, or a spouse or relative of any of the foregoing who has the same home as such person;

(g) "Person" means an individual, corporation, association, partnership, trust, or other entity;

(h) "Recipient" means a grantee, contractee, or recipient of financial assistance described in clause A of section 1006(a)(1) of the Act;

(i) "Telegraph" includes any means of record communication.

Subpart B—Offices and Agents

§ 1601.4 Principal office.

The Corporation shall maintain its principal offices in the District of Columbia.

§ 1601.5 Agent.

The Corporation shall maintain in the District of Columbia designated agent to accept service of process for the Corporation.

§ 1601.6 Other officers and agents.

The Corporation may also have offices and agents as such other places, either within or without the District of Columbia, as the business of the Corporation may require.

Subpart C—Board of Directors

§ 1601.7 General powers.

The property, affairs, and business of the Corporation shall be under the direction of the Board, subject to the provisions of the Act.

§ 1601.8 Number, terms of office, and qualifications.

(a) The Board shall consist of eleven voting members and the President of the Corporation *ex officio*. The voting members shall be appointed by the President of the United States by and with the advice and consent of the Senate. No more than six of the voting members shall be of the same political party. A majority of the voting members shall be members of the bar of the highest court of a state. None of the voting members shall be a full-time employee of the United States.

(b) The term of office of each voting member of the Board shall be three years, except that five of the members first appointed have been designated by the President of the United States to serve for a term of two years. Each member of the Board shall continue to serve until his successor is appointed and qualified. The term of the initial members of the Board shall be computed from July 14, 1975, the date of the first meeting of the Board. The term of each member of the Board other than the initial members shall be computed from the date of termination of the preceding term. Any member of the Board appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of such term. No member of the Board shall be reappointed to more than two consecutive terms immediately following such member's initial term.

§ 1601.9 The chairman of the board.

The initial Chairman of the Board, during the period July 14, 1975 to July 13, 1978, shall be a member of the Board initially designated as Chairman by the

President of the United States or, if he should resign or otherwise vacate his office or his Board membership, the member subsequently so designated by the President of the United States. Thereafter, annually or at such other time as there may be a vacancy in this office, the Board shall elect a Chairman of the Board from among its voting members who shall serve in such capacity until his successor has been duly elected and qualified, or until he shall resign or otherwise vacate his office or his Board membership. The Chairman of the Board shall, if present, preside at all meetings of the Board, shall carry out all other functions required of him by the Act and these By-laws, and shall perform such other duties as from time to time may be assigned to him by the Board.

§ 1601.10 Qualification.

A person shall be deemed to have qualified as a Director, or as the Chairman of the Board, when upon his appointment or selection, as the case may be, he has affirmed or executed a statement, in a form provided by the Board, to discharge his duties faithfully.

§ 1601.11 Outside interests of directors.

(a) No member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly benefits such member or pertains specifically to any firm or organization with which such member is then associated or has been associated within a period of two years. For the purposes of this paragraph, (1) a member of the Board shall be deemed "associated" with a firm or organization if he (i) is serving or has served within the past two years as a director, officer, trustee, employee, consultant, attorney, agent, or partner thereof, or in any of such other capacities as the Board may from time to time determine, (ii) is negotiating or has any arrangement concerning prospective employment therewith, or (iii) has or has had within the past two years any direct or indirect financial or ownership interest therein; and (2) the term "member of the Board" includes a member of the immediate family of a member of the Board. If a Director violates this paragraph in connection with any transaction, the validity of the transaction, unless void by law or voidable by the Corporation, shall not be affected by the violation, but the Director by law may be liable to the Corporation for damages.

(b) Pursuant to procedures to be established by the Board from time to time, each member of the Board, upon assuming office and at least annually thereafter, shall file with the Secretary a statement identifying any firm or organization with which he is then or has been within the past two years associated (as defined in paragraph (a) of this section) and the nature of the association. In the event the association is a result of a financial or ownership interest, that fact shall be reflected in the statement, but the member need not reveal the degree of financial interest. Such statements shall be available for public inspection.

§ 1601.12 Removal.

(a) A Director may be removed, by a vote of seven members at a meeting of the Board, for persistent neglect of or inability to discharge duties, for malfeasance in office, or for offenses involving moral turpitude, and for no other cause.

(b) When a Director shall fail to appear at three consecutive meetings of the Board or at one-half of the meetings held during a two-year period, the Secretary shall notify him in writing that the agenda for the next meeting of the Board will include the question whether he should be removed for persistent neglect of or inability to discharge duties.

(c) Except as provided in paragraph (b) of this action, the Board shall consider whether a Director shall be removed only when five or more Directors have stated in writing that they believe there is reasonable cause for each action, giving specific allegations in support of such belief.

(d) A Director may not be removed unless (1) notice of the basis of removal has been given to such Director at least thirty days before a vote is taken concerning his removal and (2) the Director has been afforded the opportunity to contest his removal by making written submissions to the other members of the Board and by appearing in person ,with or without counsel present, at the meeting at which the vote concerning removal is taken.

§ 1601.13 Resignation.

A Director may resign at any time by giving written notice of his resignation to the President of the United States and to the President of the Corporation.

Notice of a resignation shall be posted at the offices of the Corporation in an area to which the public has access. A resignation shall take effect at the time received by the President of the United States unless another time is specified therein. The acceptance of a resignation shall not be necessary to make it effective.

§ 1601.14 Compensation.

Directors shall be entitled to receive, at appropriate rates prescribed from time to time by the Board, not in excess of the rates established for consultants to the Federal Government, per diem compensation for their services as members of the Board or of any committee thereof and reimbursement for travel, subsistence, and other expenses necessarily incurred in connection therewith. A Director shall not serve the Corporation in any other capacity or receive compensation for such services, except as authorized by the Board. In no event shall a Director receive compensation in more than one capacity.

Subpart D—Meetings of Directors

§ 1601.15 Regular meetings.

Regular meetings of the Board shall be held at least four times a year, on the first Friday of March, June, October, and December, if not a legal holiday or, if a legal holiday, then on the next business day following, at 10 a.m., or at such other date and time as shall be determined by a majority of the members of the Board. Such regular meetings shall be held in the District of Columbia unless a majority of the members of the Board otherwise determine. Notice of the place of a regular meeting shall be mailed to each Director at least ten days before the date of the meeting or shall be telegraphed or delivered at least five days before such date.

(b) In the event a majority of the members of the Board agree to postpone a regular meeting, notice of such postponement shall be mailed to each Director at least five days before the scheduled date for such meeting or shall be telegraphed or delivered at least three days before such scheduled date. In the event a majority of the members of the Board agree to reschedule a regular meeting to a date in advance of the scheduled date for such meeting, notice of such rescheduling shall be mailed to each Director at least twenty-one days before the rescheduled date for such meeting or shall be telegraphed or delivered at least fifteen days before such rescheduled date. Every such notice shall specify the place, day, and hour of the rescheduled meeting.

§ 1601.16 Special meetings.

Special meetings of the Board may be called by the Chairman of the Board or shall be called upon receipt by him of a written request from five or more members of the Board or from the President of the Corporation and four or more members of the Board. Notice of any such meeting shall be mailed to each Director at least seven days before the date on which the meeting is to be held or shall be telegraphed or delivered at least three days before such date. Every such notice shall specify the place, day, and hour of the meeting.

§ 1601.17 Notice and waiver of notice.

(a) Notice of a meeting of the Board when mailed shall be deemed given when deposited in the United States mail, postage paid, addressed to the Director at his address appearing on the books of the Corporation or supplied by him for the purpose of this notice. Notice may be delivered at such address to a person having apparent authority to accept such delivery for such Director. Notices by telegraph shall be sent, charges prepaid, to such address.

(b) A waiver of notice of a meeting in writing signed by the Director entitled to such notice, whether before or after the time of such meeting, shall be deemed equivalent to the timely giving of such notice. Attendance of a Director at any meeting shall constitute a waiver by him of notice of such meeting except where he attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

§ 1601.18 Agenda.

For each regular and special meeting, the Chairman of the Board or the President of the Corporation shall cause to be prepared an agenda of matters to be discussed at the meeting and shall make reasonable effort to mail the agenda to all Directors as far in advance of the meeting as practicable. When feasible, the agenda shall be posted at the offices of the Corporation, in an area to which

the public has access, at least three days before the date on which the meeting is to be held. Any matters appearing on the agenda which the Chairman of the Board or the President of the Corporation believes should be discussed in an executive session in accordance with § 1601.22 shall be so noted. Matters not appearing on the agenda may also be discussed and acted upon at the meeting, but the Chairman of the Board or the President of the Corporation shall endeavor to include as many matters on the agenda as can be reasonably anticipated.

§ 1601.19 General notice.

Concurrently with the giving of notice to the Directors of any meeting of the Board or any rescheduling thereof, such notice shall be filed for publication in the Federal Register and posted at the offices of the Corporation in an area to which the public has access. Reasonable effort shall be made to communicate such notice, at least three days before the meeting, to the chairman of each state advisory council appointed pursuant to section 1004(f) of the Act and to every recipient. Failure to provide general notice in accordance with this Section shall not affect the validity of Board action at such meeting.

§ 1601.20 Organization of directors meeting.

At each meeting of the Board, the Chairman of the Board or, in his absence, a temporary chairman chosen by a majority of the members of the Board present shall preside. The Secretary of the Corporation shall act as secretary at all meetings of the Board. In the absence from any such meeting of the Secretary, the chairman of the meeting shall appoint a person to act as secretary of the meeting.

§ 1601.21 Quorum, manner of acting, and adjournment.

(a) At each meeting of the Board, the presence of six Directors or, if the number of Directors in office is seven or fewer, two-thirds of such Directors shall constitute a quorum for the transaction of business. Except as otherwise specifically provided by law or these By-laws, the vote of a majority of the Directors present at the time of a vote, provided that a quorum is present at such time, shall be the act of the Board. If a quorum is present when a meeting is convened at which an action is subsequently voted upon, the action shall be the valid action of the Board unless a Director suggests the absence of a quorum and there is, in fact, no quorum then present. A Director who is present at a meeting of the Board but is required to abstain from participation in the vote upon any matter, whether he remains in the meeting or withdraws therefrom during the vote, may be counted for purposes of determining whether or not a quorum is present, and if a quorum is present, the vote of a majority of the Directors who are eligible to vote with respect to such matter shall be the act of the Board.

(b) A majority of the Directors present at a duly convened meeting, whether or not they shall comprise a quorum, may temporarily adjourn the meeting. Whenever a meeting is temporarily adjourned to a date not more than five business days following such adjournment, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted thereat otherwise than by an announcement at the meeting at which such adjournment is taken.

(c) Each Director shall be entitled to one vote. Voting rights of Directors may not be exercised by proxy.

§ 1601.22 Public meetings; executive sessions.

(a) All meetings of the Board shall be open to the public unless two-thirds of the Directors eligible to vote determine that consideration of specific matter on a specific occasion shall be closed to the public. That part of a meeting closed to the public shall be known as an executive session. Agenda and non-agenda items may be considered in an executive session. An executive session shall consider only matter for which the required determination has been made. The chairman of the meeting shall announce the subject of the executive session prior thereto.

(b) In determining whether an executive session is required the Board shall be governed by the principle that the public is entitled to the fullest information regarding the decision-making process of the Corporation consistent with the protection of personal privacy or with compelling interests of the Corporation or the public.

§ 1601.23 Public participation.

The Board welcomes written and other communication from members of the public. Members of the public may address a meeting of the Board upon invitation of the chairman of the meeting unless the Board otherwise directs.

§ 1601.24 Minutes.

The minutes of each meeting of the Board, including an executive session, shall record the names of the Directors present, the actions taken, and the result of each vote. If there is a division on a vote, the minutes shall record the vote of each Director. Minutes shall reflect discussions held in executive session, including as much information as possible about such discussions without compromising the purpose for which such meeting was closed to the public. A copy of the minutes of each meeting shall be supplied to each member of the Board in advance of the next meeting and shall be presented for approval by the Board at such meeting. The minutes of each meeting shall be available for inspection by the public in the form supplied to, and in the form approved by, the Directors.

§ 1601.25 Action by directors without a meeting.

Any action which may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors and general notice of the proposed action is published in the manner prescribed by § 1601.19 on or before the date when such consents are first solicited. Any such action so taken shall be included on the agenda of the next meeting of the Board for discussion, ratification, or such other action as may be indicated by the circumstances.

Subpart E—Committees

§ 1601.26 Establishment and appointment of committees.

The Board may by resolution of a majority of the Directors in the office establish (and thereafter dissolve) such executive, regular, standing, or temporary committees as the Board may deem appropriate to perform such functions as it may from time to time designate. The authority of any such committee shall expire at the time specified in such resolution, which shall be no later than two years after its establishment. The Board may appoint Directors to serve on such committees including one to serve as the chairman, or may delegate to the Chairman of the Board the authority to make such appointments. A person appointed as a member of a committee shall serve as such only at the pleasure of the Board. The Chairman of the Board shall be an *ex officio* nonvoting member of each committee.

§ 1601.27 Committee procedures.

(a) Except as otherwise provided in these By-laws or in the resolution establishing the committee, a majority of the voting members thereof, or one-half of such members if their number is even, shall constitute a quorum: *Provided*, That if the Chairman of the Board is present, he may be counted in lieu of any absent voting member for quorum purposes. The vote of a majority of the voting members present at the time of a vote, if a quorum is present at such time, shall be the act of the committee. Meetings of each committee shall be called by the chairman of the committee or any two members of the committee, with notice thereof provided to each committee member including the Chairman of the Board. An agenda shall not be required for a committee meeting, but shall be furnished with the notice when feasible.

(b) Notice of a committee meeting shall be provided to members of the committee in the manner required for notice of special meetings of the Board by §§ 1601.16 and 1601.17(a). Notice may be waived in the manner described in § 1601.17(b). When feasible, general notice of a committee meeting shall be given in the manner described in § 1601.19, but failure to provide general notice shall not affect the validity of action at such committee meeting.

(c) All meetings of a committee shall be open to the public unless a majority of the voting members of the committee, or one-half of such members if their number is even, determine that part of all of the meeting shall be in executive session closed to the public; provided that, in the case of a committee to which has been delegated the power of the Board to act on any matter, an executive session shall not be held with respect to such matter unless two-thirds of the committee members eligible to vote make such determination pursuant to the provisions of § 1601.22.

(d) Minutes shall be kept of each committee meeting in the manner described in § 1601.24. The minutes shall be available for inspection by the public.

(e) Any Director and the President of the Corporation shall have access to the records of any committee irrespective of whether he is a member of the committee.

Subpart F—Officers

§ 1601.28 Officers.

The officers of the Corporation shall be a President, a Secretary, a Treasurer, a Comptroller, and such other officers as the Board determines to be necessary. The President of the Corporation shall be appointed by a majority of the Directors in office. Other officers shall be appointed by the Board after consultation with the President of the Corporation. The officers shall have such authority and perform such duties, consistent with the Act and these By-laws, as may from time to time be determined by the Board or, with respect to the other officers, by the President of the Corporation consistently with any such determination of the Board. The President of the Corporation shall provide supervision and direction to the other officers in the performance of their duties.

§ 1601.29 Election, term of office, and qualifications.

The officers of the Corporation shall be appointed annually at the October meeting of the Board or whenever a vacancy arises. Each officer shall hold his office until his successor shall have been duly appointed or until he shall resign or shall have been removed in the manner provided in § 1601.30. Any two offices may be held by the same person, except the offices of the President of the Corporation and Secretary. All officers shall serve at the pleasure of the Board.

§ 1601.30 Removal.

The President of the Corporation may be removed by a majority of the Directors in office, and any other officer may be removed by the Board pursuant to the quorum and voting provisions of § 1601.21 but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

§ 1601.31 Resignation.

Any officer may resign at any time by giving written notice of his resignation to the Board. Such resignation shall take effect at the time received, unless another time is specified therein. The acceptance of such resignation shall not be necessary to make it effective.

§ 1601.32 Vacancies.

Any vacancy in any office shall be filled as provided in § 1601.28.

§ 1601.33 The president.

(a) The President of the Corporation shall be its Chief Executive Officer and shall have the responsibility and authority, in accordance with the Act, rules and regulations promulgated pursuant to the Act, and these Bylaws, subject to the direction of and policies established by the Board, for (1) the day-to-day administration of the affairs of the Corporation; (2) the appointment of such employees of the Corporation as he determines necessary to carry out the purposes of the Corporation and the removal of such employees; (3) the making of grants and the entering into of contracts; and (4) the exercise of such other powers incident to the office of the President of the Corporation and the performance of such other duties as the Board may from time to time prescribe.

(b) The President of the Corporation shall be a member of the bar of the highest court of a State and shall be a nonvoting *ex officio* member of the Board of Directors.

§ 1601.34 The secretary.

The Secretary shall (a) ensure that all notices are duly given in accordance with the Act and these By-laws; (b) be the custodian of the seal of the Corporation and affix such seal to all documents the execution of which is authorized by the Board or by any officer or employee of the Corporation to whom the power to authorize the affixing of such seal shall have been delegated; (c) keep, or cause to be kept, in books provided for the purpose, minutes of the meetings of the Board and of each committee of the Board; (d) ensure that the books, reports, statements, and all other documents and records required by law are properly kept and filed; (e) sign such instruments as require the signature of the Secretary; and (f) in general, perform all the duties incident to the office of the Secretary and such other duties as from time to time may be assigned to him.

§ 1601.35 The treasurer.

The Treasurer shall (a) have charge and custody of, and be responsible for, all funds and securities of the Corporation and (with the exception of petty cash) deposit all such funds and securities in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of these By-laws; (b) receive, and give receipts for, moneys due and payable to the Corporation from any source whatsoever; (c) sign such documents as shall require the signature of the Treasurer; (d) render to the Board at each regular meeting and at such times as the Board may require a report on the financial condition of the Corporation; and (e) in general, perform all the duties as from time to time may be assigned to him. The Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such sureties as the Board shall determine.

§ 1601.36 The comptroller.

The Comptroller shall keep or cause to be kept full and correct records and accounts of the business, transactions, receipts, and disbursements of the Corporation and at all reasonable times shall exhibit such records and accounts to any Director upon application at the office of the Corporation where such records are kept; and shall perform such other duties as from time to time may be assigned to him.

§ 1601.37 Compensation.

The compensation of the officers shall be fixed from time to time by the Board or, in the case of an officer other than the President or a Vice President, by a committee or another officer to whom such authority is delegated at rates not in excess of amounts permitted by law. No officer of the Corporation may receive any salary or other compensation for services from any source other than the Corporation during his period of employment by the Corporation except as authorized by the Board.

§ 1601.38 Prohibition against using political test or qualification.

No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the Corporation.

§ 1601.39 Outside interests of officers and employees.

The board may from time to time adopt rules and regulations governing the conduct of officers or employees with respect to matters in which they have any interest adverse to the interests of the Corporation. Such rules and regulations may forbid an officer or employee from participating in corporate action with respect to any contract, grant, transaction, or other matter in which, to the knowledge of such officer or employee, he or any member of his immediate family has any interest, financial or otherwise, unless (a) such officer or employee makes full disclosure of the circumstances to the Board or its delegate and the Board or its delegate determines that the interest is not so substantial as to affect the integrity of the services of such officer or employee, or (b) on the basis of standards to be established in such rules and regulations, the interest is too remote or too inconsequential to affect the integrity of such services. Such rules and regulations may also prohibit or establish appropriate limits upon (1) the ownership by an officer or employee, or member of his immediate family, of securities of any firm, corporation, or other entity doing a substantial volume of business with the Corporation and (2) the present or future association by an officer or employee (or former officer or former employee), or member of his immediate family, with any firm, corporation, or other entity doing a substantial volume of business with the Corporation.

Subpart G—Deposits and Accounts

§ 1601.40 Deposits and accounts.

All funds of the Corporation, not otherwise employed, shall be deposited from time to time in general or special accounts in such banks, trust companies, or other depositories as the Board may select, or as may be selected by any officer, agent, or employee of the Corporation to whom such power has been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, checks, drafts, and other orders for the payment of money that are payable to the order of the Corporation may be endorsed, assigned, and delivered by any officer of the Corporation designated by the Board.

Subpart H—Seal

§ 1601.41 Seal.

The Corporation shall have a corporate seal, which shall include the words "Established by Act of Congress July 25, 1974" and shall be in the form adopted by the Board.

Subpart I—Fiscal Year

§ 1601.42 Fiscal year.

The fiscal year of the Corporation shall begin on October 1.

Subpart J—Indemnification

§ 1601.43 Indemnification.

(a) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Corporation), by reason of the fact that he is or was a Director, officer, employee, or agent of the Corporation, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding if he acted in good faith and in a manner he reasonably believed to be in the best interest of the Corporation and, with respect to any criminal action, suit, or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not ast in good faith and in a manner which he reasonably believed to be in the best interests of the Corporation and, with respect to any criminal action, or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Corporation to procure a judgment in its favor, by reason of the fact that he is or was a Director, officer, employee, or agent of the Corporation, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in the best interests of the Corporation, except that no indemnification shall be made in respect to any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Corporation unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extent that a Director, officer, employee, or agent of the Corporation has been successful on the merits or otherwise in the defense of any action, suit, or proceeding referred to in paragraph (a) and (b) of this section or in the defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(d) Any indemnification under paragraph (a) and (b), of this section (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraph (a) and (b) of this section. Such determination shall be made (1) by the Board by a majority vote of a quorum consisting of Directors eligible to vote who were not parties to such action, suit, or proceeding, or (2) if such quorum is not obtainable or, even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.

(e) Expenses incurred in defending a civil or criminal action, suit, or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit, or proceeding as authorized by the Board in any case upon receipt of an undertaking by or on behalf of the Director, officer, employee, or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this Section.

(f) The indemnification provided by this Section shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled under any By-law, agreement, or vote of disinterested Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Subpart K—Amendments

§ 1601.44 Amendments.

These By-Laws may be amended by a vote of a majority of the Directors in office: *Provided*, That (a) such amendment is not inconsistent with the Act, (b) the notice of the meeting at which such action is taken shall have stated the substance of the proposed amendments, (c) the notice of such meeting shall have been mailed, telegraphed, or delivered to each Director at least five days before the date of the meeting, and (d) when feasible, the proposed amendment shall have been published in the FEDERAL REGISTER at least thirty days before the meeting and interested parties shall have been afforded a reasonable opportunity to comment thereon.

Effective date: December 8, 1975.

DAVID S. TATEL,
Counsel to the Corporation.

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TITLE 45—PUBLIC WELFARE

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1602—PROCEDURES FOR DISCLOSURE OR PRODUCTION OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act, 42 U.S.C. 2996-2996*l* ("the Act"). Section 1005(g) of the Act, 42 U.S.C. § 2996d(g), provides that the Corporation shall be subject to the provisions of the Freedom of Information Act, 5 U.S.C. § 552.

On page 42374 of the FEDERAL REGISTER of September 12, 1975, there were published proposed regulations for Procedures for Disclosure or Production of Information by the Corporation under the Freedom of Information Act. Interested persons were given until October 11, 1975 in which to submit comments, suggestions, or objections regarding the proposed regulations. All comments submitted with respect to the proposed regulations were given due consideration. The proposed regulations were adopted by the Board of Directors of the Corporation with the following minor changes:

1. The third and fourth sentences of § 1602.3, pertaining to policy, were deleted. The third sentence was eliminated as a redundancy. The fourth sentence was eliminated out of concern that it might create a mechanistic test which would deprive the Corporation of the best legal advice. It is the intention of the Board of Directors that exemption decisions be made in a two step process. The first step involves the determination of whether an exemption applies as a matter of law. The second step, which obtains only if an exemption is available under the law, involves the discretionary determination of whether and in what form the requested information should be released. This discretion is to be guided by the policy set forth in the remainder of § 1602.3 and in § 1602.9. Among the considerations which prompted the deletion of the fourth sentence was the fear that a mandatory restrictive interpretation of several of the exemptions might result in undesirable invasions of personal privacy.

2. The Corporation's address and telephone number were inserted in the first sentence of § 1602.5(a). The addresses and telephone numbers of regional records offices were inserted in a new § 1602.6(b).

3. The third sentence in § 1602.8(b)(5) was revised to read, "Fees may be required to be paid in advance in accordance with Section 1602.13." This change clarifies an inconsistency in the earlier draft.

4. A new § 1602.8(e) was inserted in order to give expression to the policy that the Corporation will provide a substantive response to requests for information in a diligent fashion, once a determination is made that a request will be granted.

5. Section 1602.10, pertaining to officials authorized to grant or deny requests for records, was revised to provide that a denial may be made only by the General Counsel or his delegate. This revision is intended to assure that a decision to withhold information is made at a high level in the Corporation by a legal expert who does not otherwise have line responsibility for the records which are likely to be requested.

6. Several additional minor changes of a perfecting nature, not having substantive implications, were made throughout the text.

Accordingly, with these changes and additions, the proposed regulations are adopted as set forth below, to become effective December 15, 1975, pursuant to section 1063(e) of the Act.

Subpart A—General

Sec.

Subpart B—Maintenance of Records

Subpart C—Procedure

AUTHORITY: Sec. 1005(g), 68 Stat. 381 (42 U.S.C. § 2996d(g)).

Subpart A—General

§ 1602.1 Purpose.

These regulations provide information concerning the procedures by which records of the Legal Services Corporation may be made available pursuant to section 1005(g) of the Legal Services Corporation Act, 42 U.S.C. 2996d(g), and the Freedom of Information Act, as amended in 1974, 5 U.S.C. 552.

§ 1602.2 Definitions.

As used in this Part—

(a) "Act" means the Legal Services Corporation Act, 42 U.S.C. 2996-2996*l*;

(b) "Corporation" means the Legal Services Corporation;

(c) "FOIA" means the Freedom of Information Act, as amended in 1974, 5 U.S.C. 552;

(d) "President" means the President of the Legal Services Corporation;

(e) "Records" means books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved or appropriate for preservation by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation or because of the informational value of data in them. The term does not include books, magazines, or other materials acquired solely for library purposes and available through any officially designated library of the Corporation.

§ 1602.3 Policy.

It is and will be the policy of the Corporation to maximize the extent to which records concerning its operations, activities, and business will be available to the public. Records will be withheld from the public only in accordance with the FOIA and these implementing regulations. Records which may be exempted from disclosure will generally be made available as a matter of discretion when disclosure is not prohibited by law and it does not appear adverse to legitimate public or personal interests.

The Corporation will attempt to provide the fullest possible assistance to requesting parties, including information as to how and where the request may be submmitted. The Corporation will provide the most timely possible action on requests for records.

Subpart B—Maintenance of Records

§ 1602.4 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of § 1602.5(b) (1)–(3) which has been issued, adopted, or promulgated by the Corporation, and other information published or made publicly available. The index will be maintained and made available for public inspection and copying at the Corporation's headquarters in Washington, D.C., and at each regional office. The Corporation will publish the index or a supplement thereto at least once each quarter and will distribute copies on request, at a cost not to exceed the direct cost of duplication.

§ 1602.5 Central records room.

(a) The Corporation will maintain a central records room at its headquarters at 733 15th Street, NW., Suite 700, Washington, D.C. 20005, (202) 376–5100. This room will be supervised by a Records Officer, and will be open during regular business hours of the Corporation for the convenience of members of the public in inspecting and copying records made available pursuant to this Part. Certain records, as described in paragraph (b) of this section, will be regularly maintained in or in close proximity to the records room, to facilitate access thereto by any member of the public.

(b) Subject to the limitation stated in paragraph (c) of this subsection, there will be available in the central records room the following:

(1) All final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation;

(3) Administrative staff manuals and instructions to the staff which affect the public;

(4) To the extent feasible, guidelines, forms, published regulations, notices, program descriptions, and other records considered to be of general interest to members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities;

(5) The current index required by § 1602.4

(c) Certain types of staff manuals or instructions, such as instructions to auditors or inspection staff, or instructions covering certain phases of contract negotiation, which deal with the performance of functions that would automatically be rendered ineffective by general awareness of the Corporation's techniques or procedures, may be exempt from mandatory disclosure although they affect or may affect the public. These records will not be maintained in the central records room.

(d) Certain records maintained in the records room or otherwise made available pursuant to this Part may be "edited" by the deletion of identifying details concerning individuals, to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it a full explanation of the deletion.

§ 1602.6 Regional records rooms.

(a) Each regional office shall have either a specially designated records room similar to the central records room described in § 1602.5 or, if that is not feasible, a designated area within the office, a principal function of which is to serve the public in accordance with this Part. The Corporation will endeavor to maintain and have readily available in its regional offices the records described in § 1602.5(b), and will designate a Records Officer in each regional office to receive and process requests submitted pursuant to this Part.

(b) The regional records rooms are located at the following addresses:

Boston Regional Office, John F. Kennedy Federal Building, Boston, Massachusetts 02203 (617) 223–4093.

New York Regional Office, 26 Federal Plaza, 32nd Floor, New York, New York 10007 (212) 264–1940.

Philadelphia Regional Office, Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19104 (215) 597–6105.

Atlanta Regional Office, 730 Peachtree Street, N.E., Atlanta, Georgia 30308 (404) 526-3049.
Chicago Regional Office, 300 South Wacker Drive, 26th Floor, Chicago, Illinois 60606 (312) 353-1155.
Dallas Regional Office, 1100 Commerce Street, Dallas, Texas 75202 (214) 749-1357.
Kansas City Regional Office, 911 Walnut Street, Kansas City, Missouri 64106 (316) 374-5118.
Denver Regional Office, 1961 Stout Street, Denver, Colorado 80202 (303) 837-4026.
San Francisco Regional Office, 690 Market Street, Room 700, San Francisco, California 94104 (415) 556-8484.
Seattle Regional Office, Arcade Plaza Building, 1321 Second Avenue, Seattle, Washington 98101 (206) 443-0593.

Subpart C—Procedure

§ 1602.7 Use of records rooms.

(a) Any member of the public who wishes to inspect or copy records regularly maintained in the central or a regional records room may secure access to these records by presenting himself or herself at the records room during business hours. No advance notice or appointment is required, although persons wishing to make extended use of regional office facilities should take account of the possible limitations in these facilities.

(b) Each records room will also be available to any member of the public to inspect and copy records which are not regularly maintained in such room. To obtain such records a person should present his or her request identifying the records to the Records Officer. Because it will sometimes be impossible to produce those records or copies of them on short notice, a person who wishes to use records room facilities to inspect or copy such records is advised to arrange a time in advance, by telephone or letter request made to the Records Officer to the facility which he or she desires to use. Persons submitting requests by telephone will be advised by the Records Officer or another designated employee whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Persons submitting written requests should identify the records sought in the manner provided in § 1602.8(b) and should indicate whether they wish to use the records room facilities on a specific date. The Records Officer will endeavor to advise the requesting party as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

§ 1602.8 Availability of records on request.

(a) In addition to the records made available through the records rooms, the Corporation will make such records available to any person in accordance with paragraphs (b) and (c) of this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9 of the regulations.

(b) Requests. (1) A request will be acceptable if it identifies a record with sufficient particularity to enable officials of the Corporation to locate the record with a reasonable amount of effort. Requests seeking records within a reasonable specific category will be deemed to conform to the statutory requirements of a request which "reasonably describes" such records if professional employees of the Corporation who are familiar with the subject area of the request would be able, with a reasonable amount of effort, to determine which particular records are encompassed within the scope of the request, and to search for, locate, and collect the records without unduly burdening or materially interfering with operations because of the staff time consumed or the resulting disruption of files. If it is determined that a request does not reasonably describe the records sought as specified in this paragraph, the response denying the request on that ground shall specify the reasons why the request failed to meet the requirements of this paragraph and shall extend to the requesting party an opportunity to confer with Corporation personnel in order to attempt to reformulate the request in a manner which will meet the needs of the requesting party and the requirements of this paragraph.

(2) To facilitate the location of records by the Corporation, a requesting party should try to provide the following kinds of information. If known: (i) the specific event or action to which the record refers; (ii) the unit or program of the

Corporation which may be responsible for or may have produced the record; (iii) the date of the record or the date or period to which it refers or relates; (iv) the type of record, such as an application, a grant, a contract, or a report; (v) personnel of the Corporation who may have prepared or have knowledge of the record; (vi) citations to newspapers or publications which have referred to the record.

(3) The Corporation is not required to create a record to satisfy a request for information. When the information requested exists in the form of several records at several locations, the requesting party should be referred to those sources only if gathering the information would unduly burden or materially interfere with operations of the Corporation.

(4) All requests for records under this section shall be made in writing, with the envelope and the letter clearly marked: "Freedom of Information Request." All such requests shall be addressed to the Records Officer at the headquarters of the Corporation or at any regional records office. Any request not marked and addressed as specified in this subparagraph will be so marked by Corporation personnel as soon as it is properly identified, and forwarded immediately to the Records Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (c) of this section until forwarding to the appropriate office has been effected, or until such forwarding would have been effected with the exercise of due diligency by Corporation personnel. On receipt of an improperly addressed request, the Records Officer shall notify the requesting party of the date on which the time period commenced to run.

(5) A person desiring to secure copies of records by mail should write to the Records Officer at the headquarters in Washington, D.C. The request should identify the records of which copies are sought and should indicate the number of copies desired. Fees may be required to be paid in advance in accordance with § 1602.13. The requesting party will be advised of the estimated fee, if any, as promptly as possible. If a waiver of fees is requested, the grounds for such request should be included in the letter.

(c) The Records Officer, upon request for any records made in accordance with this Part, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requesting party within ten days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such request, except for unusual circumstances in which case the time limit may be extended for not more than ten working days by written notice to the requesting party setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. In determining whether to issue a notice of extension of time for a response to a request beyond the ten-day period. Corporation officials shall consult with the Office of the General Counsel. As used herein, "unusual circumstances" are limited to the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request:

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Corporation having substantial subject matter interest therein.

(d) If no determination has been dispatched at the end of the ten-day period, or the last extension thereof, the requesting party may deem his request denied, and exercise a right of appeal in accordance with § 1602.12. When no determination can be dispatched within the applicable time limit, the Records Officer shall nevertheless continue to process the request. On expiration of the time limit, he shall inform the requesting party of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the President in accordance with § 1602.12; and he may ask the requesting party to forego appeal until a determination is made.

(e) After it has been determined that a request will be granted, the Corporation will act with diligence in providing a substantive response.

§ 1602.9 Invoking exemptions to withhold a requested record.

(a) A requested record of the Corporation may be withheld from public disclosure only if one or more of the following categories exempted by the FOIA apply:

(1) Matter which is (i) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (ii) is in fact properly classified pursuant to such Executive Order;

(2) Matter which is related solely to the internal personnel rules and practices of the Corporation;

(3) Matter which is specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Corporation;

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right of a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Matter which is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) In the event that one or more of the above exemptions applies, any reasonably segregable portion of a record shall be provided to the requesting party after deletion of the portions which are exempt. In appropriate circumstances, subject to the discretion of Corporation officials, it may be possible to provide a requesting party with: (1) a summary of information in the exempt portion of a record or (2) an oral description of the exempt portion of a record. In determining whether any of the foregoing techniques should be employed in accordance with this paragraph or whether an exemption should be waived in accordance with paragraph (c) of this section, Corporation officials shall consult with the Office of General Council. No requesting party shall have a right to insist that any or all of the foregoing techniques should be employed in order to satisfy a request.

(c) Records which may be exempted from disclosure pursuant to paragraph (a) of this section may be made available as a matter of discretion when disclosure is not prohibited by law, if it does not appear adverse to legitimate public or personal interests.

§ 1602.10 Officials authorized to grant or deny requests for records.

The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this Part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this Part by and within the Corporation. Officials of the Corporation shall consult with the General Counsel before denying requests under this Part, or before granting requests for waiver or modified application of an exemption or for categories of documents which the General Counsel determines may present special or unusual problems. Only the General Counsel or his delegate, is authorized to deny requests under this Part. The General Counsel, and subject to consultation with him when required, the Records Officer, each Regional Director, and each Regional Records Officer, are authorized to grant requests under this Part.

§ 1602.11 Denials.

(a) A denial of a written request for a record issued by an official of the Corporation shall be in writing and shall include the following:

(1) A reference to the applicable exemption or exemptions in § 1602.9(a) upon which the denial is based;

(2) An explanation of how the exemption applies to the requested records;
(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;
(4) The name and title of the person or persons responsible for denying the requests; and
(5) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, including the address of the official to whom appeals should be submitted.
(b) Whenever the Corporation makes a record available subject to the deletion of a portion of the record, such action shall be deemed a denial of a record for purposes of paragraph (a) of this section.
(c) All denials shall be treated as opinions and shall be maintained and indexed accordingly, subject only to the necessity of deleting identifying details the release of which would constitute a clearly unwarranted invasion of personal privacy for a member of the public.

§ 1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within ninety days by writing to the President of the Corporation at the headquarters in Washington, D.C. The envelope and letter should be clearly marked: "Freedom of Information Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.
(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President, or the President's specifically designated representative, for this purpose.
(c) The decision of the President on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requesting party, the matters described in § 1602.11(n)(1)–(4), and the provisions for judicial review of such decision under Section 552(a)(4) of the FOIA. The decision shall be dispatched to the requesting party within twenty working days after receipt of the appeal, unless an additional period is justified pursuant to Section 1602.8(c) and such period taken together with any earlier extension does not exceed ten days. The President's decision shall constitute the final action of the Corporation. All such decision shall be treated as final opinions under § 1602.5(b).

§ 1602.13 Fees.

(a) Information provided routinely in the normal course of doing business will be provided at no charge.
(b) The Records Officer may waive or reduce fees where special circumstances, including but not limited to the benefit of the general public, warrant. A Records Officer shall waive fees where the requesting party is indigent unless the fees would exceed $25 and may waive or reduce fees for the request of an indigent where the fees would exceed $25. These provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.
(c) There shall be no fee charged for services rendered by the Corporation pursuant to this Part, unless the charges, as calculated in paragraph (e) of this Section, exceed $6.50. Where the charges are calculated to exceed $6.50, the fee shall be the difference between $6.50 and the calculated charges.
(d) Ordinarily, no fee shall be levied where the records requested are not provided or made available. However, if the time expended in processing the request is substantial, and if the requesting party has been notified of the estimated cost pursuant to paragraph (f) of this section, and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.
(e) The schedule of charges for services regarding the production or disclosure of the Corporation's records is as follows:
(1) Search for records: $1.50 per one-quarter hour.
(2) Computer Time:
Central Processing Unit. $10.80 per minute.
Card Reader, .60 per 1000 cards.
Printer, .60 per 333 cards.
Tape or Disk, .60 per 100 lines: .75 per 1000 number of reads or lines.
Minimum charge. $1.50.

(3) Reproduction, duplication, or copying of records: $0.10 per page.
(4) Reproduction, duplication, or copying of microfilm:
Microfilm, $0.75 per frame.
Microfiche, $1.45 per jacket.
(5) Certification of true copies: $1.00 each.

(f) Where it is anticipated that the fee chargeable under this Part will amount to more than $25, and the requesting party has not indicated in advance his willingness to pay so high a fee, the requesting party shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In such cases, a request will not be deemed to have been received until the requesting party is notified of the anticipated cost and agrees to bear it. Such a notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requesting party the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet his needs at a reduced cost.

(g) Where the anticipated fee chargeable under this Part exceeds $25, an advance deposit of 25 percent of the anticipated fee may be required. Where a requesting party has previously failed to pay a required fee, an advance deposit of the full amount of the anticipated fee together with the fee then due and payable may be required.

(h) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requesting party, or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

Effective date: December 15, 1975.

DAVID S. TATEL,
Counsel to the Corporation.

[FR Doc. 75-30638 Filed 11-12-75;8:45 am]

[Following are excerpts from the Federal Register]

FINAL REGULATION

Title 45—Public Welfare

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1603—STATE ADVISORY COUNCILS

Adoption of Regulations

Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"). Section 1004(f) of the Act, 42 U.S.C. 2996c(f), provides that within six months after the first meeting of the Board of Directors of the Corporation, the Board shall request the Governor of each state to appoint a state advisory council for legal services programs.

On page 53272 of the Federal Register of November 17, 1975, the Corporation published proposed regulations for the establishment of state advisory councils. Interested persons were given until December 18, 1975 to submit comments, suggestions or objections to those proposed regulations. All comments received were given consideration by the Corporation. The following regulations were duly adopted by the Corporation. They represent changes from the proposed regulations in the following ways:

1. A definition of the term "apparent violation" was added to § 1603.2.
2. Section 1603.4 was redrafted to clarify the recommended appointment procedure for naming council members. A sentence setting forth the power of the Board of Directors to appoint a council if the Governor does not was struck as redundant of the Act. A new provision was added to treat procedures for dealing with vacancies on the council after the original members' terms expire.
3. Section 1603.5(b) was substantially shortened to clarify the duties of state advisory councils when they receive a complaint about legal services programs.
4. Former § 1603.5(c) was struck as redundant because of the redrafted § 1603.5(b).

5. Former § 1603.5(d) is now § 1603.5(c). The present § 1603.5(c) now obligates the Corporation to inform a state advisory council of any action which the Corporation takes on a complaint which comes to the Corporation directly.

6. Section 1603.7(c) was revised by striking the limitation of four meetings annually for a council.

7. Section 1603.7(e) was struck as redundant of Section 1004(g) of the Act, which provides that meetings of state advisory councils shall be open to the public.

8. Section 1603.8(a) was entirely rewritten to state that the Corporation will provide specified amounts of money for the conduct of council business and reasonable travel expenses for members.

9. The second sentence of § 1603.8(b) was struck as redundant.

10. Section 1603.8(c) was redrafted to place the burden of posting notices in local offices on the recipient, rather than on the person in charge of the local office.

11. Section 1603.9 was amended to give state advisory councils more latitude regarding the subject matter of their annual reports.

12. Section 1603.10 was amended to state that a council must forward notifications of apparent violations to the local and administrative offices of a recipient, where a recipient operates in more than one state.

13. Several additional minor changes of a perfecting or stylistic nature, not having substantive implications, were made throughout the text.

Accordingly, the state advisory council regulations are adopted as set forth below, to become effective 30 days hereafter, pursuant to Section 1003(e) of the Act.

PART 1603—STATE ADVISORY COUNCILS

Sec.

AUTHORITY: Sec. 1004(f), 88 Stat. 379–380 (42 U.S.C. 2996c(f)).

§ 1603.1 Purpose.

The purpose of this part is to implement section 1004(f) of the Legal Services Corporation Act of 1974, 43 U.S.C. 2996c(f), which provides authority for the appointment of state advisory councils.

§ 1603.2 Definitions.

As used in this part the term—

(a) "Act" means the Legal Services Corporation Act of 1974, Pub. L. 93–355, 88 Stat. 378, 42 U.S.C. 2996–2996*l*;

(b) "apparent violation" means a complaint or other written communication alleging facts which, if established, constitute a violation of the Act, or any applicable rules, regulations or guidelines promulgated pursuant to the Act:

(c) "Board" means the Board of Directors of the Legal Services Corporation:

(d) "Corporation" means the Legal Services Corporation established under the Act:

(e) "council" means a state advisory council established pursuant to Section 1004(f) of the Act:

(f) "eligible client" means any person financially unable to afford legal assistance:

(g) "Governor" means the chief executive officer of a State:

(h) "recipient" means any grantee contractee, or recipient of financial assistance described in clause (A) of Section 1006(a)(1) of the Act:

(i) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

§ 1603.3 Composition and term of office of council membership.

A council shall be composed of nine members. A majority of the members of a council shall be attorneys admitted to practice in the State. It is recommended that the remainder of the council to the maximum extent possible, be broadly representative of persons concerned with the effective functioning of legal services programs. Membership of a council shall be subject to annual reappointment but it is recommended that no member of a council be appointed to serve for more than three consecutive years.

§ 1603.4 Procedure for appointment of council.

At the formal request of the Board, to be made before January 14, 1976, the Governor may appoint a council for the State. Those council members who are attorneys admitted to practice in the State shall be appointed by the Governor after recommendations have been received from the State bar association. In making such appointments, it is recommended the the Governor consult with other bar associations in the State, representatives of groups concerned with the interests of recipients, eligible clients and other interested groups. It is recommended that the Governor appoint attorneys who have interest in and knowledge of the delivery of quality legal services to the poor, and that the remaining members of the council, who are not attorneys, be selected after the Governor has consulted with representatives of groups, concerned with the interests of eligible clients. It is recommended that the Governor seek recommendations from recipients in the State before appointing any members to the council. Sixty days prior to the expiration of a member's term, the Governor shall notify those groups mentioned in this Section so that their recommendations may be solicited for purposes of appointment of a new member or reappointment of an incumbent member of the council.

§ 1603.5 Council purpose and duties.

(a) The purpose of the council shall be to notify the Corporation of any apparent violation as defined in § 1603.3(b) of this chapter.

(b) in fulfilling the purpose set forth in paragraph (a) of this Section, the council shall forward any apparent violation to the Corporation. The Chairperson of the council shall inform the complainant, the Corporation and the recipient of any action taken on the complaint. Notification of an apparent violation forwarded by the council to the Corporation shall not necessarily constitute a position of the council concerning the apparent violation.

(c) These procedures are not exclusive. Complaints may be submitted to the Corporation, and complaints submitted to a council may be submitted to the Corporation without regard to council action. The Corporation shall inform the complainant, the council and the recipient of all action taken on the complaint.

§ 1603.6 Duties of Corporation upon receipt of notification of violation.

(a) Upon receipt of a notification of an apparent violation, the matters contained therein shall be investigated and resolved by the Corporation in accordance with the Act and rules and regulations issued thereunder.

(b) Upon receipt from a council of a notification of an apparent violation, the Corporation shall allow any recipient affected thereby a reasonable time (but in no case less than thirty days) to reply to any allegation contained in the notification.

(c) The Corporation shall inform the Chairperson of a council of the action, if any, the Corporation has taken with regard to any notification received from such council.

§ 1603.7 Organization and procedural functioning of council.

(a) Within 30 days after the appointment of the council, and annually thereafter, the Governor shall send to the Secretary of the Corporation in Washington, D.C., a list of the members of the council for the State that shall include the name, address and telephone number of each council member, and indicate which members are attorneys.

(b) It is recommended that the Governor appoint from among those named to the council a Chairperson of the council.

(c) It is recommended that each council establish at its first meeting such fair and reasonable procedures for its operation as it may deem necessary to carry out the purpose set forth in § 1603.5(a) of this Chapter. The procedures for operation of the council shall include provisions for notifying the appropriate

regional director of the Corporation of the time and place of any meeting of the council.

(d) It is recommended that a council meet at the call of the Chairperson thereof, or at the request to the Chairperson of at least four members thereof, at such times as may be necessary to carry out its duties, but at least annually.

§ 1603.8 Corporation support of council.

(a) The Corporation shall inform the Chairperson of each council of the funds available to the council from the Corporation for actual and reasonable expenses incurred by members of the council to pursue council business.

(b) It shall be the duty of the President of the Corporation to keep the Chairperson of each council informed of the work of the Corporation.

(c) The Secretary of the Corporation shall mail annually to each recipient the name and address of the Chairperson of the appropriate council and a form of notice indicating where complaints may be sent. The recipient shall post said name and address of the Chairperson and said notice in plain public view in each office of the recipient.

§ 1603.9 Annual report of council.

On or before March 31, 1977, and on or before March 31 of each succeeding year, a council shall submit to the Corporation a report of the activities of the council during the previous calender year. The report may contain comments or suggestions regarding how best to provide high quality legal assistance to the poor, and regarding such other matters having to do with provision of legal services to eligible clients in the State as the council may deem advisable.

§ 1603.10 Multi-state recipients.

Where a recipient has offices in more than one State, the council of the State in which the apparent violation occurred has the responsibility for notifying the Corporation and the recipient at its local and administrative offices.

Effective date: January 23, 1976.

DAVID S. TATEL,
Acting General Counsel.

[FR Doc. 75-34799 Filed 12-22-75; 8:45 am]

PART 1604—OUTSIDE PRACTICE OF LAW

General Policy

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"), Section 1007(a)(4), 42 U.S.C. 2996f(a)(4), provides that the Corporation shall issue guidelines concerning the outside practice of law by attorneys employed full time in legal assistance activities.

On March 12, 1976 (41 FR 10629) a proposed regulation on outside practice of law was published. Interested persons were given until April 11, 1976 to submit comments on the proposed regulation. All comments submitted with respect to the outside practice of law were given full consideration and the following issues were taken into account in redrafting the regulation:

Purpose.—Section 1007(a)(4) of the Act and its legsilative history show that Congress contemplated that outside practice by legal services lawyers would be regulated by the Corporation. Some outside practice is both unavoidable and desirable, if a lawyer is to satisfy the legitimate demands made upon him or her as an officer of the Court and as a responsible participant in community life. At the same time, it is essential to insure that a legal services lawyer does not compete with lawyers in private practice, is not burdened by excessive court appointments, and does not undertake other professional commitments that might prevent the rendering of the highest quality full time legal assistance to eligible clients.

Definition.—In response to comments received, a technical change was made in the definition of "outside practice" in Section 1604.2, to make clear that work done for a client, not eligible for services under the Act, who is a client of the attorney's employer, is not "outside practice". The change was necessary because some recipients receive funds from other sources for the purpose of serving a particular category of clients, e.g., the aged, who may not be eligible under the Act. In addition, the change permits the Corporation to make grants

to, or contracts with, private law firms. Teaching, consulting, evaluating, and other similar activities are also excluded from the coverage of this Part.

Safeguards.—Section 1604.3 prohibits outside practice if the director of a recipient has determined that such practice will interfere with the attorney's full time responsibilities. There are only two situations in which a recipient may permit an attorney to engage in compensated outside practice of law. If Section 1604.3 is satisfied, a newly employed attorney may conclude cases from a previous practice if he or she does so expeditiously: and an attorney may accept appointment under a court rule or practice of general applicability. Uncompensated outside practice may be authorized under Section 1604.5 if the requirement of Section 1604.3 is met, and the practice is undertaken on behalf of a close friend or family member, or for a civic, or charitable group, or pursuant to court appointment under a generally applicable rule or practice.

Accordingly, the Board of the Legal Services Corporation adopts the final regulation, as set forth below, to become effective on June 3, 1976, pursuant to section 1003(e) of the Act.

Sec.
1604.1 Purpose.
1604.2 Definitions.
1604.3 General policy.
1604.4 Compensated outside practice.
1604.5 Uncompensated outside practice.

AUTHORITY: Sec. 1007(a)(6), 1000(e) (42 U.S.C. 2006f(a)(4), 2006g(e)).

§ 1604.1 Purpose.

This Part is designed to permit an attorney to comply with the reasonable demands made upon all members of the Bar and officers of the Court, so long as those demands do not hinder fulfillment of the attorney's overriding responsibility to serve those eligible for assistance under the Act.

§ 1604.2 Definitions.

(a) "Attorney", as used in this Part, means a person who is employed full time in legal assistance activities supported in major part by the Corporation, and who is authorized to practice law in the jurisdiction where assistance is rendered.

(b) "Outside practice of law" means the provision of legal assistance to a client who is not entitled to receive legal assistance from the employer of the attorney rendering assistance, but does not include, among other activities, teaching, consulting, or performing evaluation.

§ 1604.3 General policy.

No attorney shall engage in any outside practice of law if the director of the recipient has determined that such practice is inconsistent with the attorney's full time responsibilities.

§ 1604.4 Compensated outside practice.

A recipient may permit an attorney to engage in the outside practice of law for compensation if Section 1604.3 is satisfied, and

(a) The attorney is newly employed and has a professional responsibility to close cases from a previous law practice, and does so as expeditiously as possible; or

(b) The attorney is acting pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction, and remits to the recipient all compensation received.

§ 1604.5 Uncompensated outside practice.

A recipient may permit an attorney to engage in uncompensated outside practice of law if Section 1604.3 is satisfied, and the attorney is acting

(a) Pursuant to an appointment made under a court rule or practice of equal applicability to all attorneys in the jurisdiction; or on behalf of

(b) A close friend or family member; or

(c) A religious, community, or charitable group.

THOMAS EHRLICH,
President,
Legal Services Corporation.

PART 1605—APPEALS ON BEHALF OF CLIENTS

Efficient and Effective Use of Corporation Funds

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"), Section 1007(a)(7) of the Act requires recipients to establish guidelines, consistent with regulations promulgated by the Corporation, for review of appeals taken on behalf of clients.

A proposed regulation was issued on March 12, 1976 (41 FR 10629), and interested persons were given until April 11, 1976 to submit comments on the proposed regulation. All comments received by the Corporation with respect to appeals were given full consideration and the following issues were taken into account in redrafting the regulation:

Coverage of Part 1605.—Section 1007(a)(7) of the Act requires all recipients to establish guidelines consistent with Corporation Regulations, for review of appeals. Since the purpose is to insure efficient utilization of Corporation resources, this Part does not apply to any part of a recipient's practice that is undertaken with other than Corporation funds. (Comments received noted that the published draft did not address the problem of mixed practices.) The Part requires a recipient to establish a policy and procedure for review of every appeal, as defined by local usage, taken to an appellate court from the decision of any court or tribunal.

Standards for Review.—Aside from that clarifying change, the only other changes are the addition of some relevant statutory language omitted from the published draft, and a fuller, but substantively unchanged, statement of the standards for review. A recipient is required to adopt a review policy that discourages frivolous appeals and gives appropriate weight to priorities in resource allocation required by the Act, the Corporation, or its own governing body, but does not interfere with an attorney's professional responsibilities to a client.

Accordingly, the Board of Directors of the Legal Services Corporation adopts the final regulation, as set forth below, to become effective on June 3, 1976, pursuant to section 1008(e) of the Act.

Sec.

AUTHORITY: Sec. 1007(a)(7), 1008(e), 42 U.S.C. 2996f(a)(7), 2996g(e).

§ 1605.1 Purpose.

This Part is intended to promote efficient and effective use of Corporation funds. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1605.2 Definition.

"Appeal" means any appelate proceeding in a civil action as defined by law or usage in the jurisdiction in which the action is filed.

§ 1605.3 Review of Appeals.

The governing body of a recipient shall adopt a policy and procedure for review of every appeal to an appellate court taken from a decision of any court or tribunal. The policy adopted shall

(a) Discourage frivolous appeals, and

(b) Give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act, or Regulations of the Corporation; but

(c) Shall not interfere with the professional responsibilities of an attorney to a client.

THOMAS EHRLICH,
President,
Legal Services Corporation.

FR Doc. 76-12953 Filed 5-4-76; 8:45 am]

TEMPORARY FINAL REGULATION

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1606—APPLICATIONS FOR REFUNDING

Adoption of Temporary Regulations

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1011 of the Act, 42 U.S.C. 2996j, requires that the Corporation prescribe procedures to insure that, among other things, applications for refunding are not denied unless the grantee, contractor, or person or entity receiving financial assistance has been afforded reasonable notice and an opportunity for a timely, full and fair hearing.

On page 10630-10632 of the Federal Register of March 12, 1976, the Corporation published a proposed temporary regulation designed to satisfy the requirements of Section 1011 of the Act. (The procedures described in the proposed temporary regulation have been prescribed by the Corporation in matters now pending before it.) Interested persons were given until April 11, 1976 to submit comments on the proposed temporary regulation, and all comments received were given full consideration.

Some comments stated objections to 1606.2(d), which authorizes any person who has not been "directly involved" in the preliminary determination to deny refunding to be designated by the President of the Corporation as the "responsible Corporation official", or presiding officer, at a hearing. It was urged that the presiding officer charged with the duty of reviewing a preliminary determination to deny refunding should be an independent impartial outsider, or an official of the Corporation who had not been involved in any way at all with the preliminary determination. In our view the objection misconceives the nature and purpose of the review contemplated by Congress and Regulation 1606. Section 1011 of the Act does not describe an appellate review process. Rather it assures that the Corporation will not act arbitarily in the first instance. The purpose of § 1011 of the Act is to assure that a recipient has a full opportunity to present the reasons for continued funding before the Corporation makes a final decision not to continue support. The hearing required by Section 1011 and provided in this Regulation is not an adversarial one; but even if it were, its provision for a presiding officer would satisfy the Constitutional test of impartiality. See e.g., *Withrow* v. *Larkin*, 95 S.Ct. Rptr. 1456, 1464 (1975), in which the Court held that due process does not even prohibit combining investigative and adjudicative functions in the same person or body—a combination that does not occur in Part 1606. The Court said that a contention that there is an unconstitutional risk of bias in administrative adjudication must "overcome a presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weakness . . . [there is] such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." After considering the purpose of the hearing, required by Section 1011, and the organizational structure of the Corporation, we believe that the provisions of 1606.2(d) do not present a prohibited risk of prejudice. And, as a matter of policy, we believe that it would be irresponsible of the Corporation to delegate to an outsider a decision granting or denying refunding, which should be made in the context of the Corporation's overall efforts to implement the Act.

Some comments recommended that an addition be made to 1606, enumerating all possible grounds on which refunding might possibly be denied. We believe that a temporary regulation dealing with procedure is not the appropriate place in which to make such important and far reaching decisions. But Section 1606.4 does require that a recipient be given a written notice that includes "a detailed statement of supporting reasons and facts" for a preliminary determination to deny refunding: and Section 1606.15 applies similar requests to final determinations. Thus the Part does insure that a recipient will be informed of the grounds and bases for the Corporation's decisions, and of the issues that may be covered in a review hearing. If a recipient regards the statement of reasons in the notice as inadequate, the Prehearing Conference described in Section 1606.10 provides an opportunity for further identification and clarification of the issues.

Some comments criticized 1606.8, which states that an applicant shall be given an opportunity to "demonstrate that its application for refunding should not be denied, or that the preliminary determination was based on erroneous information, or was arbitrary or capricious." Comments said that this section imposed an unfair or unduly heavy burden on a recipient, and that the burden of proving that refunding should be denied should rest upon the Corporation. As we see it, the Section does not impose a formal burden of proof on either side, and the slight presumption in favor of a carefully considered preliminary determination that it creates is appropriate; but the standard for review set forth in 1606.8 provides ample opportunity for challenge by a recipient.

After giving full consideration to these and all other issues of law and policy raised by the comments received, the Corporation determined that the proposed temporary regulation meets the requirements of Section 1011 of the Act, and should be adopted, without change, as a temporary regulation. The Corporation further determined that all comments received on the proposed temporary regulation should be considered again before a permanent regulation is adopted.

At a meeting, held on April 24, 1976, the Board of Directors of the Corporation approved the following resolution, that adopts, without change, the proposed temporary regulation that was published on March 12, 1976:

Resolved, that Regulation 1606, which has been published for public comment, and embodies procedures prescribed by the Corporation and now in effect in matters arising under Section 1011 of the Act, shall be, and hereby is, adopted without change, as a temporary regulation;

Resolved further, that Regulation 1606 shall be published in the FEDERAL REGISTER.

THOMAS EHRLICH,
President,
Legal Services Corporation.

PART 1606—APPLICATIONS FOR REFUNDING

Subpart A—General

Subpart B—Application Process; Preliminary Determination; Interim Funding

Subpart C—Review Procedures; Final Determinations

AUTHORITY: Sec. 1006(a)(1)(A), 88 Stat. 381 (42 U.S.C. 1996e(a)(1)(A)); Sec. 1007 (a)(9), 88 Stat. 384 (42 U.S.C. 2996(a)(9)); Sec. 1011, 88 Stat. 386 (42 U.S.C. 2996j)).

Subpart A—General

§ 1606.1 Purpose.

These temporary regulations establish procedures for processing applications for refunding by the Legal Services Corporation of financial assistance provided by the Office of Legal Services of the Community Services Administration or any other applications for refunding of financial assistance under section 1006(a)(1)(A) of the Legal Services Corporation Act of 1974.

§ 1606.2 Definitions.

As used in this part.

(a) "Act" means the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378 (42 U.S.C. 2996–2996*l*);

(b) "Corporation" means the Legal Services Corporation established by section 1003 of the Act (42 U.S.C. 2996b);
(c) "Applicant" means any grantee or contractor receiving funds for the provision of legal assistance;
(1) From the Office of Legal Services of the Community Services Administration, or
(2) From the Corporation under section 1006(a)(1)(A) of the Act,
and any subgrantee, subcontractor or delegate agency thereof through which legal assistance is provided;
(d) "Responsible Corporation official" means the President of the Corporation or the President's designee, provided that such designee shall not be any person directly involved in the preliminary determination described in § 1606.4;
(e) "Application for refunding" means a request by any applicant seeking financial assistance beyond the term of its existing grant or contract;
(f) "Denial" of an application for refunding means:
(1) A determination by the Corporation not to provide financial assistance beyond the term of a current grant or contract to an applicant which has filed an application for refunding, or
(2) A determination to provide financial assistance beyond the term of a current grant or contract to an applicant which has filed an application for refunding when the determination:
(i) Reduce the applicant's annual rate of financial support under its existing grant or contract. *Provided*, That a "denial" shall not mean any reduction in funding which is necessitated by a reduction in the Corporation's appropriation which is uniformly applied to all applicants of the same class, or
(ii) Imposes new conditions or restrictions which would prevent the applicant from maintaining its current level of legal services to eligible clients.

Subpart B—Application Process; Preliminary Determination; Interim Funding

§ 1606.3 Applications for refunding.

An application for refunding must be filed with the Corporation at least 120 days before the expiration of the applicant's current grant or contract, unless the Corporation agrees to a later filing. Applications shall be filed in accordance with instructions which may from time to time be issued by the Corporation.

§ 1606.4 Preliminary determinations.

The Corporation shall act upon applications for refunding as soon as practicable. If the Corporation makes a preliminary determination that an application for refunding should be denied, the Corporation shall given written notice to the applicant. The notice shall include a detailed statement of supporting reasons and facts and shall be accompanied by copies of all relevant documents. The notice shall also advise the applicant of its right to request review of the preliminary determination pursuant to subpart C, and shall state that the applicant must request review in writing within 15 days of receiving such notice.

§ 1606.5 Interim funding.

When the Corporation issues a preliminary determination to deny an application for refunding pursuant to § 1606.4, or fails to act upon an application by the end of the term of the applicant's current grant or contract, the Corporation shall provide the applicant with interim funding necessary to maintain its current level of legal assistance activities under section 1606(a)(1)(A) of the Act until (a) the application for refunding has been approved and funds pursuant thereto received or (b) a final determination has been made under Subpart C of the Part.

§ 1606.6 Temporary funding.

Where an application for refunding has been finally denied in accordance with subpart C of this Part, the Corporation may authorize temporary funding in order to ensure that current matters for existing clients are closed or transferred in accordance with attorneys professional responsibilities.

Subpart C—Review Procedures; Final Determinations

§ 1606.7 Request for review.

An applicant receiving notice that a preliminary determination has been made to deny its application for refunding shall advise the Corporation in writing

within 15 days of receipt of such notice whether it requests a review pursuant to this subpart. If an applicant advises the Corporation that it will not request a review or if it fails to request a review within the prescribed period the Corporation's preliminary determination shall become final.

§ 1606.8 Review in general.

A review under this subpart shall afford a full and fair opportunity for the applicant to demonstrate that its application for refunding should not be denied or that the preliminary determination was based on erroneous information or was arbitrary or capricious. The review shall also provide an opportunity for determining whether temporary funding shall be provided in accordance with § 1606.6.

§ 1606.9 Review notice.

Within 10 days of receiving a request from an applicant for review the Corporation shall notify the applicant in writing of:

(a) The name of the responsible Corporation official;

(b) The date and place of the prehearing conference described in § 1606.10; and

(c) The time within which written submissions described in § 1606.11 shall be filed.

§ 1606.10 Pre-hearing conference.

The responsible Corporation official shall preside over a pre-hearing conference which shall take place within 10 days of the issuance of the notice required by § 1606.9 and shall be held, whenever possible, at a place convenient to the applicant and the community affected. The purpose of the pre-hearing conference shall be to identify the issues and to attempt to resolve such issues by informal means. At the pre-hearing conference a determination shall be made whether a hearing under § 1606.12 is necessary, and if so, the responsible Corporation official shall set the date, time and place of such hearing.

§ 1606.11 Written submissions.

Written submissions by the applicant shall be filed with the responsible Corporation official within 20 days of the issuance of the notice required by § 1606.9. Written submissions shall include a detailed response to the Corporation's preliminary determination and may, in addition, include documentary evidence, briefs, memoranda or any other materials. Upon their own initiative or at the request of the resposible Corporation official, employees or agents of the Corporation may submit additional written materials.

§ 1606.12 Hearing.

A hearing, if any, shall be held within 30 days of the issuance of the notice required by § 1606.9 and shall be held, whenever possible, at a place convenient to the applicant and the community affected. The hearing shall be conducted as follows:

(a) The presiding officer at the hearing shall be the responsible Corporation official. The presiding officer shall conduct a full and fair hearing, avoid delay, maintain order, and make a record sufficient for a full disclosure of the facts and issues. The hearing shall be open to the public unless the presiding officer for good cause shown shall otherwise determine.

(b) The applicant shall have the right to present oral testimony and written evidence pertaining to contested issues of fact and briefs and oral arguments on questions of law and policy. The applicant shall also have the right to examine Corporation employees or agents involved in the Corporation's preliminary determination provided that good cause is shown and that prior arrangement have been made. Upon their own initiative or at the request of the responsible Corporation official, employees or agents of the Corporation may present oral testimony and submit written materials as are appropriate and relevant.

(c) Technical rules of evidence shall not apply. The presiding officer shall make all procedural and evidentiary rulings necessary to ensure admission of relevant evidence and to subject testimony to such cross-examination as may be required for a full disclosure of the facts. Opportunity shall be given to refute all facts and arguments advanced by all parties. The presiding officer may exclude irrevelant, immaterial or unduly repetitious evidence.

(d) The hearing shall be recorded in a manner determined by the presiding officer and such record shall be made available upon payment of any prescribed costs. All documents and other evidence submitted shall be open to examination.

(c) The applicant may waive a hearing, in which case the recommended and final determination described in §§ 1606.14 and 1606.15 shall be based on all available evidence.

§ 1606.13 Additional authorized participants.

The responsible Corporation official may authorize the participation in review proceedings under this subpart by such persons or organizations as may be necessary for a proper determination of the issues involved.

(a) Any person or organization wishing to participate in review proceedings pursuant to this subpart may request permission to do so from the responsible Corporation official. This request shall state the participant's interest in the proceedings, the evidence or arguments the participant intends to contribute, and the necessity for the introduction of such evidence or arguments.

(b) The responsible Corporation official shall permit or deny such participation and shall give notice of his decision to the participant, the applicant, and the Corporation and, in the case of denial, shall include a brief statement of the reasons therefor.

(c) Authorized participants under this section may be limited to participation in those issues or activities that the responsible Corporation official believes will meet the needs of the review proceedings, and may be limited to the filing of written materials.

§ 1606.14 Recommended final determinations.

If the responsible Corporation official is not the President of the Corporation, the official shall issue a recommended final determination within 10 days of the conclusion of review proceedings described in §§ 1606.8 through 1606.12. The recommended final determination shall conform with the requirements for a final determination described in § 1606.15(b). Within 10 days of receiving a copy of the recommended final determination, the applicant and others authorized to participate pursuant to § 1606.13 may submit written comments to the President. Within 20 days of issuance of the recommended final determination, the President shall issue a final determination as described in § 1606.15(b).

§ 1606.15 Final determination.

(a) If the responsible Corporation official is the President of the Corporation the President shall issue a final written determination within 20 days of the conclusion of review proceedings described in §§ 1606.8 through 1606.12.

(b) The final determination shall either:

(1) Grant the application for refunding, subject to such modifications, terms or conditions as the President shall determine to be necessary, or

(2) Deny the application for refunding indicating:

(i) Reasons for such denial, including responses to the specific arguments made in the course of review proceedings described in this subpart, and

(ii) Whether, in what amount, and under what conditions temporary funding shall be made available pursuant to § 1606.6.

§ 1606.16 Right to counsel.

In review proceedings under this subpart the applicant and the Corporation shall have the right to be represented by counsel or other authorized representatives. The applicant is authorized to designate a staff attorney to represent it in such review proceedings or to retain outside counsel who may be compensated by the applicant at the reasonable and customary rate for an attorney practicing in the locality of the counsel so retained. The applicant is authorized to pay for normal and customary travel and per diem expenses for counsel and necessary witnesses.

§ 1606.17 Modifications.

The responsible Corporation official may alter, eliminate or modify any of the provisions of this subpart with the consent of the applicant. All time limitations may be modified, except that in no event shall the proceedings described in §§ 1606.9 through 1606.12 be completed later than 45 days from the issuance of the notice required by § 1606.9.

§ 1606.18 Notices.

All notices required to be sent by the Corporation or the responsible Corporation official shall be sent to the chairperson of the governing body and the project director of the applicant affected.

[FR Doc. 76-12705 Filed 4-29-76; 8:45 am]

Title 45—Public Welfare

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1606—PROCEDURES GOVERNING APPLICATIONS FOR AND DENIAL OF REFUNDING

In FR Doc. 77-2576 appearing at page 4864 in the Federal Register of Wednesday, January 26, 1977, the "COMMENT" appearing on pages 4864–4865 is corrected by deleting Section 3 "Obligations of the Corporation" and substituting the following language:

3. Obligations of the Corporation

The temporary regulation places the burden of proof in every case upon the recipient. Section 1606.11 of the current draft imposes upon the Corporation the obligation of proving, by a preponderance of the evidence, any disputed fact relied upon as a ground for denying refunding on a ground described in paragraph (c) or (d) of Section 1604.4. On all other issues, the Corporation has the obligation of showing that there is a substantial basis for denying refunding.

The Regulations Committee believes there is no legal requirement for the Corporation to assume these obligations, but concluded that it would be wise policy for it to do so.

Dated: January 28, 1977.

ALICE DANIEL,
General Counsel,
Legal Services Corporation.

[FR Doc.77-3308 Filed 2-2-77;8:45 am]

LEGAL SERVICES CORPORATION

[45 CFR Part 1606]

FINANCIAL ASSISTANCE

Procedures Governing Applications for and Denial of Refunding

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"). Section 1011 of the Act, 42 U.S.C. 2996j, provides that the Corporation shall prescribe procedures to insure that, among other things, applications for refunding are not denied unless the grantee, contractor, or person or entity receiving financial assistance has been afforded reasonable notice and an opportunity for a timely, full, and fair hearing.

Pursuant to section 1008(e) of the Act, the Corporation hereby affords notice and publishes for comment the following proposed regulation concerning procedures governing applications for and denial of refunding. Public comment will be received by the Corporation at its headquarters office, Suite 700, 733 15th Street, NW., Washington, D.C. 20005 on or before February 25, 1977. Comments must be in writing and may be accompanied by a memorandum or brief in support thereof. Comments received may be seen at the above offices during business hours Monday through Friday.

Final regulations will be issued by the Corporation after review and consideration of public comments received pursuant to this notice.

Comment

To insure that the provision of legal assistance to eligible clients would not be disrupted unnecessarily, Congress provided, in section 1011 of the Act, that a recipient's application for refunding should not be denied unless the recipient had been afforded reasonable notice and opportunity for a timely, full, and fair hearing.

The current draft was prepared after consideration of 48 written comments received in response to the publication of a proposed temporary regulation on March 12, 1976 (now in effect) and a proposed final draft on April 30, 1976, as well as lengthy analyses submitted by NLADA and PAG, and proposed drafts prepared by those organizations.

It seems a fair conclusion that section 1011 of the Act calls for procedures less elaborate than those of the Administrative Procedure Act,[1] but broadly

[1] Had full APA procedures been intended, the Act could simply have adopted them as it did 5 U.S.C. 552 in section 1005(g).

comparable to the due process requirements applied to termination of governmental financial benefits, licenses, or employment. This conclusion precludes summary procedures or any provision that is unfair, but does not compel the Corporation to imitate courtroom procedures. Most refunding decisions require the exercise of discretion and policy judgments, issues that are better settled by discussion than by adversarial confrontation. Rarely will refunding hearings be adjudicative in the conventional sense. Nor is it the purpose of the hearing to review or to challenge a decision after it has been made; the purpose is to provide an opportunity for meaningful involvement of a recipient before a final decision is reached, thereby insuring that the Corporation will not act hastily, or on mistaken grounds, or without receipt of all information and viewpoints entitled to consideration.

The issues raised in the comments received by the Corporation should be considered by the Board.

1. Grounds for denial of refunding

The requirements of section 1011 are procedural, and nothing in the Act requires the Corporation to issue a regulation stating all the grounds and criteria that may be applied in the future in considering applications for refunding. The Committee decided that it is desirable to do so, however, and that the grounds enumerated in § 1606.4 are adequate to cover all contingencies likely to occur.

This draft corrects a flaw that comments identified in the earlier one, which failed to provide a hearing on the question whether a generally applicable law or policy was being applied correctly in a particular case.

2. Presiding officer

Section 1606.7(a)(1) states that the presiding officer "may be an officer or employee of the Corporation who has not previously been concerned with the investigation or consideration of the application for refunding, or may be a person recruited or retained from outside the Corporation who is familiar with the provision of legal services to the poor and supportive of the purposes of the Act."

Many comments urged the use of an administrative law judge or another person not employed by the Corporation in every case. The request seems misfounded.

Assuming that the presiding officer was not involved in the preliminary determination or the investigation that led to it, there cannot be a serious question about the propriety or validity of designating a Corporation official to preside at the hearing. In "The National Paralegal Institute v. The Legal Services Corporation," Civ. No. 76–1260, (August 12, 1976) the Court held that the provisions of the Corporation's temporary regulations authorizing a Corporation employee to act as presiding officer satisfied the requirements of section 1011. The decision was clearly supported by Supreme Court decisions defining constitutional requirements for an impartial tribunal.[2]

The Corporation's regulation is consistent with the one adopted by ACTION, that is also required by statute to provide a full and fair hearing before terminating funding, 42 U.S.C. 5052. It provides that the presiding officer shall be the responsible ACTION official, or at the discretion of the responsible ACTION official, an independent hearing examiner designated pursuant to the Administrative Procedure Act, 45 CFR 1206.1–7(b)(1). The ACTION regulations were published in the Federal Register on January 16, 1974, seven months before passage of the Legal Services Corporation Act, with its provision containing identical language. There is no reason to believe that the Congress intended to impose heavier requirements on the Corporation than on ACTION.[3]

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[2] Thus, a parole revocation hearing, or one for the revocation of probation, may be conducted before an in-house presiding officer so long as he was not directly involved in the antecedent investigation. "Morrissey v. Brewer," 408 U.S. 471 (1972); "Gagnon v. Scarpelli," 413 U.S. 788 (1973). A board of physicians may first investigate and then itself hear a license suspension. "Withrow v. Larkin," 421 U.S. 35 (1975). A board composed of senior prison officials may decide a disciplinary case. "Wolff v. McDonnell," 418 U.S. 539 (1974). A "neutral investigative officer", reviewed by the hospital superintendent can determine whether a mental patient should be transferred to the maximum security unit. "Jones v. Robinson," 440 F. 2d 249 (CADC, 1971). A school may be denied eligibility for educating nonimmigrant alien students if the due process hearing is conducted before an official who did not participate in the investigation. "Blackwell College of Business v. Attorney General", 454 F. 2d 928 (CADC, 1971).

[3] See also 45 CFR 1067.1–7 and 45 CFR 1303.3–1, implementing 42 U.S.C. 2044(e) (OEO), and 48 U.S.C. 2928(h)(3) (Headstart), respectively.

The current draft authorizes appointment of a presiding officer who is not employed by the Corporation. It may be expected that an outsider will most frequently be appointed when a recipient is charged with violating the Act or failing to provide high quality assistance, and the burden of proof is upon the Corporation as provided by § 1606.11. But when the issues presented require judgments about the effective use of Corporation resources, decisions should be made by a person familiar with the overall development of Corporation policy.

3. Obligations of the Corporation

The temporary regulation places the burden of proof in every case upon the recipient. Section 1606.11 of the current draft imposes upon the Corporation the obligation of proving, by a preponderance of the evidence, any disputed fact relied upon as a ground for denying refunding. On issues of policy, the Corporation has the obligation of showing that there is a substantial basis for denying refunding.

The Committee believes there is no legal requirement for the Corporation to assume these obligations, but concluded that it would be wise policy for it to do so.

The other changes from the published draft were minor or technical in nature.

PART 1606—PROCEDURES GOVERNING APPLICATIONS FOR AND DENIAL OF REFUNDING

Sec.

AUTHORITY: Secs. 1006(b) (1), (3), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1011 (42 U.S.C. 2996e(b) (1) and (3), 2996f(a)(1), 2996f(a)(3), 2996f(a)(9), 2996(d), 2996g(e), 2996j.

§ 1606.1 Purpose.

By affording a recipient the opportunity for a timely, full, and fair hearing that will promote informed deliberation by the Corporation when there is reason to believe an application for refunding should be denied, this part seeks to avoid unnecessary disruption in the delivery of legal assistance to eligible clients.

§ 1606.2 Definitions.

(a) "Denial of refunding" means a decision that, after expiration of its current grant or contract, a recipient—

(1) Will not be provided with financial assistance; or

(2) Will have its annual level of financial support reduced to an extent that is not required by a reduction in the Corporation appropriation that is apportioned among all recipients of the same class, and is either more than 10 percent or more than $20,000 below the recipient's annual level of financial assistance under its current grant or contract; or

(3) Will be provided with financial assistance subject to a new condition or restriction that is not generally applicable to all recipients of the same class and that would significantly reduce the ability of a recipient to maintain its current level of legal assistance to eligible clients.

(b) "Director of a recipient" means the person who has overall day-to-day responsibility for management of operations by the recipient.

(c) "President", as used in this part means the President (or acting President) of the Corporation, and not his designee.

(d) "Presiding Officer" means the President, or a person designated by the President to recommend a final decision that an application for refunding should be granted or denied.

§ 1606.3 Application for refunding.

At least 120 days before expiration of its current grant or contract, a recipient that desires refunding shall file an application therefor with the Corporation in conformity with directions that, from time to time, may be issued by the Corporation.

§ 1606.4 Grounds for denial of refunding.

An application for refunding may be denied when:

(a) Denial is required by law; or

(b) Denial is required by a Corporation policy that is generally applicable to all recipients of the same class; or

(c) There has been substantial failure by a recipient to comply with a provision of law, or a rule, regulation, or guideline issued by the Corporation, or a term or condition of a current or prior grant from or contract with the Corporation or a predecessor agency. In the absence of unusual circumstances, refunding shall not be denied for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action.

(d) There has been substantial failure by a recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the Act, or a rule, regulation or guideline issued by the Corporation. In the absence of unusual circumstances, refunding shall not be denied for this cause unless the Corporation has given the recipient notice of such failure and an opportunity to take effective corrective action.

(e) Denial will implement a provision of the Act, or a Corporaton policy, rule, regulation or guideline regarding economical or effective use of resources.

§ 1606.5 Preliminary determination.

(a) When there is reason to believe an application for refunding should be denied, the Corporation shall serve a written preliminary determination upon the recipient, which shall state the grounds for proposed denial, and shall identify, with reasonable specificity, any facts or documents relied upon as justification for denial.

(b) The preliminary determination shall advise the recipient that it may, within ten days or receipt of the preliminary determination, make written request for:

(1) A hearing under this part, or

(2) An Informal conference under § 1606.6 with a subsequent right as there provided to request a hearing.

(c) The preliminary determination shall also advise the recipient of its right to request interim or termination funding, as the case may be under § 1606.18 or § 1606.19.

§ 1606.6 Informal conference.

On timely request by the recipient the Corporation employee who made the preliminary determination shall conduct an informal conference with the recipient at a time and place designated by the employee. The parties thereto shall exchange views, seek to narrow the issues, and explore the possibilities of settlement or compromise. At the conclusion of the conference, which may be adjourned for deliberation or consultation, the Corporation employee may, in writing, modify, withdraw, or affirm the preliminary determination. The recipient may, within five days thereafter, make written request for a hearing under § 1609.9 through § 1609.15.

§ 1606.7 Initiation of proceedings.

Within ten days of a request for a hearing made under § 1606.5(b) or § 1606.6, the Corporation shall notify a recipient in writing of:

(a) The name of the presiding officer, and of the attorney who will represent the Corporation;

(b) The date, time and place scheduled for a prehearing conference, if any should be requested or ordered; and

(c) The date, time and place scheduled for the hearing.

§ 1606.8 Presiding Officer.

(a) The presiding officer may be an officer or employee of the Corporation who has not previously been concerned with the investigation or consideration of the

application for refunding, or may be a person who is not an employee of the Corporation, who is familiar with the provision of legal services to the poor and supportive of the purposes of the Act.

(b) After designation, the presiding officer shall not consult with or receive communications from the employee who made the preliminary determination or from those representing the Corporation on any of the factual issues in the hearing except in the presence of, or with copies to, the recipient.

§ 1606.9 Prehearing conference.

(a) A prehearing conference may be ordered by the presiding officer, and shall be ordered if requested by either the recipient or the Corporation. The matters to be considered at the conference shall include:

(1) Proposals to define and narrow the issues:

(2) Efforts to stipulate the facts, in whole or in part;

(3) The probable number, identity, and order of presentation of exhibits and witnesses;

(4) On the agreement of the parties, the possibility of presenting the case on written submission or oral argument;

(5) The desirability of advance submission or some or all of the direct testimony in writing;

(6) Any necessary variation in the date, time and place of the hearing; and

(7) Such other matters as may be appropriate.

(b) In advance of the prehearing conference, the presiding officer may require a party to submit a written statement discussing any matter described in paragraph (a) of this section. After the prehearing conference, the presiding officer may establish the procedures, consistent with this part, to be followed at the hearing.

(c) The presiding officer may, at the prehearing conference or at any subsequent appropriate time prior to completion of the hearing, require the Corporation or the recipient, on sufficient notice, to produce a relevant document in its possession, to make a report not unduly burdensome to prepare, or to produce a person in its employ to testify, if any might offer a relevant and substantial addition to the accuracy or completness of the record. With the consent of the presiding officer, a party may make a written submission before the hearing.

§ 1606.10 Conduct of hearing.

(a) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 45 days after the notice required by § 1606.7, and, whenever practical, shall be held at a place convenient to the recipient and the community it serves. A hearing affecting more than one community or recipient shall be held in a single centrally located place unless the presiding officer determines that an additional hearing place is required.

(b) The presiding officer shall preside, conduct a full and fair hearing, avoid delay, maintain order, and insure that a record sufficient for full disclosure of the facts and issues is made. The hearing shall be open to the public unless, for good cause and in the interests of justice, the presiding officer shall determine otherwise.

(c) The presiding officer may allow any interested person or organization to participate in the hearing if such participation will not broaden the issues unduly or cause delay, and will aid in proper determination of the issues.

(1) A person or organization wishing to participate in a hearing shall request permission from the presiding officer, stating the reason for the request, and the nature of the evidence or argument to be offered; and shall notify the Corporation and the recipient of its request.

(2) The presiding officer shall notify the Corporation, the recipient, and the person or organization requesting participation whether the request has been granted, and in case of denial shall include a brief statement of the reasons therefor.

(3) The presiding officer may limit the scope or form of participation authorized under this paragraph.

(d) The Corporation and the recipient each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any document submitted by another party, and submit rebuttal evidence.

(e) If a party fails, without good cause, to produce a person or document required under § 1606.9(c), the presiding officer may make an adverse finding on the fact or issue with respect to which production was required.

(f) Technical rules of evidence shall not apply. The presiding officer shall make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(g) Official notice may be taken of published policies, rules, regulations, guidelines and instructions of the Corporation, or any matter of which judicial notice may be taken in a federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(h) A record or summary of the hearing shall be made in a manner determined by the presiding officer, and shall be made available to a party upon payment of its cost.

§ 1606.11 Obligations of the Corporation.

At a hearing under § 1606.10:

(a) The Corporation shall have the obligation of proving, by a preponderance of the evidence, the existence of any disputed fact relied upon as justification for denial or refunding on a ground described in paragraph (c) or (d) of § 1606.4; and

(b) On all other issues, the Corporation shall have the obligation of establishing a substantial basis for denying the application for refunding.

§ 1606.12 Briefs and argument.

(a) Within ten days after the close of the hearing, each party may, and upon request of the presiding officer, shall, submit to the presiding officer, with service upon all other parties, proposed findings of fact and argument on matters of law or policy.

(b) The presiding officer may direct or permit oral argument at the close of the hearing or after submission of briefs.

§ 1606.13 Recommended decision.

(a) As soon as practicable after the hearing, and normally within twenty days after its conclusion, the presiding officer shall issue a written recommended decision

(1) Granting the application for refunding, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; or

(2) Denying the application for refunding.

(b) The recommended decision shall contain findings of the significant and relevants facts and shall state the reasons for the decision. Findings of fact shall be based solely on the evidence adduced at the hearing or on matters of which official notice was taken.

§ 1606.14 Final decision.

(a) If neither the Corporation nor the recipient requests review by the President, a recommended decision shall become final ten days after receipt by a recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within ten days after receipt by the party of the recommended decision, and shall state in detail the reasons for seeking review.

(c) Within thirty days after receipt of a request for review of a recommended decision. the President may adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1606.13(b).

(d) If the presiding officer is the President, within thirty days after the conclusion of a hearing. a final decision that conforms to the requirements of §1606.13 shall be issued.

(e) A decision by the President shall become final upon receipt by a recipient.

§ 1606.15 Time extension and waiver.

(a) Any period of time provided in these rules may, upon good cause shown and determined, be extended (1) By the person making the preliminary determination, prior to the time the presiding officer is designated; (2) By the presiding officer, prior to the issuance of a recommended decision; or (3) By the President at any time.

(b) Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 90 days of the preliminary determination.

(c) Any other provision of these rules may be waived or modified (1) By the presiding officer, if other than the President, with the assent of the recipient and of counsel for the Corporation, or (2) By the President upon good cause shown and determined.

§ 1606.16 Right to Counsel.

At a hearing under § 1606.10, the Corporation and the recipient each shall be entitled to be represented by counsel, or by another person. The attorney designated may be an employee, or may be outside counsel retained for the purpose, who may be compensated at the reasonable and customary rate for an attorney practicing in the vicinity of the attorney retained. Unless prior written approval is received from the Corporation, such fees shall not exceed the daily equivalent of the rate of level V of the Executive Schedule specified in section 5316 of Title 5, United States Code.

§ 1606.17 Reimbursement.

If an application for refunding is granted after a Preliminary Determination has been issued under § 1606.5, a recipient, at the discretion of the President, may receive reimbursement by the Corporation, in whole or in part, for reasonable and actual expenses that were required in connection with proceedings under this part.

§ 1606.18 Interim funding.

Failure by the Corporation to meet a time requirement of this part shall not entitle a recipient to refunding. If the Corporation fails to take final action upon an application for refunding prior to the expiration of the term of a recipient's current grant or contract, the Corporation shall provide the recipient with interim funding necessary to maintain its current level of legal assistance activities under the Act until

(a) The application for refunding has been approved and funds pursuant thereto received, or

(b) A final decision denying the application has been made.

§ 1606.19 Termination funding.

After a final decision to deny refunding, and without regard to whether a hearing has occurred, the Corporation may authorize temporary funding it necessary to enable a recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibility to its present clients.

§ 1606.20 Notice.

A notice required to be sent to a recipient under this part shall be sent to the director of the recipient, and may be sent to the chairperson of its governing body.

THOMAS EHRLICH,
President,
Legal ServicesCorporation.

[FR Doc. 77-2570 Filed 1-25-77; 8:45 am]

Title 45—Public Welfare

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1607—GOVERNING BODIES OF RECIPIENTS

Requirements

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings to persons financially unable to afford legal assistance. Section 1007(c) of the Act, 42 U.S.C. 2996f(c), states that the composition of the governing body of a recipient shall meet certain requirements.

On May 5, 1976 (41 FR 18526) a proposed regulation on governing bodies of recipients was published. Interested persons were given until June 3, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. Several minor technical changes were made, and the following issues were considered before adoption of the final regulation.

Composition

The Act requires that sixty percent of the governing body of a recipient be lawyers, and that at least one member be an eligible client. The Corporation concluded that there are sound and persuasive policy reasons for going beyond the Act and imposing additional requirements. This conclusion rests on the Corporation's recognition that a legal services client has only limited freedom of choice in selecting a lawyer; unlike the client of a private law firm, he or she cannot go to another law firm if dissatisfied with any aspect of the assistance received. Therefore, it seems essential to structure the governing body in a way that insures that legal services lawyers will be strictly accountable, through the governing body, to the clients they serve.

While we expect lawyer members to be diligent in pursuit of the goal of accountability, we believe that its attainment requires more than one client member. As a practical matter, a dissatisfied client may be reluctant or unable to seek out and present a grievance to a lawyer-member of the governing body: client-members may be expected to be more accessible. Moreover, "the client community" is not monolithic; most legal services programs serve heterogeneous populations with diverse, and sometimes conflicting, needs and interests. A single voice cannot represent them all. A governing body would be sorely handicapped in its task of establishing priorities in resource allocation if its client membership did not reflect this diversity.

These concerns underlie the requirement in § 1607.3(a) that the governing body "reasonably reflect the interests and characteristics of the eligible clients in the area served." The Corporation considered, and rejected as both unwise and unworkable, a formulation requiring the lawyer and the client component of the body each to reflect specified segments of the general population served. The desire to insure accountability led to the requirement in § 1607.3(d) that one-third of a governing body be either clients or representatives of client groups. This requirement also should serve to eliminate the tension that occasionally developed in the past of client membership of a governing board was minimal or nonexistent, and the program perceived a contradiction between the instructions of the governing body and the demands of its clients. In most programs, however, client membership has comprised between one-third and one-half of the governing body membership, and this formula apparently has worked well.

Qualifications

Section 1607.3 adopts the language used in §§ 1603.3 and 1603.4, governing State Advisory Council membership, and requires that attorney members of the governing body be supportive of the purposes of the Act and "have interest in, and knowledge of, the delivery of quality legal services to the poor."

Under § 1607.3(d), only one member need be an eligible client when selected: the other members of the client component may be delegates or representatives. This realistic allowance is made because clients may be reluctant to speak up in the presence of a group of lawyers, and may feel that their own point of view would be presented more effectively by a spokesman of their choice. A client member who becomes ineligible for legal assistance because of a change in financial circumstances may, nonetheless, remain on the governing board.

The requirement in § 1607.3 that lawyers and the clients be selected from, or designated by, appropriate groups, follows from our overall concern to insure that membership is both representative of, and accountable to the interests it represents. The remaining member of a governing body need not represent any group, but must be interested in and supportive of legal services to the poor.

Section 1607.3(h) states that no category of governing board membership shall be dominated by persons serving as the representatives of a single association, group, or organization. It should be noted that the Regulation does not prevent drawing all attorney members, for example, from the same state or local Bar Association, so long as a dominant percentage of the attorney membership of the governing body has not been designated by that Bar Association as its representatives.

Functions of governing body

The Corporation believes that Formal Opinion 334 of the American Bar Association Committee on Ethics and Professional Responsibility (August 10, 1974) enunciates sound principles to guide a governing body in carrying out its responsibilities to a legal services program and its clients.

Compensation

Section 1607.6 authorizes payment to governing body members for reasonable and actual expenses required for fulfillment of membership obligations, but the Corporation does not encourage members who can afford to pay such expenses themselves to seek reimbursement from the recipient.

The following regulation has been adopted by the Legal Services Corporation, to become effective July 23, 1976, pursuant to section 1008(e) of the Act.

Part 1607 is established to read as follows:

Sec.

AUTHORITY: Sec. 1007(e); 42 U.S.C. 2996f(e).

§ 1607.1 Purpose.

This part is designed to insure that the governing body of a recipient will be well qualified to guide a recipient in its efforts to provide high quality legal assistance to those who otherwise would be unable to obtain adequate legal counsel, and to insure that the recipient is accountable to its clients.

§ 1607.2 Definition.

"Eligible client," as used in this Part, means a person eligible to receive legal assistance under the Act, without regard to whether the person is receiving assistance at the time of selection for membership on a governing body.

§ 1607.3 Composition.

(a) A recipient shall be incorporated in a State in which it provides legal assistance, and shall have a governing body that reasonably reflects the interests and characteristics of the eligible clients in the area served.

(b) At least sixty (60) percent of a governing body shall be attorneys admitted to practice in a State in which a recipient is to provide legal assistance, who are supportive of the purposes of the Act and have interest in, and knowledge of, the delivery of quality legal services to the poor.

(c) The attorneys shall be selected from, or designated by appropriate Bar Associations and other groups, including, but not limited to law schools, civil rights or anti-poverty organizations, and organizations of eligible clients.

(d) At least one member of a governing body 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.

(e) The members who are, or who represent those who are, eligible clients shall be selected from, or designated by, a variety of appropriate groups including, but not limited to, client and neighborhood associations and organizations.

(f) The categories of "attorney" and "eligible client representative" are not mutually exclusive; a single individual may be counted toward satisfaction of both requirements.

(g) The remaining members of a governing body, whatever the method of selection, shall be individuals interested in and supportive of legal services to the poor.

(h) No category of governing board membership shall be dominated by persons serving as the representatives of a single association, group, or organization.

(i) Members of a governing body may be selected by appointment, election, or other means. The method of selection and composition shall be subject to approval by the Corporation. A recipient whose current governing body does not satisfy the requirements of this section shall submit for approval a plan for achieving compliance as soon as possible.

§ 1607.4 Functions of a governing body.

(a) A governing body shall have at least four meetings a year. Timely and effective prior public notice of all meetings shall be given, and all meetings shall be public except for those concerned with matters properly discussed in executive session.

(b) A governing body shall establish and enforce broad policies governing the operation of a recipient, but shall not interfere with any attorney's professional responsibilities to clients.

§ 1607.5 Waiver.

(a) Upon application, the President shall waive the requirements of this Part to permit a recipient that was funded under section 222(a)(3) of the Economic Opportunity Act of 1964 and, on July 25, 1974, had a majority of persons who were not attorneys on its governing body, to continue such a non-attorney majority.

(b) The President may waive the requirements of this Part upon application of a recipient that demonstrates that it cannot comply with them because of

(1) The nature of the population or area served: or

(2) Special circumstances, including, but not limited to, conflicting requirements of the recipient's major funding source.

(c) A recipient seeking a waiver shall demonstrate that it has made diligent efforts to comply with the requirements of this Part.

§ 1607.6 Compensation.

While serving on the governing body of a recipient, no member shall receive compensation from the recipient, but a member may receive payment for normal travel and other out-of-pocket expenses required for fulfillment of the obligations of membership.

THOMAS EHRLICH,
President, Legal Services Corporation.

[FR Doc.76-1893 Filed 6-22-76;8:45 am]

FINAL REGULATION

PART 1608—PROHIBITED POLITICAL ACTIVITIES

Quality Legal Assistance

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings to persons financially unable to afford legal assistance. Sections of the Act, including sections 1005(b), 1006(b)(5), 1006(d)(3) and (4), 1006(e)(1) and (2), 1007(a)(6) and 1007(b)(2) prohibit certain political activities by the Corporation, recipients, and their respective employees.

A proposed regulation on prohibited political activities was published on May 5, 1976 41 FR 18527), and interested persons were given until June 3, 1976 to submit comments. All comments received were given full consideration, but none raised any issue of substance, and the proposed regulation has been adopted without change.

The following issues were considered before adoption of the final regulation:

Purpose

Congress declared that in order to "preserve its strength, the legal services program must be kept free from the influence of or use by it of political pressures"; and the Act contains several provisions that are designed to insure that Corporation funds will not be used to promote political interests. This part implements those provisions.

Application of the Hatch Act

The Legal Services Corporation Act (hereinafter LSC Act) refers to the Hatch Act in two places, one affecting Corporation employees, and the other, staff attorneys. After passage of the LSC Act, a relevant portion of the Hatch Act barring employees from taking an active part in political campaigns was amended, and now bars only actual candidacy for elective public office. Before adopting a regulation implementing these Sections of the LSC Act, it was necessary to decide whether either or both of the references in the LSC Act constitute a specific incorporation of the unamended Hatch Act, precluding consideration of subsequent amendments.

Section 1006(e)(2) states that Corporation employees "shall be deemed to be State or local employees" for Hatch Act purposes. The emphasis is on identity of treatment with the other employees specified, and not on prohibiting particular activities. Therefore we concluded that Congress would have applied the amended Hatch Act to Corporation employees, and we have done so in § 1608.4.

The best reading of § 1007(a)(6), which requires the Corporation to insure that staff attorneys refrain from activities "of the type" prohibited by the Hatch Act, suggests that the Hatch Act is cited by way of example only, leaving specific prescriptions to the discretion and continuing experience of the Corporation. Support of such reading is found in the fact that the LSC Act requires the Corporation to limit both partisan and nonpartisan political activity by staff attorneys, but the Hatch Act never applied to nonpartisan activity. We concluded that neither the amended nor unamended provisions of the Hatch Act directly apply to staff attorneys, and that the Corporation has discretion to deviate from the Hatch Act in relation to them; but in the absence of experience justifying deviation, we have embodied the Hatch Act without any change except the addition of a prohibition against nonpartisan candidacy, as required by the LSC Act.

The following regulation has been adopted by the Legal Services Corporation, to become effective July 23, 1976, pertinent to § 1008(e) of the Act.

Part 1608 is established to read as follows:

Sec.

AUTHORITY: Secs. 1001(5), 1005(b)(2), 1008(b)(3), 1008(b)(5)(B), 1006(d)(3), 1005(d)(4), 1105(c)(1), 1006(e)(2), 1007(a)(6), 1007(b)(2); 42 U.S.C. 2996(5), 2996d(b)(a), 2996e(b)(3), 2996e(b)(5)(B), 2996e(d)(3), 2996e(d)(4), 2996e(e)(1), 2996e(e)(2), 2996f(a)(6), 2996(b)(2).

§ 1608.1 Purpose.

This Part is designed to insure that the Corporation's resources will be used to provide high quality legal assistance and not to support or promote political activities or inteersts. The Part should be construed and applied so as to further this purpose without infringing upon the constitutional rights of employees or the professional responsibilities of attorneys to their clients.

§ 1608.2 Definition.

"Legal assistance activities," as used in this Part, means any activity.

(a) Carried out during an employee's working hours;

(b) Using resources provided by the Corporation or by a recipient; or

(c) That, in fact, provides legal advice, or representation to an eligible client.

§ 1608.3 Prohibitions applicable to the corporation and to recipients.

(a) Neither the Corporation nor any recipient shall use any political test or qualification in making any decision, taking any action, or performing any function under the Act.

(b) Neither the Corporation nor any recipient shall contribute or make available Corporation funds, or any personnel or equipment

(1) To any political party or association.

(2) To the campaign of any candidate for public or party office, or

(3) For use in advocating or opposing any ballot measure, initiative, or referendum.

§ 1608.4 Prohibitions applicable to all employees.

(a) No employee shall intentionally identify the Corporation or a recipient with any partisan or nonpartisan political activity, or with the campaign of any candidate for public or party office.

(b) No employee shall use any Corporation funds for activities prohibited to attorneys under Section 1608.6; nor shall an employee intentionally identify or encourage others to identify the Corporation or a recipient with such activities.

§ 1608.5 Prohibitions applicable to corporation employees and to staff attorneys.

While employed under the Act, no Corporation employee and no staff attorney shall, at any time,

(a) Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office, whether partisan or nonpartisan;

(b) Directly or indirectly coerce, attempt to coerce, command or advise an employee of the Corporation or of any recipient to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; and

(c) No staff attorney shall be a candidate for elective public office, whether partisan or nonpartisan; nor shall a Corporation employee be a candidate for partisan elective public office.

§ 1608.6 Prohibitions applicable to attorneys and to staff attorneys.

(a) While engaged in legal assistance activities supported under the Act, no attorney shall engage in

(1) Any political activity,

(2) Any activity to provide voters with transportation to the polls, or to provide similar assistance in connection with an election, or

(3) Any voter registration activity.

(b) While employed under the Act, no staff attorney shall engage in the activities prohibited by paragraphs (a)(2) or (a)(3) of this section at any time.

§ 1608.7 Attorney-client relationship.

Nothing in this Part is intended to prohibit an attorney or staff attorney from providing any form of legal assistance to an eligible client, or to interfere with the fulfillment of any attorney's professional responsibilities to a client.

§ 1608.8 Enforcement.

This Part shall be enforced according to the procedures set forth in § 1612.5.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-18294 Filed 6-22-76; 8:45 am]

Title 45—Public Welfare

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1609—FEE-GENERATING CASES

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"). Section 1007(b)(1) of the Act, 42 U.S.C. 2996f(b)(1), prohibits the use of Corporation funds to provide legal assistance with respect to any fee-generating case, except in accordance with guidelines promulgated by the Corporation.

On May 5, 1976 (41 FR 18528) a proposed regulation on fee-generating cases was published. Interested persons were given until June 3, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

Purpose

Generally the private Bar is eager to accept contingent fee cases and cases in which there may be an award of attorneys' fees to be paid by the opposing party pursuant to specific statutory authorization. However, there may be instances when no private attorney is willing to represent an individual, because the recovery of a fee is unlikely, the potential fee small, or for some other reason. The Act requires the Corporation to issue guidelines to insure that eligible clients will be able to obtain legal assistance in such cases with appropriate safeguards to prevent legal services lawyers from competing with the private bar when private representation is in fact available.

The definition of "fee-generating case" in § 1602.2(a) includes every situation in which an attorney reasonably may expect to receive a fee for services from any source except the client.

Safeguards

Section 1609.3 prohibits representation in a fee-generating case unless other adequate representation is unavailable. Section 1609.4 sets forth the circumstances in which a fee-generating case may be accepted. The principal safe-

guard is in the requirement that either the client or the recipient attempt to find private representation through the local lawyer referral service, or by request made to two private lawyers. Referral need not be attempted, however, if the recipient knows from past experience that it would be futile because the case is of a type that private lawyers ordinarily do not accept; and referral may be postponed if emergency circumstances require immediate action. Referral is not required when a client is obliged to pay a fee before a case will be considered. The provision should encourage local referral services and members of the private Bar to waive their customary fees for initial consultation when a recipient refers an eligible client with a fee-generating case. When recovery of damages is not the principal object of a case, a request for damages sometimes may be necessary, for tactical reasons, or because a latent counterclaim is discovered in the course of representation. Referral in such cases is rarely feasible, and requiring that it be attempted is an unnecessary administrative burden the Committee decided not to impose.

Awards of fees or costs

In recent years statutes have begun to include provisions for the award of attorneys' fees to successful plaintiffs, and § 1609.5 encourages legal services programs to take advantage of this trend. Such cases are subject to the safeguards in § 1609.4 applicable to all fee-generating cases, but if referral is not possible, a recipient may take the case and may accept an award of attorneys' fees. The proceeds must be remitted to the recipient, used solely for purposes authorized by the Act, and reported to the Corporation.

Recipients are encouraged to take advantage of statutory provisions for attorneys' fees. Many courts have held that the fact that an attorney did not charge a fee to the client does not disqualify the attorney from receiving a fee under such statutes. See generally: *Tafte* v. *Department of Social and Health Services*, 85 Wash. 2d 161 (1975) and cases cited therein; *Holtt* v. *Vitek*, 495 F.2d 219 (1st Cir. 1974); *Miller* v. *Amusement Enterprises, Inc.*, 426 F.2d 534 (5th Cir. 1970); Comment, "Award of Attorney's Fees to Legal Aid Officers," 87 Harv. L.R. 411 (1973).[1] Awards to recipients will increase their resources, and may encourage private attorneys to undertake similar cases on behalf of eligible clients. A recipient's tax status will not be affected by its acceptance, and use for program purposes, of fees awarded in cases undertaken for eligible clients.

The disclaimers in § 1609.6 (a) and (b) clarify the intention of the original draft. Section 1609.6(c) is new. It was added in response to suggestions that such a provision would encourage desirable cooperation between recipients and the private Bar. A private lawyer may be reluctant to undertake a low-fee case in a possibly novel area of the law without the assurance of assistance from a recipient. By permitting a recipient to share its expertise with the private Bar the Corporation can, without expending its own resources, increase the number of lawyers available to serve the poor. In such cases it seems appropriate to allow the recipient to share in any award of attorneys' fees that may be made.

Sec.

AUTHORITY: Sec. 1007(b)(1), (42 U.S.C. 2996f(b)(1)).

§ 1609.1 Purpose.

This part is designed to insure that recipients do not compete with private attorneys and, at the same time, to guarantee that eligible clients are able to obtain appropriate and effective legal assistance.

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[1] To the extent that the basis for the award in federal cases is the "private attorney general" theory they have been rendered obsolete by the decision in *Alyeska Pipeline Service Company* v. *The Wilderness Society*, 421 U.S. 240 (1975); but Alyeska did not undermine the principle that legal services programs are entitled to equal treatment with private attorneys when there is statutory authorization for an award of fees.

§ 1609.2 Definition.

"Fee-generating case" means any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds, or from the opposing party.

§ 1609.3 Prohibition.

No recipient shall use funds received from the Corporation to provide legal assistance in a fee-generating case unless other adequate representation is unavailable. All recipients shall establish procedures for the referral of fee-generating cases.

§ 1609.4 Authorized representation in a fee-generating case.

Other adequate representation is deemed to be unavailable when (a) The recipient has determined that free referral is not possible because:

(1) The case has been rejected by the local lawyer referral service, or by two private attorneys; or

(2) Neither the referral service nor any lawyer will consider the case without payment of a consultation fee; or

(3) The case is of the type that private attorneys in the area ordinarily do not accept, or do not accept without prepayment of a fee; or

(4) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or

(b) Recovery of damages is not the principal object of the case and a request for damages is merely ancillary to an action for equitable or other nonpecuniary relief; or inclusion of a counterclaim requesting damages is necessary for effective defense or because of applicable rules governing joinder of counterclaims; or

(c) A court appoints a recipient or an employee of a recipient pursuant to a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction.

§ 1609.5 Acceptance of fees.

(a) A recipient may seek and accept a fee awarded or approved by a court or administrative body, or included in a settlement, if

(1) The requirements of § 1609.4 are met; and

(2) Funds received are not used for purposes prohibited by the Act, and are accounted for in the manner directed by the Corporation.

(b) If a legal fee is awarded or approved by a court or administrative body, it shall be remitted promptly to the recipient.

§ 1609.6 Acceptance of reimbursement.

When a case or matter subject to this Part results in a recovery of damages, other than statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case or matter, if

(a) The requirements of § 1609.4 are met, and

(b) The client has agreed in writing to reimburse the recipient for such costs and expenses.

§ 1609.7 Application.

Nothing in this part shall prevent a recipient from

(a) Requiring a client to pay court fees when the client does not qualify to proceed in forma pauperis under the rules of the jurisdiction; or

(b) Accepting a fee in a case that was initiated prior to adoption of this part; or

(c) Acting as co-counsel with a private attorney when appropriate, and accepting part of any fee that may result from a shared case.

Effective date: This part becomes effective on October 12, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-26499 Filed 9-9-76; 8:45 am.]

PART 1610—USE OF FUNDS FROM SOURCES OTHER THAN THE CORPORATION

Prohibitions and Accounting

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996–2996*l* ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1010(c) of the Act, 42 U.S.C. 2996i(c), restricts the use of funds received by recipients from sources other than the Corporation.

A proposed regulation on the use of non-Corporation funds was published on May 5, 1976 (41 FR 13528), and interested persons were given until June 3, 1976 to submit comments. All comments received by the Corporation were given full consideration, and, in addition to technical changes, the following revisions were made in the proposed regulation:

Definition (§ 1610.1); Waiver (§ 1610.4)

Several comments indicated confusion about what activities are prohibited by the Act. Therefore, a definition of "purposes prohibited by the Act or Corporation Regulations" was added, referring to the specific prohibitions in the Act.

To avoid inconsistency in use of the term "recipient," the proposed definition, excluding private attorneys, law firms, State or local entities of attorneys, and legal aid organizations with separate public defender programs, was removed from § 1610.1, and a new waiver provision (§ 1610.4) was added. An exception from the Part's requirements is authorized only if necessary to permit the Corporation to make a contract or arrangement with one of the enumerated entities.

Authorized Use of Other Funds (§ 1610.3)

Section 1610.3 authorizes a recipient to use public or tribal funds for any purpose within the scope of the grant.

The following regulation has been adopted by the Legal Services Corporation, to become effective July 23, 1976, pursuant to section 1003(e) of the Act.

Sec.
1610.1 Definition.
1610.2 Prohibition.
1610.3 Authorized use of other funds.
1610.4 Accounting.
1610.5 Waiver.

AUTHORITY: Section 1010(c); 42 U.S.C. 2996i.

§ 1610.1 Definition.

As used in this Part, the phrase "purposes prohibited by the Act or Corporation Regulations" refers to activities prohibited by the following Sections of the Act and the Regulations promulgated thereunder:

(a) Sections 1006(d)(3), 1006(d)(4), 1007(a)(6), and 1007(b)(2) (Political activities);

(b) Section 1007(a)(5) (Legislative and administrative representation);

(c) Section 1007(a)(10) (Activities inconsistent with professional responsibilities);

(d) Section 1007(b)(1) (Fee-generating cases; criminal proceedings; civil actions challenging criminal convictions);

(e) Section 1007(b)(4) (Representation of juveniles);

(f) Section 1007(b)(5) (Advocacy training);

(g) Section 1007(b)(6) (Organizing activities);

(h) Section 1007(b)(7) (School desegregation);

(i) Section 1007(b)(8) (Abortions); and

(j) Section 1007(b)(9) (Violations of Military Selective Service Act or military desertion).

§ 1610.2 Prohibition.

Funds received from another source for the provision of legal assistance shall not be used by a recipient for purposes prohibited by the Act or Corporation Regulations, unless such use is authorized by § 1610.3.

§ 1610.3 Authorized use of other funds.

A recipient may receive public or tribal funds and use them in accordance with the purposes for which they were provided.

§ 1610.4 Accounting.

Funds received by a recipient from a source other than the Corporation shall be accounted for as separate and distinct receipts and disbursements, in the manner directed by the Corporation.

§ 1610.5 Waiver.

Any provision of this Part may be waived by the President when necessary to permit the Corporation to make a contract or other arrangement for the provision of legal assistance with any private attorney, law firm, State or local entity of attorneys, or a legal aid organization that has a separate public defender program.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-18295 Filed 6-22-76; 8:45 am]

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1611—ELIGIBILITY

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(a)(2) of the Act requires the Corporation to establish maximum income levels for individual eligible for legal assistance, eligibility guidelines which take into account certain enumerated factors, and priorities to insure that persons least able to afford legal assistance are given preference in furnishing such assistance.

On June 11, 1976 (41 FR 23727) a proposed regulation on eligibility was published. Interested persons were given until July 12, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

Comment

Maximum income levels.—The Legal Services Corporation Act provides little guidance for establishing a maximum income standard for persons eligible to receive legal assistance. Section 1002(3) defines an "eligible client" as "any person financially unable to afford legal assistance". Congress recognized that the Corporation would not have resources adequate to provide legal assistance to all who would be eligible according to the statutory definition, and the House Report states that "it is expected that, until a substantial increase in program appropriations is provided, the eligibility level will be approximately commensurate to the poverty line in each community. Regulations promulgated by the Corporation will insure that the poorest of the poor receive a priority in the provision of legal services * * *" p. 8-9. Consistent with the legislative history, Section 1007(a)(2)(C) directs the Corporation to "establish priorities to insure that persons least able to afford legal assistance are given preference in the furnishing of such assistance."

The maximum income level adopted here is equal to 125% of the official poverty line.[1] In designating that level, the Corporation recognizes that a substantial number of people who are unable to afford legal assistance will nonetheless be rendered ineligible, but the Corporation's limited resources prevent adoption of a higher level at this time. After the Corporation reaches its preliminary goal of providing the equivalent of two lawyers for every 10,000 poor persons, as defined by the official measure, additional funds may be sought to permit adoption of an income standard that is more realistic in terms of the income required in order for a person to be able to afford private legal assistance. It is also hoped that the development of knowledge about the fees charged for various legal services by the

[1] The definition of "income" in § 1611.2 conforms to the one used by the Community Services Administration that develops the "official" poverty line. A chart showing the maximum income levels adopted by the Corporation is attached hereto.

private Bar will contribute to a more informed determination of how much income is required to afford private assistance.

The "official" poverty measure attempts to define poverty in terms of the minimum income needed for subsistence. Critics of the measure argue that it is too low—that even bare subsistence living requires a higher income than indicated by the official line. The recently published, Congressionally-mandated study, "The Measure of Poverty", describes some flaws in the current measure, but adhering to the Congressional directive, does not make any specific recommendations for change.

An acknowledged limitation of the current measure is that it does not make any geographic distinctions, except for Hawaii and Alaska. Yet it is generally conceded that the cost of living does vary geographically; and the Act requires the Corporation to take substantial cost of living variations into account. In the absence of data that would enable the Corporation to make these distinctions, we have no choice but to give each recipient the responsibility for doing so. Setting a maximum below 125% of the poverty line would deny some programs the latitude required by local conditions, that Congress intended them to have. See Senate Report, p. 14–15.

A maximum income level below 125% of the poverty line would disqualify the working poor, whose financial resources are only slightly greater than those of families entirely dependent on welfare. (The 125% line is 140% of the maximum AFDC grant for a family of four, 124% of the maximum AFDC standard of need for a family of four,[2] and 132% of the maximum AFDC grant for a family of two.)

As a matter of policy, the Corporation believes it would be a mistake to adopt a standard so low that it excluded all but welfare recipients from receiving legal assistance.

The Corporation rejected a proposal that it set the maximum at 150% of the poverty line to accommodate areas with exceptionally high living costs. Our research indicates that there are very few places in the United States where the cost of living is more than 25% above the national average. A random-sample poll of legal services programs conducted in August 1975 indicated that only a small number of them applied an eligibility standard greater than 125% of the poverty line. Adopting a national standard high enough to cover those few seems unjustifiable. It seems wiser to require them to apply for authority to adopt a higher standard on a program-by-program basis, as the regulation does.

The Corporation also rejected a suggestion that it adopt the Bureau of Labor Standard's "Lower Standard Budget" as the maximum standard. According to "The Measure of Poverty", there are numerous technical limitations in its methodology, and it was not intended to be a poverty standard. In autumn of 1974, the lower BLS budget for a family of four was more than 80% higher than the comparable poverty measure. In view of the Corporation's limited resources, adoption of the BLS standard is inconsistent with the statutory mandate to give priority to those least able to afford level assistance. Moreover, the BLS standard measures only 40 cities, and it provides no basis for extrapolating geographical variations in the cost of living in other areas. Using the BLS standard in the cities it does study, while relying on the poverty standard elsewhere, would result in gross inequity, extending eligibility in some areas to people whose income were far above the eligibility levels elsewhere.

Satisfaction of the directions of the Act requires coordination between the Corporation and recipients in establishing maximum income levels for individuals eligible to receive legal assistance. The Corporation cannot set an inflexible standard because, as stated above, no poverty definition now in use adequately takes into account either substantial cost-of-living differences or urban-rural differences. The only way of complying with the statutory mandate to consider those factors is by giving recipients the responsibility for doing so.

The Regulation does not permit a recipient automatically to set its income standard at the maximum authorized. Section 1611.3 requires a recipient to take into account cost of living in the locality, the number of clients that can be assisted with the resources available to the recipient, the population at and below alternative income levels in the area served by the recipient, and the availability and cost of legal services provided by the private Bar in the area before it establishes a maximum income standard. The regulation thus formalizes a

[2] The "need standard" is the amount determined by a state to be necessary for subsistence, and is, in all states, greater than the maximum actually granted.

process that has occurred in many programs in the past. Recognizing that their own resources are limited, most programs have set their financial eligibility level below the poverty line, and they may be expected to continue to do so. It is expected that only a few programs, located in localities with exceptionally high living costs, will adopt the maximum authorized by the regulation. An even smaller number may request specific authorization to set a standard above that level.

In allocating resources among legal services programs the Corporation uses a formula that takes into account, among other factors, the size of the population at and below the official poverty line in the area served by the program, and for the present the Corporation will continue to apply that standard even to programs that set their maximum income levels above the poverty line. Knowing that choice of a higher maximum income level will not increase program resources, few programs are likely to choose an inappropriately high standard.

Authorized exceptions.—A person whose income exceeds the maximum income level established by a recipient may not be provided legal assistance unless the person comes within one of three exceptions described in § 1611.4.

The first exception, in § 1611.4(a), is mandated by the Act, that requires a recipient to determine individual eligibility on the basis of factors such as fixed debts, medical expenses, and other factors affecting a client's ability to pay for legal assistance. An individual whose income is above the maximum income level adopted by a recipient may be eligible for legal assistance after allowance is made for such factors.

Section 1611.4(b) allows a recipient to provide legal assistance to a person whose income is above the established maximum if the person is seeking legal assistance to obtain, or prevent the loss of, benefits provided by a "governmental program for the poor", as defined in § 1611.2. These cases traditionally have been a major part of the caseload of legal services programs. The private Bar is rarely willing to undertake them, because they require a high degree of familiarity with complex administrative regulations, and generally do not generate a fee for legal services. Individuals who depend on such programs for subsistence usually have no discretionary income with which to pay for legal services.

Section 1611.4(c) allows a recipient to provide legal assistance to a person whose income exceeds the maximum if the person would be eligible but for the receipt of benefits from a "governmental income maintenance program", as defined in § 1611.2.

Comparison of the poverty line with current AFDC and SSI standards and grant levels shows that the poverty line is considerably higher than the AFDC standard of need in every state, and that in only three states—California, Colorado and Massachusetts—does the maximum SSI payment exceed 125% of the poverty line. Therefore, with the exception of SSI recipients in those three states, any person whose income is derived entirely from those benefit programs would be eligible for legal assistance on the basis of income without regard to the authorized "exception". Indeed, since 125% of the poverty line is equal to 140% of the maximum AFDC grant for a family of four, most families that receive income from both AFDC and employment would still have an income below 125% of the poverty line, particularly after deduction for child care and other work-related expenses. But this would not be invariably true. In a few states, strict adherence to the maximum income level would render otherwise eligible welfare recipients ineligible if they become employed. That result would be inconsistent with federal law that "disregards" a percentage of earned income in order to permit welfare recipients to become employed without thereby sacrificing welfare benefits. In effect, the regulation adopts the federal "income disregard" policy. It also permits legal assistance to a person whose income is derived, in the main, from employment, with some supplementation by governmental benefits.

The Corporation recognizes that § 1611.4(c) may be viewed as inequitable in one respect, because it permits legal assistance to an employed person who also receives welfare benefits while denying assistance to a person whose identical income is derived entirely from employment. But after much deliberation the Corporation concluded that, on balance that potential inequity was outweighed by the desirability of following the federal policy of providing work incentives to welfare recipients.

An additional advantage of the provision is administrative simplicity, because it permits a recipient to avoid complicated income calculations if an applicant for legal assistance submits proof of receipt of benefits from a governmental income maintenance program. It would still be necessary, however, for a recipient to consider the individual factors listed in § 1611.5.

Determination of eligibility. Section 1611.5(b) lists some of the personal factors that should be considered by a recipient in determining eligibility. The list is not exhaustive. Depending on local circumstances, a recipient may consider other factors that might either expand or narrow eligibility. For example, a recipient in a state like Alaska might consider the cost of transportation from a remote area to the nearest private lawyer as a factor bearing on a client's ability to pay for private assistance. Another recipient might consider the value of a person's non-liquid assets as a factor rendering the person ineligible.

In determining a person's income, past earnings are irrelevant except insofar as they may have resulted in the acquisition of assets, that are required by § 1611.5(b)(2) to be considered. Inquiry should be focused on present income and on the prospects for its continuation. Thus, if a person is engaged in seasonal work such as farm labor, it should be recognized that the person's salary during peak harvest is not an accurate indication of annual income. This requirement is established by § 1611.5(b)(1).

Federal and local taxes should be considered before determining whether to provide legal assistance to a person whose gross income is above the established maximum. Failure to do so would discriminate against working people, whose income is subject to taxation, while that of individuals on welfare is not. After taxes have been deducted, a working person whose gross income is above the maximum may actually have less discretionary money available for legal services than a welfare recipient.

A person who is aged or disabled may have unusual expenses associated with that condition (such as special housing, utility, transportation, dietary or medical needs), and allowance should be made for them in determining eligibility.

The disqualifying factor described in § 1611.5(c) is required by Section 1007(a)(2)(B)(iv) of the Act.

A group, corporation, or association may be afforded representation if the criteria of § 1611.5(d) are met. The legislative history of the Act makes clear that Congress intended to permit recipients to aid such organizations, as they have in the past.

Manner of determining eligibility. Section 1611.6 requires a recipient to determine eligibility by means of a simple and dignified procedure that is appropriate to a law office and conducive to development of an effective attorney-client relationship. At the same time, all necessary information must be obtained and preserved, in a manner that protects the identity of the client, for audit by the Corporation.

Both the House and the Senate Reports on the Act stated that financial eligibility should be determined in a manner that promotes "trust and confidence between an attorney and client". It would be inconsistent with that directive for a recipient to require an applicant for assistance to swear, under penalty of perjury, to the accuracy of conformation provided. If there is substantial reason to doubt the information, the recipient should make further inquiry of the client.

Section 1611.6(c), prohibiting disclosure of financial eligibility information provided by a client, without express written consent, is consistent with Ethical Opinions rendered by the American Bar Association and the Ethics Committees of local Bar Associations. Because the Corporation frequently has been called upon to confirm its agreement with those Opinions, an explicit statement of Corporation policy was deemed appropriate. Section 1006(b)(3) of the Act requires the Corporation to insure that legal services activities are conducted in a manner consistent with professional and ethical obligations.

Change in circumstances. If a client becomes ineligible because of a change in circumstances, § 1611.7 requires a recipient to discontinue representation if the change is sufficiently likely to continue to enable the client to obtain private counsel, and if discontinuation is not inconsistent with the Code of Professional Responsibility.[1]

[1] Former § 1611.8, dealing with caseload control priorities, has been renumbered Part 1620.

Accordingly, Part 1611 is added to read as set forth below.

Sec.
1611.1 Purpose.
1611.2 Definition.
1611.3 Maximum Income Level.
1611.4 Authorized Exceptions.
1611.5 Determination of Eligibility.
1611.6 Manner of Determining Eligibility.
1611.7 Change of Circumstances.
Appendix A.

AUTHORITY: Sec. 1007(a)(2); 42 U.S.C. 2996(a)(2).

§ 1611.1 Purpose.

This Part is designed to insure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance, and afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. The Part also seeks to insure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

§ 1611.2 Definitions.

"Governmental income maintenance program" means Aid for Dependent Children, Supplemental Security Income, Unemployment Compensation, and a state or county general assistance or home relief program.

"Governmental program for the poor" means any federal, state or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

"Income" means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit.

"Total cash receipts" include money wages and salaries before any deductions, but do not include food or rent in lieu of wages. They include income from self-employment after deductions for business or farm expenses, they include regular payments from public assistance, social security, unemployment and worker's compensation, strike benefits from union funds, veterans benefits, training stipends, alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; income from dividends, interest, rents, royalties, or from estates and trusts. They do not include money withdrawn from a bank, or received from sale of real or personal property, or from tax refunds, gifts, one-time insurance payments or compensation for injury; nor do they include non-cash benefits.

§ 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125%) of the official poverty threshhold as defined by the Office of Management and Budget.

(c) Before establishing its maximum income level, a recipient shall consider relevant facors including:

(1) Cost-of-living in the locality;

(2) The number of clients who can be served by the resources of the recipient;

(3) The population who would be eligible at and below alternative income levels; and

(4) The availability and cost of legal services provided by the private Bar in the area.

(d) Unless authorized by § 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance under the Act.

(e) This Part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client is supported by funds from a source other than the Corporation.

§ 1611.4 Authorized exceptions.

A person whose income exceeds the maximum income level established by a recipient may be provided legal assistance under the Act if:

(a) The person's circumstance require that eligibility should be allowed on the basis of one or more of the factors set forth in § 1611.5(b); or

(b) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor; or

(c) The person would be eligible but for receipt of benefits from a governmental income maintenance program.

§ 1611.5 Determination of eligibility.

(a) The governing body of a recipient shall adopt guidelines, consistent with these regulations, for determining the eligibility of persons seeking legal assistance under the Act. At least once a year, guidelines shall be reviewed and appropriate adjustments made.

(b) In addition to income, a recipient shall consider other relevant factors before determining whether a person is eligible to receive legal assistance. Factors considered shall include:

(1) Current income prospects, taking into account seasonal variations in income;

(2) Liquid net assets;

(3) Fixed debts and obligations, including federal and local taxes, and medical expenses;

(4) Child care, transportation, and other expenses necessary for employment;

(5) Age or physical infirmity of resident family members;

(6) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;

(7) The consequences for the individual if legal assistance is denied; and

(8) Other factors related to financial inability to afford legal assistance.

(c) Evidence of a prior administrative or judicial determination that a person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment, shall disqualify the person from receiving legal assistance under the Act. This paragraph does not bar provision of legal assistance to an otherwise eligible person who seeks representation in order to challenge the prior determination.

(d) A recipient may provide legal assistance to a group, corporation, or association if it:

(1) Is primarily composed of persons eligible for legal assistance under the Act, or

(2) Has as its primary purpose furtherance of the interests of persons in the community unable to afford legal assistance, and

(3) Provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

§ 1611.6 Manner of determining eligibility.

(a) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. The form and procedure adopted shall be subject to approval by the Corporation, and the information obtained shall be preserved, in a manner that protects the identity of the client, for audit by the Corporation.

(b) If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiries to verify it, in a manner consistent with an attorney-client relationship.

(c) Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any person who is not employed by the recipient in a manner that permits identification of the client, without the express written consent of the client.

§ 1611.7 Change in circumstances.

If an eligible client becomes ineligible through a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficiently likely to continue for the client to afford private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibilities.

Effective date: December 23, 1976.

APPENDIX A

Table showing maximum income levels equal to 125 percent of the Office of Management and Budget 1976 revision of the official poverty line threshold figures.

All States Except Alaska and Hawaii

Size of family unit:	*Maximum income*
1	$3,500
2	4,625
3	5,750
4	6,874
5	8,000
6	9,125

For family units with more than 6 members, add $1,125 for each additional member in a nonfarm family and $950 for each additional member in a farm family.

Alaska

Size of family unit:	*Maximum income*
1	$4,400
2	5,800
3	7,200
4	8,600
5	10,000
6	11,400

For family units with more than 6 members, add $1,400 for each additional member in a nonfarm family and $1,188 for each additional member in a farm family.

Hawaii

Size of family unit:	
1	$4,050
2	5,338
3	6,625
4	7,913
5	9,200
6	10,488

For family units with more than 6 members add $1,288 for each additional member in a nonfarm family and $1,088 for each additional member in a farm family.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-34496 Filed 11-22-76; 8:45 am]

[From the Federal Register, May 13, 1977]

Title 45—Public Welfare

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1611—ELIGIBILITY

Agency: Legal Services Corporation.

Action: Amendment to Appendix A.

Summary: This amendment increases the Maximum Annual Income Levels for individuals Eligible for Legal Assistance. The Legal Services Corporation Act requires the Corporation to establish these levels. The amounts set forth below are one hundred twenty-five percent (125%) of the official poverty threshold as defined by the Office of Management and Budget. That definition was revised on April 25, 1977.

Effective date: May 13, 1977.

For further information contact:
Linda Davis, Office of the General Counsel, Legal Services Corporation, 733 15th Street, NW., Suite 700, Washington, D.C. 20005, 202-376-5113.
Accordingly, 45 CFR Part 1611 is amended by revising Appendix A to read as follows:

APPENDIX A—MAXIMUM INCOME LEVELS AUTHORIZED BY THE LEGAL SERVICES CORPORATION REGULATION 1611.3(b)

For all States except Alaska and Hawaii

Size of family unit:	*Amount*
1	$3,713
2	4,913
3	6,113
4	7,313
5	8,513
6	9,713

For family units with more than six members, add $960 for each additional member.

Poverty guidelines for Alaska

Size of family unit:	*Amount*
1	$4,650
2	6,150
3	7,650
4	9,150
5	10,650
6	12,150

For family units with more than six members, add $1200 for each additional member.

Poverty guidelines for Hawaii

Size of family unit:	*Amount*
1	$4,288
2	5,663
3	7,038
4	8,413
5	9,788
6	11,163

For family units with more than six members, add $1100 for each additional member.

ALICE DANIEL,
General Counsel,
Legal Services Corporation.

[FR Doc. 77-13822 Filed 5-12-77; 8:45 am]

[From the Federal Register, May 19, 1977]

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1611—ELIGIBILITY

Maximum Income Levels for Individuals Eligible for Legal Assistance, Correction

Agency: Legal Services Corporation.
Action: Correction of Final Rule.
Summary: This corrects the rule published Friday, May 13, 1977, 42 FR 24271, establishing maximum income levels for individuals eligible for legal assistance.
Effective date: May 19, 1977.
For further information contact:
Linda Davis, Legal Services Corporation, 733 15th Street, NW., Suite 700, Washington, D.C. 20005, 202-376-5113.
Substitute the following figures for the ones previously published:

FOR ALL STATES EXCEPT ALASKA AND HAWAII

For family units with more than six members, add $1,200 for each additional member.

POVERTY GUIDELINES FOR ALASKA

For family units with more than six members, add $1,500 for each additional member.

POVERTY GUIDELINES FOR HAWAII

For family units with more than six members, add $1,375 for each additional member.

JAMES E. COLEMAN,
Assistant Counsel,
Legal Services Corporation.

[FR Doc. 77-14316 Filed 5-18-77; 8:45 am]

PART 1612—RESTRICTIONS ON CERTAIN ACTIVITIES[1]

Picketing, Boycotts, Strikes, Illegal Activities; Legislative and Administrative Representation

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974. Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("The Act"). Section 1006(b)(5) of the Act requires the Corporation to issue regulations implementing the Act's restrictions on picketing, boycotts, strikes and illegal activities by employees of the Corporation and of recipients, as well as restrictions on legislative and administrative representation using Corporation funds.

Temporary regulations were published on September 12, 1975 (40 FR 42362) and became effective on October 14, 1975. Proposed final regulations were published on March 5, 1976 (41 FR 9571), and interested persons were given until April 5, 1976 to resubmit comments on the proposed final regulations. All comments received by the Corporation with respect to the proposed final regulations were given consideration and the regulations were reorganized and revised substantially in light of those comments. In addition, Part 1600 was renumbered and now appears as Part 1612. This change was made to permit the inclusion of a general "Definitions" section [now Part 1600], and to establish a more logical order for future regulations. The following considerations were taken into account in redrafting the proposed final regulations:

Prohibition Against Encouraging Action by Other People.—The Act contains a number of provisions designed to prevent legal services attorneys from engaging in activities unrelated to the provision of legal assistance to eligible clients. The prohibitions against direct participation by attorneys presented no difficult issues of interpretation; but the prohibition against encouraging others to engage in lawful activities such as public demonstrations and picketing presented the major policy issue in this Part. In construing the prohibition we tried to reconcile demands presented by the Code of Professional Responsibility, the Constitution, and the intent of Congress.

We believe a lawyer is obligated to advise a client about lawful alternatives to litigation[2] and we do not think Congress intended to prevent such advice.[3] An appropriate construction of the term "encourage" would permit such advice, and at the same time, would satisfy the restriction against vagueness and over-breadth in the First Amendment area, and the parallel ethical constraint against external interference with a lawyer's professional judgment.[4]

The legislative history of the Act suggests that the intention of Congress was to prevent lawyers from deliberately propelling others toward activities they otherwise might not engage in; so from the many possible meanings of "encourage" we chose those that seemed best suited to convey that intention, and replaced "encourage" with the words "exhort, direct, or coerce others to engage in such

[1] See F.R. Doc. 76-12951 supra.
[2] See Ethical Considerations 7-7 and 7-8 of the ABA Code of Professional Responsibility.
[3] See Section 1006(b)(3) of the Act; Conference Report p. 21-22; House Report p. 7.
[4] See, e.g., ABA Committee on Ethics and Professional Responsibility, Formal Opinion 334 (1974), p. 7.

activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow." The definition of "encouraging" that appeared in Sections 1600.3(a)(2) and 1600.3(a)(3), as published, is now superfluous, and has been omitted.

Mens rea requirement.—The final regulations modify the prohibitions of Section 1600.2 by the addition of mens rea requirements. To invoke Corporation sanctions, an employee's direct participation in prohibited activities must be undertaken "knowingly", and action leading another to engage in such activities must be taken "intentionally". These requirements were added in the belief that there is no place for absolute liability in the First Amendment area, and that Congress did not intend to impose it.

Other illegal activity.—As published, the proposed regulations did not interpret the Act's prohibition against "other illegal activity". Section 1612.2(b)(1)(C), as here presented, bars illegal activity that is inconsistent with an employee's responsibilities under the Act, Corporation Regulations, or the Code of Professional Responsibility. These categories seem sufficient to cover the situations when the Corporation should add its sanctions to those imposed by the law.

Legal assistance activities.—The definition of "carrying out legal assistance activities" that appeared in the published version of Section 1600.3(a)(1) included any time during which an attorney "could reasonably be expected to provide legal advice or representation." That phrase has been dropped because it introduced unnecessary uncertainty into a reasonably clear provision. The definition of "legal assistance activities" now appears in Section 1612.1.

Attorney-client relationship.—A single provision, Section 1612.3, replaces the repetitive disclaimers and exception found in the published version of Section 1600.3(a)(2) and its terminal proviso.

Legislative and administrative representation.—Section 1600.4, now 1612.4, has been rewritten for greater clarity, but no substantive changes were made. It follows the Act in permitting "lobbying" efforts to be made on behalf of any client of the recipient if the client may be affected by a particular legislative or administrative measure, but prohibits soliciting a client for the purpose. For practical and economic reasons we permit a client to be represented for "lobbying" purposes by a different person than the one who may represent him in other matters. In allowing this we are supported by ABA Formal Opinion 334, note 3 supra, which states that the client of a legal services office "has a lawyer-client relation with its staff of lawyers which is the same as any other client who retains a law firm to represent him. It is the firm, not the individual lawyer, who is retained."

Subsection 1612.4(b) was added in response to comments received on the proposed regulations. It makes explicit what was previously implied, that the prohibition against "lobbying" does not prevent queries to the Corporation or to governmental agencies; nor does it prevent furnishing information to clients about legislative or administrative developments.

Enforcement.—The only change in the enforcement Section is the addition of sub-section 1612.6(b)(3), which requires a recipient to consult the General Counsel of the Corporation before suspending or terminating an employee for violation of the provisions of this Part. The requirement serves to promote uniform interpretation of the Part, and also insures that the Corporation will be notified of any serious violation.

Accordingly, the Board of Directors of the Legal Services Corporation adopts the final regulations, as set forth below, to become effective on June 3, 1976 pursuant to Section 1008(e) of the Act.

Sec.

AUTHORITY: Secs. 1006(b)(5), 1007(a)(5), 1011, 1008(e), P.L. 93-355, 83 Stat. 378 (42 U.S.C. 2996e(b)(5), 2996f(a)(5), 2996j, 2996g(e)).

§ 1612.1 Definition.

"Legal assistance activities", as used in this Part, means any activity

(a) Carried out during an employee's working hours;

(b) Using resources provided by the Corporation or by a recipient; or

(c) That, in fact, provides legal advice, or representation to an eligible client.

§ 1612.2 Public demonstrations and other activities.

(a) While carrying out legal assistance activities under this Act no employee shall

(1) Knowingly participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation; or

(2) Intentionally exhort, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

(b) While employed under the Act, no employee shall, at any time,

(1) Knowingly participate in any

(i) Rioting or civil disturbance;

(ii) Activity in violation of an outstanding injunction of any court of competent jurisdiction; or

(iii) Any other illegal activity that is inconsistent with an employee's responsibilities under the Act, Corporation Regulations, or the Code of Professional Responsibility; or

(2) Intentionally exhort, direct, or coerce others to engage in such activities, or otherwise usurp or invade the rightful authority of a client to determine what course of action to follow.

§ 1612.3 Attorney-client relationship.

Nothing in this Part shall prohibit an attorney from

(a) Informing and advising a client about legal alternatives to litigation or the lawful conduct thereof;

(b) Attending a public demonstration, picketing, boycott, or strike for the purpose of providing legal assistance to a client; or

(c) Fulfilling the professional responsibilities of an attorney to a client.

§ 1612.4 Legislative and administrative representation.

(a) No funds made available to a recipient by the Corporation shall be used, directly or indirectly, to support activities intended to influence the issuance, amendment, or revocation of any executive or administrative order or regulation of a Federal, State or local agency, or to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative body; except that

(1) An employee may engage in such activities in response to a request from a government agency or a legislative body, committee, or member made to the employee or to a recipient; and

(2) An employee may engage in such activities on behalf of an eligible client of a recipient, if the client may be affected by a particular legislative or administrative measure; but no employee shall

(i) Solicit a client for the purpose of making such representation possible, or

(ii) Solicit a group of clients for the purpose of representing it with respect to matters of general concern to a broad class of persons as distinguished from the interests of a particular client.

(b) Nothing in this section is intended to prohibit an employee from

(1) Communicating with a governmental agency for the purpose of obtaining information, clarification, or interpretation of the agency's rules, regulations, practices, or policies; or

(2) Informing a client about a new or proposed statute, executive order, or administrative regulation; or

(3) Communicating with the Corporation for any purpose.

§ 1612.5 Enforcement.

(a) The Corporation shall have authority, in accordance with procedures set forth in Title 45 of the Code of Federal Regulations at § 1067.1–4(b) (relating to suspension), or at §§ 1067.1–5 through 1067.1–11 (relating to termination)

(1) To suspend or terminate the employment of an employee of the Corporation who violates the provisions of this Part; and

(2) To suspend or terminate financial assistance to a recipient which fails to insure that its employees refrain from activities prescribed by the Act or by this Part; provided that

(i) No suspension of employment or financial assistance shall be continued for longer than 30 days unless the recipient or employee of the Corporation is provided notice and an opportunity for a hearing in accordance with the procedures relating to termination cited above, and

(ii) The term "OEO" in the above-referenced regulations shall mean the Corporation, and the term "responsible OEO official" shall mean the President

of the Corporation, or, if no President is in office, the Chairman of the Board or his designee.

(b) A recipient shall

(1) Advise employees about their responsibilities under this Part; and

(2) Establish procedures, consistent with the notice and hearing requirements of Section 1011 of the Act, for determining whether an employee has violated a provision of this Part; and shall establish a policy for determining the appropriate sanction to be imposed for a violation, including

(i) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(ii) Suspension and termination of employment; and

(iii) Other sanctions appropriate for the enforcement of this regulation; and

(3) Consult the General Counsel of the Corporation before suspending or terminating the employment of any person for violation of this Part.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-12059 Filed 5-4-76; 8:45 am]

PART 1613—RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(b)(1) of the Act restricts the use of Corporation funds in criminal proceedings.

A proposed regulation was published on June 11, 1976 (41 FR 23728-9), and interested persons were given until July 12, 1976 to submit comments. All comments received were given full consideration before adoption of a final regulation. The following issues were among those considered.

Definition

An initial policy question was whether to leave the scope of the prohibition against criminal representation to the varying definition of "criminal" in state and federal law, or to adopt a uniform definition. Consistent with the Corporation's policy seeking uniformity in application of the Act and its regulations, a uniform definition has been adopted.

Many minor infractions, such as housing, sanitation and traffic law violations, that are punishable by no more than a fine, are basically civil in nature. They are treated as civil Code, and the ABA recommends their removal from criminal codes. "ABA Report, New Prespectives on Crime" iv (1972). Because the Corporation believes such offenses are basically civil in nature, and because the imposition of a fine may be extremely burdensome for the clients of legal services programs, the regulation permits representation of defendants in such cases.

The definition in the original draft has been amended to exclude cases prosecuted by private citizens to vindicate claims that are civil in nature, even though criminal sanctions or procedures may be provided by some states. Examples are child support and alimony cases. The change is consistent with the Conference Report, which states that the conferees understood "criminal proceedings" to refer to actions brought by governmental units.

The definition may leave a gap between cases where legal services lawyers can provide representation, and those where the Sixth Amendment right to counsel in criminal prosecution applies, because the Supreme Court has suggested that the Sixth Amendment is inapplicable when imprisonment is unlikely, although authorized. "*Argersinger* v. *Hamlin*," 407 U.S. 25 (1975). Recognizing that gap, the Corporation still believes that legal services lawyers should not participate in cases where an alternative jail sentence is authorized, even though they are arguably civil in nature. The Corporation's resources are too limited to accept the substantially expanded quasi-criminal caseload that might result if such representation were permitted.

If no more than a fine can result from conviction, the Part does not prohibit representation. But whether representation actually should occur is a question for a recipient to decide on the basis of its own priorities and resources, and the availability of other legal assistance in the community.

The prohibition of this part does not apply until adversary judicial criminal proceedings have been initiated by formal complaint, indictment, or information. Choice of this point was suggested by the Supreme Court's decision in "*Kirby* v. *Illinois*," 406 U.S. 682 (1972), where the Court explained that "The initiation of judicial criminal proceedings is far from a mere formalism. It is the starting point of our whole system of adversary criminal justice. For it is only then that the government has committed itself to prosecute, and only then that the adverse positions of government and defendant have solidified * * *. It is the point, therefore, that marks the commencement of [a] 'criminal prosecution' * * *," 406 U.S. 689.

Authorized Representation

The legislative history makes it clear that certain limited exceptions to the general prohibition against criminal representation were intended.

In geographic areas where the is no Public Defender, and there are relatively few lawyers available, a legal services lawyer may be required by a court to accept appointment to represent an indigent defendant. If appointment is made pursuant to a statute or a court rule or practice of general applicability to all attorneys in the jurisdiction, § 1613.4(a) permits a legal services lawyer to fulfill an attorney's responsibility as an officer of the court, as long as criminal representation is not inconsistent with the primary responsibility of the legal services program to provide assistance to eligible clients in civil matters.

Occasionally a noncriminal matter undertaken on behalf of a juvenile evolves into a criminal proceeding (as for example, when a juvenile court waives jurisdiction). Section 1613.4(b) permits continued representation of the juvenile in the criminal proceeding, if required by professional responsibility.

Section 1613.4(c) was added to permit representation, if required by professional responsibility, in a case in which a criminal charge directly arises out of a civil matter in which a client has received or is receiving legal assistance from a recipient.

This Part does not prohibit legal assistance with respect to any matters that are not part of a criminal prosecution, such as probation revocation after sentence has been imposed, "*Mempa* v. *Rhay*," 389 U.S. 128 (1967), parole revocation, "*Morrissey* v. *Brewer*," U.S. 471 (1972), or relief from illegal conditions of confinement.

Sec.
1613.1 Purpose.
1613.2 Definition.
1613.3 Prohibition.
1613.4 Authorized Representation.

AUTHORITY: Sec. 1007(b)(1); (42 U.S.C. 2996f(b)(1)).

§ 1613.1 Purpose.

This part is designed to insure that Corporation funds will not be used to provide legal assistance with respect to criminal proceedings unless such assistance is required as part of an attorney's responsibilities as a member of the Bar.

§ 1613.2 Definition.

"Criminal proceeding" means the adversary judicial process prosecuted by a public officer and initiated by a formal complaint, information, or indictment charging a person with an offense denominated "criminal" by applicable law, and punishable by death, imprisonment, or a jail sentence. A misdemeanor or lesser offense tried in an Indian tribal court is not a "criminal proceeding."

§ 1613.3 Prohibition.

Corporation funds shall not be used to provide legal assistance with respect to a criminal proceeding, unless authorized by this part.

§ 1613.4 Authorized representation.

Legal assistance may be provided with respect to a criminal proceeding.

(a) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the recipient's

primary responsibility to provide legal assistance to eligible clients in civil matters; or

(b) When professional responsibility requires continued representation of a juvenile pursuant to § 1614.6; or

(c) When professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by a recipient.

Effective date. This part becomes effective on October 12, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-26500 Filed 9-9-76; 8:45 am]

PART 1614—LEGAL ASSISTANCE TO JUVENILES

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(b)(4) of the Act restricts the use of Corporation funds in the representation of juveniles.

A proposed regulation was published on June 11, 1976 (41 FR 23729), and interested persons were given until July 12, 1976 to submit comments. All comments received were given full consideration before adoption of a final regulation. The following issues were among those considered.

Purpose

The legislative history of the Act shows that Congress intended to prohibit legal services programs from providing legal assistance to a juvenile when doing so would create or exacerbate conflict between parent and child. At the same time, assistance is authorized when family relationships have broken down or essential rights of a juvenile are at stake. This part is designed to meet these dual concerns.

Representation at the request of a parent, guardian, or court

Section 1614.4 follows the Act in permitting legal assistance at the request of one of the juvenile's parents or guardians, or a court of competent jurisdiction. Requests made by agents or officials such as probation officers, youth workers and counselors, through whom a court normally acts, are considered requests of a court.

When a legal services program is asked to provide assistance to a juvenile who is tried as an adult in a criminal proceeding, the limitations of Part 1613 apply. The Act permits legal assistance to juveniles in noncriminal proceedings, but if a case is one in which a juvenile has a right to appointed counsel, Corporation funds should not be used to relieve governmental entities of their financial responsibilities. The original draft attempted to meet that concern in § 1614.3(c). However, many comments were received objecting that the provision went beyond the Act by unduly restricting representation of juveniles in cases in which there is a legal right to appointed counsel. It was pointed out that there are many situations when adults, as well as juveniles, may have a legal right to counsel compensated by the state (e.g., mental commitment proceedings), and there is no indication that Congress intended there to be greater restrictions on the representation of juveniles than adults in such cases. (The legislative history of the section indicates that the chief concern of Congress was to prevent legal services programs from providing representation injurious to the integrity of a family—a concern that is irrelevant in the types of cases at issue here.) Further, many comments stated that the right to appointed counsel in noncriminal cases is scarcely implemented, if at all, in many states. To the extent that the legal right to appointed counsel is a reality within a jurisdiction, the provisions of Part 1609, requiring referral of fee-generating cases, should be adequate to prevent legal services programs from competing with the private Bar, whether the potential client is a juvenile or an adult.

Because of the critical comments received § 1614.3(c) was deleted and § 1614.7 added in its place. The new provision allows a recipient to adopt a policy con-

sistent with its own resources and priorities, and the realities of practice within the jurisdiction. If a state provides adequate representation for juveniles, it may be assumed that a recipient will refrain from undertaking such cases.

Representation without the request of a parent, guardian, or court

When the normal relationship between parent and child no longer exists, or the interests of parent and child conflict, the Act permits legal assistance to a juvenile without a request from a parent, guardian or court. Sections 1614.5 (a) and (b) carry out the intent of the Act by providing that assistance may be given in cases of child neglect, as well as child abuse; and in proceedings involving guardianship, as well as custody. Section 1614.5(c) tracks section 1007(b)(4)(C) of the Act in permitting legal assistance to a juvenile in cases involving the initiation, continuation, or conditions of institutionalization.

Consistent with the balance struck by the Act between preserving parent-child relationships and protecting the legal rights of juveniles, section 1007(b)(4)(D) of the Act permits legal assistance to secure or prevent the loss of legal benefits or services, except when judicial action is commenced against a juvenile's parent or guardian. "Guardian", in this context, has been construed to mean "non-institutional guardian", because doing otherwise would shield institutional guardians from their legal responsibilities. This interpretation is supported by the legislative history of the provision. "Congressional Record," S. 12934, July 18, 1974.

If, after commencement of a case, a parent or guardian joins the action as a defendant or respondent, the Part permits representation of a juvenile to continue. Withdrawal at that point would violate Disciplinary Rule 2–110 of the ABA Code of Professional Responsibility; and the Corporation could not require it without violating section 1006(a)(3) of the Act, that prohibits interference with an attorney's fulfillment of professional responsibilities. Here, too, the regulation is supported by legislative history.

Continuity of representation

Proceedings initiated in a juvenile court are sometimes transferred to an adult court where criminal proceedings ensue. If a legal services lawyer has represented a juvenile prior to transfer, Disciplinary Rule 2–110 of the ABA Code of Professional Responsibility prohibits withdrawal until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of the client. Therefore, while requiring an attorney to make a good faith effort to be relieved from representation in the criminal proceeding, § 1614.6 permits continued representation unless the attorney is relieved by the court.

Sec.

AUTHORITY: Sec. 1007(b)(4) (42 U.S.C. 2996f(b)(4)).

§ 1614.1 Purpose.

This part is designed to prevent improper interference in parent-child relationships, while permitting legal assistance when it is necessary to protect essential rights of a juvenile.

§ 1614.2 Definitions.

As used in this part,

(a) "Guardian" means a person or institution lawfully appointed to protect the interests of a juvenile.

(b) "Institution" means any facility, public or private, providing a juvenile with shelter, care, education or other services.

(c) "Juvenile" means any person less than 18 years of age who is not emancipated under applicable law.

§ 1614.3 Policy.

Corporation funds may be used to provide legal assistance to a juvenile when authorized by this part.

§ 1614.4 Request of a parent, guardian, or court.

(a) Legal assistance may be provided to a juvenile

(1) When the written request of a parent or guardian of the juvenile is received; or

(2) At the request of an official or agent of a court of competent jurisdiction; but

(b) Legal assistance shall not be provided to a juvenile who is tried as an adult in a criminal proceeding, as defined in § 1613.2, unless required as part of an attorney's professional responsibilities, pursuant to § 1613.4, or § 1614.6.

§ 1614.5 Representation without request of a parent, guardian, or court.

Legal assistance may be provided to a juvenile without a request from a parent, guardian, or court in

(a) Cases, proceedings, or matters

(1) Involving child abuse or neglect;

(2) To determine legal custody or guardianship of a juvenile;

(3) In which a court has jurisdiction by reason of a juvenile's alleged need for treatment, services, supervision or control, including but not limited to proceedings formally designed for persons in need of supervision (PINS) under state law; or

(4) Involving the initiation, continuation, or conditions of institutionalization of a juvenile; or

(b) When no judicial action is commenced against the parent or non-institutional guardian of the juvenile, legal assistance may be provided

(1) To secure or prevent the loss of benefits or services, or

(2) To prevent the imposition of services against the will of the juvenile.

§ 1614.6 Continuity of representation.

If a criminal proceeding, as defined in § 1613.2, arises out of a case, proceeding, or matter with respect to which a juvenile has received assistance authorized by this part, an attorney should make a good faith effort, consistent with professional responsibility, to obtain approval of the court to withdraw from representation in the criminal proceeding, but may continue to provide representation unless relieved by the court.

§ 1614.7 Limitation policy.

A recipient shall adopt policies designed to insure that Corporation funds are not used to relieve a governmental entity of its legal responsibility to provide compensated counsel to represent juveniles in particular categories of cases, matters, or proceedings.

Effective date: This part becomes effective on October 12, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-26501 Filed 9-9-76; 8:45 am]

PART 1615—RESTRICTIONS ON ACTIONS COLLATERALLY ATTACKING CRIMINAL CONVICTIONS

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(b)(1) of the Act restricts the use of Corporation funds in certain civil actions challenging criminal convictions.

A proposed regulation was published on June 11, 1976 (41 FR 23730), and interested persons were given until July 12, 1976 to submit comments. All comments received were given full consideration before adoption of a final regulation. The following issues were among those considered.

This part implements the provision of Section 1007(b)(1) of the Act that prohibits legal assistance in certain civil actions brought to challenge criminal convictions. The prohibition includes writs of habeas corpus, and other writs such

as coram nobis that, in some jurisdictions, perform the same function of collaterally attacking the validity of a criminal conviction.

Some comments objected that the proposed regulation went far beyond the Act by adding, in subsection 1615.2(a), "a public officer who has custody of a convicted person" to the statutory list of proscribed defendants. That formulation was used because merely tracking the statutory language would not have carried out the intent of Congress, but that purpose does not require inclusion of others besides prison wardens, such as the directors of state mental institutions in which both criminally convicted and civilly committed individuals are confined. Special circumstances and legal issues arise when convicted persons are confined in institutions other than prisons, and the statutory purpose can be satisfied without prohibiting legal assistance in such cases. Therefore, the original phrase has been replaced by a narrower one, "custodian of an institution for persons convicted of crimes."

The final phrase "by a court officer or law enforcement official" was added to § 1615 2(b) in response to criticisms that, as originally drafted, the section was unclear. Because the prohibition against representation in collateral attacks on convictions is *in pari materia* with the one against representation in criminal proceedings, the limited exception permitting criminal representation in certain instances has been carried over to this part.

Consistent with the statutory language and its legislative history, this Part does not prohibit cases seeking relief from illegal conditions of confinement, or any other actions that do not have the objective of overturning a criminal conviction.

Sec.

AUTHORITY: Sec. 1007(b)(1); (42 U.S.C. 2996f(b)(1)).

§ 1615.1 Purpose.

This part prohibits the provision of legal assistance in an action in the nature of habeas corpus seeking to collaterally attack a criminal conviction.

§ 1615.2 Prohibition.

Except as authorized by this part, no Corporation funds shall be used to provide legal assistance in an action in the nature of habeas corpus collaterally attacking a criminal conviction of the action

(a) Is brought against an officer of a court, a law enforcement official, or a custodian of an institution for persons convicted of crimes; and

(b) Alleges that the conviction is invalid because of any alleged acts or failures to act by an officer of a court or a law enforcement official.

§ 1615.3 Application of this part.

This part does not prohibit legal assistance—

(a) To challenge a conviction resulting from a criminal proceeding in which the defendant received representation from a recipient pursuant to Corporation regulations; or

(b) Pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the primary responsibility of the recipient to provide legal assistance to eligible clients in civil matters.

Effective date: This part becomes effective on October 12, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc.76-26502 Filed 9-9-76;8:45 am]

PART 1166—ATTORNEY HIRING

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974. Pub. L. 93-355. 88 Stat. 378, 42 U.S.C. 2996–2996*l* ("the Act"), for the purpose of providing financial support

for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(a)(3) of the Act provides that the Corporation shall ensure that recipients solicit recommendations of the local Bar in filling staff attorney positions, giving preference to qualified local residents, and section 1006(b)(6) requires the Corporation to provide, to the extent feasible, in areas where a language other than English is the principal language of significant number of eligible clients, that such language is used in the provision of legal assistance to those clients.

A proposed regulation was published on June 11, 1976 (41 FR 23730–1), and interested persons were given until July 12, 1976 to submit comments. All comments received were given full consideration before adoption of a final regulation. The following issues were among those considered.

Section 1007(a)(8) of the Act requires a recipient to solicit recommendations from the local Bar before filling staff attorney positions, and to give preference to qualified local applicants. This part draws upon Part 1607, Governing Bodies, by requiring a recipient to seek recommendations from other appropriate groups as well as from the local Bar. And because these requirements serve the laudable purpose of promoting a cooperative relationship between a recipient and the local Bar and community, they have been applied to all attorney positions, not just "staff attorneys", as that term is defined in the Act. Local applicants need be given preference only when they are equally qualified with non-residents.

The part requires a recipient to establish qualifications for attorneys; and the enumerated criteria include those for the attorney members of governing bodies under § 1607.3(b) of the Corporation's regulations, and for State Advisory Council members under §§ 1603.3 and 1603.4. This part also implements section 1006(b)(6) of the Act, that requires legal assistance to be provided in the principal language, other than English, used by significant numbers of eligible clients in a given area.

Sec.

AUTHORITY: Secs. 1007(a)(8); 1006(b)(6); 1006(b)(4); (42 U.S.C. 2996f(a)(8); 2996e(b)(6); 2996c(b)(4)).

§ 1616.1 Purpose.

This part is designed to promote a mutually beneficial relationship between a recipient and the local Bar and community, and to insure that a recipient will choose highly qualified attorneys for its staff.

§ 1616.2 Definition.

"Community", as used in this park, means the geographical area most closely corresponding to the area served by a recipient.

§ 1616.3 Qualifications.

A recipient shall establish qualifications for individual positions for attorneys providing legal assistance under the Act, that may include, among other relevant factors:

(a) Academic training and performance;

(b) The nature and extent of prior legal experience;

(c) Knowledge and understanding of the legal problems and needs of the poor;

(d) Prior working experience in the client community, or in other programs to aid the poor;

(e) Ability to communicate with persons in the client community, including, in areas where significant numbers of eligible clients speak a language other than English as their principal language, ability to speak that language; and

(f) Cultural similarity with the client community.

§ 1616.4 Recommendations.

(a) Before filling an attorney position, a recipient shall notify the organized Bar in the community of the existence of a vacancy, and of the qualifications established for it, and seek recommendations for attorneys who meet the qualifications established for the position.

(b) A recipient shall similarly notify and seek recommendations from other organizations deemed appropriate by the recipient, that have knowledge of the legal needs of persons in the community unable to afford legal assistance.

§ 1616.5 Preference to local applicants.

When equally qualified applicants are under consideration for an attorney position, a recipient shall give preference to an applicant residing in the community to be served.

§ 1616.6 Equal employment opportunity.

A recipient shall adopt employment qualifications, procedures, and policies that meet the requirements of applicable laws prohibiting discrimination in employment, and shall take affirmative action to insure equal employment opportunity.

§ 1616.7 Language ability.

In areas where a significant number of clients speak a language other than English as their principal language, a recipient shall adopt employment policies that insure that legal assistance will be provided in the language spoken by such clients.

Effective date: This part becomes effective on October 12, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-26503 Filed 9-9-76; 8:45 am]

PART 1617—CLASS ACTIONS

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996l ("the Act"). Section 1006(d)(5) of the Act, 42 U.S.C. 2996e(d)(5), requires class action litigation undertaken by a recipient to be approved by the projecton director in accordance with policies established by the governing board. Section 1007(a)(3), 42 U.S.C. 2996f(a)(3), requires the Corporation to insure that legal assistance is rendered in the most economical and effective manner, and Section 1007(a)(1), 42 U.S.C. 2996f(a)(1), requires the Corporation to protect against impairing the integrity of the adversary process.

On September 23, 1976 (41 FR 41722) a proposed regulation on class actions was published. Interested persons were given until October 26, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

Comment

Section 1006(d)(5) of the Act requires class action litigation undertaken by a recipient to be approved by the project director in accordance with policies established by the governing board. The legislative history of the section make it clear that Congress did not intend to discourage use of class actions, but did want to insure that class action litigation would be undertaken according to standards established by persons accountable for the overall performance of the legal services program.

Neither the Act nor relevant American Bar Association Ethics Opinions permits a governing body to review class action litigation on a case-by-case basis. What is contemplated is the establishment by a governing body of broad policies that are consistent with its resource allocation priorities, and with the need to protect the rights of an individual client and similarly situated clients. The class action policy adopted by a governing body should not interfere with an attorney's independent judgment or duty to a client. See Sections 1006(a)(3); 1007(a)(1); ABA Committee on Ethics and Professional Responsibility, Formal Opinion 334.

Because a class action may be a useful way of avoiding duplicative and repetitive actions, the mandate of Section 1007(a)(3) that legal assistance be rendered in "the most economical and effective" manner, as well as the prohibition in Section 1007(a)(1) against impairing the integrity of the adversary process, preclude a recipient from adopting policies that would prevent class actions in appropriate cases.

Part 1617 is added to read as follows:

Sec.
1617.1 Purpose.
1617.2 Definition.
1617.3 Approval Required.
1617.4 Standards for Approval.

AUTHORITY: Secs. 1006(d)(5), 1007(a)(1), 1007(a)(3), 1008(e) (42 U.S.C. 2996e(d)(5), 2996f(a)(1), 2996(a)(3), 2996g(e)).

§ 1617.1 Purpose.

This Part is intended to promote responsible, efficient, and effective use of Corporation resources. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1617.2 Definition.

"Class action" means a class suit, class action appeal, or amicus curiae class action, as defined by statute or the rules of civil procedure of the court in which an action is filed.

§ 1617.3 Approval required.

No class action may be undertaken by a staff attorney without the express approval of the director of the recipient, acting in accordance with the policies established by the governing board.

§ 1617.4 Standards for approval.

The governing body of a recipient shall adopt policies to guide the director of the recipient in determining whether to approve class action litigation. The policies adopted:

(a) Shall not prohibit class action litigation when appropriate to provide effective representation to a client or a group of similarly situated clients;

(b) Shall not require case-by-case approval of class action litigation by the governing body;

(c) Shall give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act or Corporation regulations; and

(d) Shall not interfere with the professional responsibilities of an attorney to a client.

Effective date: December 23, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-34497 Filed 11-22-76; 8:45 am]

PART 1618—ENFORCEMENT PROCEDURES

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"). Sections of the Act, including Sections 1006(b)(1), 1006(b)(5), and 1007(d), 42 U.S.C. 2996e(b)(1), 2996e(b)(5), 2996f(d), provide that the Corporation shall have the authority to enforce, and to monitor and evaluate programs to insure, compliance with the Act and Corporation rules, regulations, and guidelines, Section 1006(b)(2), 42 U.S.C. 2996e(b)(2), requires recipients to insure compliance by their employees with the Act and Corporation rules, regulations, and guidelines.

On September 23, 1976 (41 FR 41723) a proposed regulation on enforcement procedures was published. Interested persons were given until October 26, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

Comment

Congress conferred upon the Corporation tha dual responsibility of insuring compliance by recipients and their employees with the provisions of the Act and Corporation rules, regulations, and guidelines, and of insuring "the protection of the integrity of the adversary process from any impairment in furnishing legal assistance" to eligible clients. (Sections 1006(b)(1) and 1007(a)(1)).

The enforcement procedures established by this Part attempts to satisfy both these goals.

The Corporation's authority to enforce the Act is found in Sections 1006(b)(1) and 1007(d). The Act specifically mentions only termination of financial support to recipients as a means of general enforcement, but such a severe remedy probably would be unwarranted in most instances. It was necessary, therefore, to provide other methods of enforcement. Cf. Section 1006(b)(5), that does contemplate other remedies for violations of its provisions. The Congressional intention that the Corporation should have authority to create other remedies is specifically stated in the Conference Report:

"The conferees intend that remedial measures short of termination be utilized prior to termination. S .Conf. Rep. 93-845, 93rd Cong., 2nd sess., 21 (1974)."

To allow maximum latitude for informal resolution of violations, this Part does not specify what kind of remedial action, short of suspension of termination, should be taken when the Corporation finds a violation of the Act. It is anticipated that some initial violations may be due to uncertainty about the proper interpretation of the Act. In such instances, it should be sufficient to notify the recipient that its interpretation of the Act is erroneous. In other cases, the Corporation may instruct the recipient to remedy the matter according to its own procedures. It is expected that the Corporation will take formal action to remedy a violation only after other means have failed.

The procedure established by this Part is consistent with the Congressional intention that a recipient should have the initial responsibility for insuring that its employees comply with the Act. Section 1006(b)(2).

Primary jurisdiction

To insure uniform and consistent interpretation and application of the Act, every alleged violation should be dealt with in the manner prescribed by this Part. Use of this procedure will also protect the integrity of the adversary process by insuring that questions of compliance with the Act will not become ancillary issues in cases undertaken by attorneys employed by recipients. The most common situation in which a question of compliance arises is when an opposing party in a lawsuit challenges a client's eligibility for representation by a legal services attorney. Several courts confronted with that issue have held that it is not a proper one for judicial determination. *Ingram* v. *Justice Court*, 69 Cal. 2d 832, 447 P. 2d 650 (1968); *Budget Finance Plan, Inc.* v. *Staley*, Civil No. GS 19245-65 (D.C. Ct. Gen. Sess., June 9, 1966); *Florida ex rel T.J.M.* v. *Carlton*, No. 75-245 (Fla. Dist. Ct. App., June, 1975) 9 Clearinghouse Rev. 209 (July, 1975); *Brednenner* v. *Brednenner*, (Penn. C.P. Luzerne Co., June 10, 1975) 9 Clearinghouse Rev. 277 (August, 1975).

In both *Carlton* and *Brednenner*, the courts specifically recognized the issue as being one for administrative resolution. In *Carlton*, the Court said:

"No authorization either state or federal, permits judicial inquiry into a client's eligibility for representation in a Florida Court by an attorney who is a member of the Florida Bar in good standing who has been designated by the client. Where the federal government makes legal services available under congressional authority, eligibility for rendering and receiving such legal services is a matter [to be resolved] by the federal agencies which make such services available. Slip Opinion at 2-3."

The approach taken by these courts is consistent with the one adopted here, which assumes that the Corporation has primary jurisdiction to enforce compliance with the Act. The primary jurisdiction doctrine requires a party to exhaust an available administrative procedure before seeking judicial resolution of a dispute subject to an agency's jurisdiction. The rationale for the doctrine supports its application to questions of compliance with the Legal Services Corporation Act. As explained by Professor Kenneth Davis, the doctrine is based on:

". . . recognition of the need for orderly and sensible coordination of the work of agencies and of courts. Whether the agency happens to be expert or not, a court should not act upon subject matter that is peculiarly within the agency's specialized field without taking into account what the agency has to offer, for otherwise parties who are subject to the agency's continuous regulation may become the victims of uncoordinated and conflicting requirements. 3 Davis Administrative Law § 1901, at 5 (Footnote omitted)."

Where appropriate, the primary jurisdiction doctrine applies even in the absence of a specific statutory provision requiring it, as shown by the decision in

Andrew v. *Louisville & Nashville R.R. Co.*, 406 U.S. 320 (1972). Commenting on *Andrews*, Professor Davis said:

"* * * perhaps the case stands for the broad proposition that establishment of federal administrative machinery to take care of a class of controversies indicates legislative intent to require prior resort to that machinery, even though the legislative body said nothing about such prior resort. Davis Administrative Law, 1976 Supplement, § 19.03 at 428."

The legislative history of the Legal Services Corporation Act supports the view that Congress intended the Corporation to have primary jurisdiction to enforce compliance with the Act. The original legal services bill, S. 1815, 93rd Cong. 1st Sess. (May 15, 1973) and H.R. 7824, Id., contained a provision that would have given private citizens the right to seek enforcement of the Act in federal court. The provision was deleted, and in the Senate debates it was specifically noted by Senator Nelson that "Any violation of the bill's restrictions [is] to be enforced by the Corporation." 120 Cong. Rec. 12923 (Daily Ed., July 18, 1974).

Support for application of the primary jurisdiction doctrine is found in the provisions of the Act itself. Section 1006(b)(1) gives the Corporation the authority, and Section 1007(d) gives it the obligation to enforce the Act. Moreover, the Act's restrictions are cast in terms that refer to the relation between the Corporation and a recipient: Section 1007(a) requires the Corporation to "insure" that certain restrictions are observed, and Section 1007(d) prohibits certain use of "funds made available by the Corporation." Both provisions support the view that an alleged violation of the Act is, at least in the first instance, a matter to be resolved by the Corporation.

Part 1618 is added to read as follows:

Sec.

1618.1 Purpose.
1618.2 Definition.
1618.3 Complaints
1618.4 Duties of Recipients.
1618.5 Duties of the Corporation.

AUTHORITY: Sections 1006(b)(1), 1006(b)(2), 1006(b)(5), 1007(d), 1008(e) (42 U.S.C. 2996e(b)(1), 2996e(b)(2), 2996e(b)(5), 2996f(d), 2996g(e)).

§ 1618.1 Purpose.

In order to insure uniform and consistent interpretation and application of the Act, and to prevent a question of whether the Act has been violated from becoming an ancilliary issue in any case undertaken by a recipient, this Part establishes a systematic procedure for enforcing compliance with the Act.

§ 1618.2 Definition.

As used in this Part, "Act" means the Legal Services Corporation Act or the rules and regulations issued by the Corporation.

§ 1618.3 Complaints.

A complaint of a violation of the Act by a recipient or an employee may be made to the recipient, the State Advisory Council, or the Corporation.

§ 1618.4 Duties of recipients.

A recipient shall:

(a) Advise its employees of their responsibilities under the Act; and

(b) Establish procedudes, consistent with the notice and hearing requirements of Section 1011 of the Act, for determining whether an employee has violated a prohibition of the Act; and shall establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(1) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(2) Suspension and termination of employment; and

(3) Other sanctions appropriate for enforcement of the Act; but

(c) Before suspending or terminating the employment of any person for violating a prohibition of the Act, a recipient shall consult the Corporation to insure that its interpretation of the Act is consistent with Corporation policy.

§ 1618.5 Duties of the Corporation.

(a) Whenever there is reason to believe that a recipient of an employee may have violated the Act, or failed to comply with a term of its Corporation grant or

contract, the Corporation shall investigate the matter promptly and attempt to resolve it through informal consultation with the recipient.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the Act, or, after notice, has failed to take appropriate remedial or disciplinary action to insure compliance by its employees with the Act, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support of the recipient pursuant to the procedures set forth in Part 1612, or may take other action to enforce compliance with the Act.

Effective date: December 23, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-34498 Filed 11-22-76; 8:45 am]

Title 45—Public Welfare

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1619—DISCLOSURE OF INFORMATION

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"). Section 1006(b)(1), 42 U.S.C. 2996e(b)(1), provides that the Corporation shall have the authority to enforce compliance with the Act and Corporation rules, regulations and guidelines promulgated pursuant thereto.

On September 23, 1976 (41 FR 41724) a proposed regulation on disclosure of recipient policies was published. Interested persons were given until October 26, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

Comment

The final regulation is a substantial revision of the draft published for comment on September 23, 1976.

The disclosure requirements of the published draft were very similar to the ones that Part 1662 imposes on the Legal Services Corporation, although the Legal Services Corporation Act applies the Freedom of Information Act to the Corporation, and not to recipients. After considering the comments received, the Corporation concluded that there is a sound basis for the distinction made by the Congress in its treatment of the Corporation and of recipients.

The published draft gave insufficient weight to the fact that a legal services office is a law firm, and that its operations are fundamentally different from those of the Corporation. Opposing attorneys and parties to lawsuits in which the other side is represented by a legal services program attempted to use the proposed regulation as a means of discovery. The regulation sought to protect against such misuse, but its description of the materials exempt from disclosure was necessarily vague and likely to raise many questions of interpretation and application. Some programs that received requests under the regulation reported difficulty in defining the scope of disclosure with respect to information relating to specific cases or clients. Requiring a legal services program to furnish any information related to a client's case might put legal services clients at a disadvantage that is unjustified by the fact that they are being assisted with funds initially provided by the Congress.

Other legal services programs received requests for information from individuals seeking to show that the recipient was violating the Act or Corporation regulations. Insofar as the draft lent itself to this use, it was inconsistent with section 1618, Enforcement Procedures, and section 1604, providing for the establishment of State Advisory Councils. An individual who has reason to believe a legal services program may have violated the Act or Corporation regulations should not undertake a private investigation or fishing expedition, but should make a complaint to the State Advisory Council, the Director of the recipient, or the Corporation. Investigation is then carried out by the Corporation, as required by Part 1618, which informs the complainant of the results.

The public has a legitimate interest in knowing the rules and regulations of the Corporation and the recipient's policies and guidelines and the names and addresses of the members of its governing body. These should be made available for public inspection during business hours at any office maintained by a recipient. Other information concerning a recipient in which the public may have a legitimate interest may be obtained by an FOIA request to the Corporation pursuant to Part 1602.

The final regulation insures that information in which the public has a legitimate interest will be disclosed, and protects recipients against burdensome or inappropriate demands.

Sec.

AUTHORITY: Sec. 1006(b)(1), (42 U.S.C. 2996e(b)(1)); sec. 1008(e), (42 U.S.C. 2996g(e).)

§ 1619.1 Purpose.

This part is designed to insure disclosure of information that is a valid subject of public interest in the activities of a recipient.

§ 1619.2 Policy.

A recipient shall adopt a procedure for affording the public appropriate access to the Act, Corporation rules, regulations and guidelines, the recipient's written policies, procedures, and guidelines, the names and addresses of the members of its governing body, and other materials that the recipient determines should be disclosed. The procedure adopted shall be subject to approval by the Corporation.

§ 1619.3 Referral to the Corporation.

If a person requests information, not required to be disclosed by this part, that the Corporation may be required to disclose pursuant to Part 1602 of this chapter implementing the Freedom of Information Act, the recipient shall either provide the information or inform the person seeking it how to request it from the Corporation.

§ 1619.4 Exemptions.

Nothing in this part shall require disclosure of

(a) Any information furnished to a recipient by a client;

(b) The work product of an attorney or paralegal;

(c) Any material use by a recipient in providing representation to clients;

(d) Any matter that is related solely to the internal personnel rules and practices of the recipient; or

(e) Personnel, medical, or similar files.

Effective date: This part shall become effective February 25, 1977.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 77-2578 Filed 1-25-77; 8:45 am]

PART 1620—PRIORITIES IN ALLOCATION OF RESOURCES

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(a)(2) of the Act requires the Corporation to establish, *inter alia*, priorities to insure that persons least able to afford legal assistance are given preference in furnishing such assistance.

On June 11, 1976 (41 FR 23727) a proposed regulation on priorities was published as § 1611.8 of the proposed regulation on eligibility. Interested persons were given until July 12, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

Comment

Section 1007(a)(2)(C) of the Act requires the Corporation to "establish priorities to ensure that persons least able to afford legal assistance are given preference in the furnishing of such assistance." In one sense, it may be argued that the mandate of that Section would be fully satisfied by the Corporation's choice of a maximum income level close to the subsistence line, excluding those with higher incomes who also might be deemed "eligible clients" within the meaning of the statutory definition. But regardles of the maximum income level established, no legal services program will have sufficient resources to meet all the legal needs of the financially eligible population in the area it serves. Disciplinary Rule 7-106 of the ABA Code of Professional Responsibiilty prohibits lawyers from undertaking more cases than they can handle in a professional manner. Recognizing this, every program has found it necessary to control its caseload, but few have done so in a rational way that insures that the most urgent needs of clients are met. As long as the need to control caseload continues, it will be necessary for the programs to establish priorities in the provision of legal assistance.

In Formal Opinion 334 (August 10, 1974), the ABA Committee on Ethics and Professional Responsibility said that

"A governing board [of a legal services program] may legitimately exercise control by establishing priorities as to the categories or kinds of cases which the office will undertake * * * The subject matter priorities must be based on a consideration of the needs of the client community and the resources available to the program."

The procedure established by the proposed regulation follows the direction suggested by the ABA and also harmonizes the statutory mandate to give preference to those least able to afford legal assistance with the provision immediately following. Section 1007(a)(3), that requires the Corporation to "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance." Section 1620.2 requires a recipient to enlist its clients, employees, and governing body in a focused inquiry designed to determine the community's most urgent legal needs, before establishing priorities. The approach is consistent with the one recommended to the Corporation by the Office of Management and Budget:

"As in the case of medical treatment, the concept of *triage* must be applied—the relative need must be further defined in terms of resource availability and the distinction between emergency and deferrable legal matters. We believe it advisable for guidelines to be established which array the legal resources available and the worth (both social and economic) of the rights at issue. * * * Only when resources are sufficient to meet all "needs" is the luxury of a policy which need not make such a distinction reasonable."

Among other factors that a recipient may deem relevant, the regulation requires that consideration be given to the resources of the recipient, the size of the financially eligible population in the area served, the availability of another source of free or low-cost legal assistance in a particular category of cases or matters, the urgency of particular legal problems, and the general effect of the resolution of a particular category of cases or matters on persons least able to afford legal assistance in the community served. To the extent that the priorities chosen by a program give preference to the legal problems of the poor *qua* poor, they may promote more economical and effective legal services by directing resources to problems that are likely to be encountered by numerous members of the community, and may be capable of solution by a unified approach.

There are a variety of methods by which a program might choose to implement its priorities. It might determine to give no assistance at all in certain categories of cases, or to give advance and consultation without engaging in litigation, or to limit litigation to the trial level. It might establish different income eligibility standards for different categories of cases. For example, if a recipient determined that divorce representation could be obtained from the private Bar for a low fee, it might limit its representation in divorce cases to only the poorest clients. Another means of enforcing priorities is through educational efforts to inform the client community of the availability of a legal remedy in a particular category of problems. Priorities should not be enforced in a manner that would prevent assistance in an emergency when the interest of justice so required, or providing appropriate legal assistance in response to unexpected or changed circumstances.

Part 1620 is added as follows.

Sec.
1620.1 Purpose.
1620.2 Procedure.

AUTHORITY: Sec. 1007(a)(2); 42 U.S.C. 2996(a)(2).

§ 1620.1 Purpose.

This Part is designed to insure that a recipient will allocate its resources in an economical and effective manner.

§ 1620.2 Procedure.

(a) A recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedures adopted shall insure participation by clients and employees of the recipient, and shall provide opportunity for comment by interested members of the public. Priorities shall be reviewed periodically.

(b) The following factors shall be among those considered in establishing priorities:

(1) The resources of the recipient;

(2) The population of eligible clients in the geographic area served by the recipient;

(3) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(4) The urgency of particular legal problems of the clients of the recipient; and

(5) The general effect of the resolution of a particular category of cases or matters on persons least able to afford legal assistance in the community served.

Effective date. December 23, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc. 76-34199 Filed 11-22-76; 8:45 am]

[45 CFR Part 1621]

CLIENT GRIEVANCE PROCEDURE

Proposed Rulemaking

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974. Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"). Section 1006(b)(1), 42 U.S.C. 2996e(b)(1), provides that the Corporation shall have authority to insure compliance of the Act.

Pursuant to section 1008(e) of the Act, the Corporation hereby affords notice and publishes for comment the following proposed regulations concerning client grievance procedures. Public comment will be received by the Corporation as its headquarters offices, Suite 700, 733 15th Street, NW., Washington, D.C. 20005 on or before February 25, 1977. Comments must be in writing and may be accompanied by a memorandum or brief in support thereof. Comments received may be seen at the above offices during business hours Monday through Friday.

Final regulations will be issued by the Corporation after review and consideration of public comments received pursuant to this notice.

Comment

A person who is denied legal assistance by a recipient, or who is dissatisfied with the assistance rendered, is unable to obtain legal assistance from another source. And, although a client does not pay a fee, adequate recourse should be available when the client believes that the services provided by a recipient do not meet the high standards of effectiveness required by the Act. Further, the fact that a recipient carries on its activities with funds from a public source imposes an additional responsibility beyond those imposed on every lawyer by the Code of Professional Responsibility. An effective client grievance procedure is an appropriate means of insuring the accountability of a recipient to its clients.

The proposed regulation requires the establishment by the governing body of a recipient of a grievance committee with authority to consider complaints that

have not been resolved by staff action. The Code of Professional Responsibility does not prevent a committee containing nonlawyers from inquiring into a lawyer's conduct of a case when the committee is acting at the request of the client. Ethical prohibitions against interference with the professional judgment of a lawyer are designed to insure that the lawyer will be directly responsible to the client, and not subject to interference or control by an intermediary. See ABA Formal Opinions 237 and 294. Inquiry by a grievance committee acting at the request of the client is consistent with these opinions.

If a client expresses dissatisfaction with any aspect of the assistance provided by a recipient, it would be appropriate for the recipient to inform the client of the existence of a local group, such as the National Clients Council or the National Welfare Rights Organization, that may be able to counsel the client about the subject of the complaint.

PART 1621—CLIENT GRIEVANCE PROCEDURE

Sec.
1621.1 Purpose.
1621.2 Governing Body Grievance Committee.
1621.3 Procedures.

AUTHORITY: Sec. 1006(b)(1) (42 U.S.C. 2996e(b)(1)).

§ 1621.1 Purpose.

By providing an effective remedy for a client who believes that legal assistance has been denied improperly, or who is dissatisfied with the assistance provided, this part seeks to insure that every recipient will be accountable to its clients and will provide the high quality legal assistance required by the Act.

§ 1621.2 Governing Body Grievance Committee.

The governing body of a recipient shall establish a grievance committee, composed of lawyer and client representatives in the same proportion in which they are on the governing body.

§ 1621.3 Procedures.

(a) A recipient shall establish effective procedures for determining the validity of a complaint that assistance has been improperly denied or ineffectively rendered. The procedures adopted shall be subject to approval by the Corporation.

(b) The procedures shall include:

(1) Adequate notice to clients of how to make a complaint;

(2) Provision of assistance to a client who requests help in presenting a complaint; and

(3) An opportunity for a complainant to appear before the grievance committee established by the governing body if the director of the recipient is unable to resolve the matter.

(c) A record of every complaint and its disposition shall be preserved for review by the Corporation.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc.77-2577 Filed 1-25-77;8:45 am]

[From the Federal Register, Apr. 29, 1976]

LEGAL SERVICES CORPORATION

SUPPORT CENTERS

Adoption of Resolution

On April 23, 1976, the Board of Directors of the Legal Services Corporation approved the following resolution that adopts, without change, the standard that was proposed for adoption in a resolution approved by the Board on March 5, 1976, and published in 41 Fed. Reg. 10271 (March 10, 1976) for purposes of receiving public comment.

SUPPORT CENTER RESOLUTION

Resolved, that the Board of Directors adopts the following standard for funding current support centers after March 31, 1976:

Support centers may be funded pursuant to § 1006(a)(1)(A) of the Act by contract for the purpose of providing legal assistance to eligible clients. Support centers entering into such contracts will be limited to client counseling and representational activities, professional responsibility activities in accordance with the Code of Professional Responsibility of the American Bar Association, and such "housekeeping" activities as are normally carried on by law officers. With minor transitional exceptions specifically authorized by the Corporation, each recipient entering into such contract will be prohibited from using Corporation funds for activities that § 1006(a)(3) of the Act authorizes the Corporation to undertake directly but not by grant or contract, namely, research, training technical assistance and information clearinghouse activities that relate to but are not a part of providing legal assistance to eligible clients under § 1006(a)(1)(A).

THOMAS EHRLICH,
President, Legal Services Corporation.

[FR Doc. 76-12479 Filed 4-28-76; 8:45 am]

[From the Federal Register, Nov. 12, 1976]

LEGAL SERVICES CORPORATION

RECIPIENT EMPLOYEE SALARY INSTRUCTIONS

Pursuant to Section 1008(e) of the Legal Services Corporation Act of 1974 (42 U.S.C. 2996g-(e)), the following instructions are published.

Salary administration

Recipients shall have a: (1) Current salary comparability statement, (2) salary schedule establishing minimum and maximum salaries for each position, (3) job description for each paid position or group of similarly paid positions, and (4) salary administration plan, including a staff performance evaluation system.

Salary comparability

In designing a salary comparability study, attorneys' salaries should be compared with local public or private nonprofit agencies or organizations which employ attorneys, e.g., public defender agencies, county counsel, city attorney, public interest law firms, etc. If the positions used for comparison are not full-time, the study should so reflect. Salary comparability for non-attorney positions may be established by using these same local agencies or organizations. The salary comparability study shall note which agencies or organizations were used for comparison and shall include a brief statement explaining how the job duties and responsibilities were compared.

Procedure

Grantees and contractors shall immediately begin to conduct a local salary survey. Within 90 days of the grant award, the salary survey and salary administration plan shall be submitted and approved by the relevant governing body and then submitted to the Regional Director for approval.

Upon receipt of written approval from the Regional Director, programs may compensate personnel in accordance with the salary schedule and salary administration plan without further approval from the Corporation so long as increase in salary do not raise the annualized cost of program operation beyond that which has been awarded by the Corporation during an approved funding period.

Annual review

Recipients should review wages annually to insure that they remain as competitive as possible with other agencies and organizations.

CHARLES E. JONES,
Director, Office of Field Services, Legal Services Corporation.

[FR Doc. 76-33385 Filed 11-11-76; 8:45 am]

LEGAL SERVICES CORPORATION,
Washington, D.C. March 7, 1977.

HON. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Housing Judiciary Committee, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: We are in the process of preparing response to the questions in your letter of March 4, which we received this morning, and will submit them to the Subcommittee with all possible speed. Because of its importance for the Corporation's operations, however, we are submitting our comments on question 9.f separately so you may have them prior to the mark-up session scheduled for tomorrow.

Question 9.f concerns a proposed amendment to the Act that would require "adversarial administrative review of defunding after the President's decision." In our view such a requirement is unnecessary and unwise. It would interfere substantially with the Corporation's ability to discharge our responsibilities under the Act.

The Corporation's primary obligation is to ensure the effective and efficient use of scarce public resources in providing legal services to poor people. It is those people that the Act is designed to help. Over the past year, decisions to defund programs have never resulted in denying service to a community. Rather, they have been decisions that some communities would be served better by different structural arrangements than the existing ones. They have, in short, been policy decisions.

It is essential, therefore, that hearings held in connection with such decisions be conducted by Corporation employees familiar with Corporation policy. Some have suggested that a defunding hearing is not an appropriate forum to make policy. That position, however, is overly simplistic. It is an elementary principle of our legal system that the application of general policies to specific cases is a primary method for developing and refining those policies. It is precisely that process that is relevant here.

For this reason, the proposed amendment is fundamentally inconsistent with the Corporation's status as an independent organization accountable directly to the Congress. Primary responsibility for interpreting and enforcing the Act rests with the Corporation. Policy is set by the Board of Directors and implemented by the President. Both the Board and President must account to the Congress for their actions. The proposed amendment, however, places ultimate authority for some decisions—decisions that necessarily determine policy—in the hands of a person accountable to no one.

The proposed amendment also assumes incorrectly that hearings under Section 1011(2) of the Act are "adversarial proceedings." Although some of those involved in programs threatened with defunding undoubtedly feel aggrieved, the issues in such hearings usually are best resolved by informed deliberation rather than confrontation and adjudication. The hearing procedures adopted by the Corporation are meant to ensure that we will act properly in the first instance, not to provide subsequent review of a decision already made. Those procedures have been designed to satisfy basic standards of fairness, however, and a United States District Court has ruled that they do so.

The proposed amendment would substantially alter this process. It would be a wasteful duplication of effort to impose a second level of administrative review on the elaborate procedures established by the Corporation. If the Corporation's present procedures were curtailed or eliminated, however, the initial decision-making process would inevitably suffer. It might prove difficult, for example, to obtain relevant information from a program that was waiting for the later proceeding to present its case.

The proposed amendment raises other questions as well. Decisions by the President to deny refunding are presently subject to judicial review to the same extent as similar decisions by federal agencies. If the amendment were adopted, could the Corporation go to court to challenge a decision with which it disagreed? Such challenges would be an unfortunate use of the Corporation's scarce resources, but would undoubtedly be necessary in some circumstances to ensure consistent application of the Act and regulations.

In sum, the proposal for further administrative review following a decision by the President is neither necessary nor wise. We urge the Subcommittee to reject it.

Cordially,

THOMAS EHRLICH.

LEGAL SERVICES CORPORATION,
Washington, D.C., March 9, 1977.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House Judiciary Committte, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: Attached are our responses to the remaining questions in your recent letter dater March 4, 1977; the response to question 9.f was submitted yesterday. By a separate letter I am providing the Corporation's response to the statement of the American Farm Bureau Federation.

I appreciate the opportunity to submit these materials for the record, and will be pleased to provide any additional information required by the Subcommittee.

Cordially,

THOMAS EHRLICH.

1. Would you please explain what guidelines the Corporation has issued on the subject of merger of existing programs? What evidence, if any, do you have that larger legal units, e.g., multicounty and statewide programs, are better than smaller units?

The Corporation's actions regarding merger of existing programs are based on its statutory obligation to "ensure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance to persons in both urban and rural areas." We have no across-the-board policy in favor of mergers. We attempt to merge program only where we are pursuaded that merger would improve the quality of legal asistance in a particular area or state, without unduly sacrificing responsiveness to local needs.

The advantages of merger vary. In some instances combining several small programs enables the attorneys to develop areas of expertise and thereby increase their efficiency. Litigation coordinators may be hired to supervise the legal work of several small offices, whose separate budgets and workloads did not justify the creation of such a position. Merger may enable a more uniform approach to be taken with respect to legislative advocacy and litigation that affects a substantial number of poor people. The opportunities for a more coherent approach to training may be increased by merger, and training events can be developed to build upon each other. The resources available to and opportunities for mobility in a larger program may enhance its ability to recruit qualified and experienced personnel, and to meet affirmative action goals. Centralization of administrative functions may free personnel in local offices from those responsibilities, and may reduce costs due to centralized purchasing. Competition for outside funds is often decreased, and outside funding sources may be more receptive to dealing with a single larger organization.

To date mergers of existing programs have taken place in Utah, Connecticut, and the State of Washington. Although some of the programs involved requested hearings in the latter two states, in each case the initiative for merger came from local groups. Statewide and regional programs are being set up with expansion funds in a number of other areas, including North Carolina, Alabama, Oregon, Michigan, and New Mexico. Again, the initiative for these programs came from local groups.

2. You have stated that middle management needs are the main reason you must delay the goals of minimum access until the end of fiscal year 1979. Yet the legal services community has expressed their view that the management is there in existing programs, and can be easily trained for new ones. In fact they state that 1½ million of those persons who will not be reached in fiscal year 1978 by the Corporation's $217 million request live in areas where programs do exist. What management training and manuals have been developed by the Corporation since it defunded NLADA's Management Assistance Project?

Will removal of the restriction in Section 1006(a)(3) on training and technical assistance help you in delivering management assistance? Doesn't your present policy of preference for expansion through existing programs in fact mean that you have the existing management structure in areas which are underfunded, and all you really need are increased funds to delivery minimal access in many areas?

The Corporation's Office of Field Services has developed sample personnel and program operations manuals and distributed them to each program that it funds. The Comptroller's Office has also developed manuals regarding problems of financial management. The staff of each Regional Office now includes a management specialist, who has primary responsibility for monitoring the programs'

internal controls and management methods and procedures. This specialist has the capability to provide immediate management assistance, or arrange for long-term technical assistance when that is required. Further specialized assistance is available through the Office of Program Support and the Comptroller's Office, both of which can dispatch consultants to work out problems requiring more time to solve.

The Corporation's training program for the coming year includes a number of sessions in general management techniques for program directors, a series of workshops on specific management problems, and sessions for the managing attorneys of branch offices. The Office of Program Support is also working with the Comptroller's Office to provide training in financial management for local controllers and chief accountants, and with the Office of Field Services to provide one training event each for the Corporation's Regional Directors and management specialists. The general level of training in these areas will be increased in Fiscal Year 1978, and management training will be expanded to include office managers and secretaries, persons who have not generally been included in national training in the past. The 1978 budget request also seeks funds to add an additional management specialist in each of the Regional Offices.

The Corporation would not expect repeal of Section 1006(a)(3) to affect substantially its ability to provide management assistance. Our plans are to make such assistance available on a continuing basis, and this is done most efficiently by maintaining a permanent technical support staff. The substantial expansion of legal services programs envisioned by the minimum-access plan, however, will result in 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 of that assistance by grant or contract rather than to maintain a staff large enough to provide all of the required technical assistance directly.

It is undoubtedly true that many programs funded below the level of two attorneys for each 10,000 poor people currently have sufficient management personnel to achieve that goal. Of the 177 existing programs funded below that level, 117 would be brought up to minimum access by the addition of five or fewer attorneys. Unfortunately, that is not the case everywhere. There are currently eleven existing programs that must hire at least twenty new attorneys—and some substantially more than that—to reach the level of two attorneys for each 10,000 poor persons. Such programs would obviously be required to recruit a significant number of experienced managers.

More basic, achieving the goal of minimum access does not mean simply adding new personnel to existing programs. One of the critical problems for severely underfunded programs is that they are unable to maintain offices that are accessible to their client populations. The Appalachian Research and Defense Fund in eastern Kentucky, for example, plans to open three additional offices within its current service area in order to achieve minimum access. The Legal Aid Society of Oklahoma City plans to strengthen one of its offices and open another in order to achieve that goal. The Georgia statewide program will open six new offices in order to increase its capacity to serve clients currently eligible for its services. Each of these programs will be required to expand its administrative structure in order to manage effectively these new offices.

Similar problems exist when expansion into new areas is accomplished through existing programs. It is, moreover, not always possible to expand in that manner. The areas of the country in which there are the largest number of people without legal services programs are also the areas in which existing programs are underfunded. In some of those situations, it may make more sense to establish a new program.

The minimum-access plan will, therefore, require creation of a substantial number of new programs.

Finally, the middle-level management referred to in our testimony does not include only people who perform administrative functions. Such persons must be experienced lawyers who can supervise the legal work of the more than 3,200 new attorneys necessary to achieve minimum access. Experienced lawyers have proven difficult to recruit in legal services, and most recent figures indicate that approximately 70 percent of the current legal services lawyers have less than three years experience in their programs.

For all of these reasons, the Corporation determined that achieving the goal of minimum access in two more years was the most prudent course. Our budget request for Fiscal Year 1978 includes a relatively larger amount of funds for

existing programs, and would bring all but eleven of those programs up to the level of minimum access. Building on the basis established in that year, we hope to then be able to complete the expansion process—at the minimum level of two attorneys for each 10,000 poor people—early in fiscal year 1979.

3. What efforts are you making to reduce high turnover of staff attorneys, including developments of salary comparability? Would not that be a high priority of your financial resources, if you cannot use all funds available to expand to new areas in one year?

At the outset, we stress that turnover among legal services attorneys is a complex problem that is not related simply to low salaries. Factors such as intolerably large caseloads and lack of adequate opportunities for professional growth are often at least as important. The Corporation is undertaking a study of the turnover problem directed by its Executive-Vice President. We have also requested each program to develop salary comparability data so we can determine those programs in which low salaries are a chronic problem. These efforts should enable us to adopt a coherent approach for dealing with the turnover issue.

A number of our current efforts should help to alleviate the turnover problem. The training available from the Office of Program Support should reduce the number of attorneys who "burn out" after a short period of time due to lack of supervision and restricted professional development. We are designing a national recruiting program that may include recruiting incentives such as a loan forgiveness program. We plan to use income available from our investments to finance a benefits package for legal services personnel. The special needs money included in our budget can be used, when necessary, to supplement the grants of programs where turnover is a critical problem. The increase requested for fiscal year 1978 to bring the most severely underfunded programs up to the minimum access level also may be used to supplement salaries. In fact, a recent review of grant applications indicates that the increases for the most underfunded programs and the inflation adjustments available to all programs over the past two years have caused average legal services salaries to increase by approximately 15 percent.

Notwithstanding these efforts, we recognize that salary comparability for legal services personnel is a high priority. In our judgment, however, our first responsibility is to the millions of poor people who have no access to legal services whatsoever. If our budget requests for the coming two years are granted, our plan to provide minimum access to legal services nationwide will be completed in early 1979. We will then be able to direct full attention to providing adequate legal assistance nationwide, including addressing the issue of salary comparability.

4. Mr. Cramton has suggested funding levels of $250 million (fiscal year 1978), $300 million (fiscal year 1979), and $400 million (fiscal year 1980). What comment do you have on these figures in light of those suggested by the Corporation and the Legal Services Community?

The Corporation continues to favor authorization for the appropriation of "such sums as may be necessary" to fulfill the purpose of the Legal Services Corporation Act. We appreciate, however, the Subcommittee's desire to include specific figures in the legislation. Those suggested by Mr. Cramton would undoubtedly accommodate the Corporation's budget request for fiscal year 1978 and 1978, based upon current planning. Our planning for fiscal year 1980 has not reached a point where we can quote a specific figure to the Subcommittee, but $400 million would provide sufficient flexibility.

5. What statistics do you have on the number of elderly and migrants in the poor population and on their service by legal services programs? What efforts are being made to reach these allegedly underfunded groups? Should national priorities be set for reaching these persons?

Do you agree with the language in H.R. 3719 which amends Section 7(a) (2) (c) to require the Corporation to "insure that recipients adopt procedures for determining and implementing priorities for the provision of legal assistance to eligible clients under this title?"

Based on the 1970 census, there were approximately 4.7 million persons over 65 with incomes below the poverty line, a figure that translates to 16.2 percent of the total poverty population. Recent figures suggest that the percentage of elderly poor has declined slightly. An April 1976 report to the Congress by the Department of Health, Education and Welfare, for example, states that persons over 65 constitute 13.6 percent of the poverty population. Although some groups have suggested that the percentage of the elderly poor is more than 25 percent,

that figure is based on the adult poverty population. Because legal services programs serve children and handle a substantial number of child-related problems, such as problems dealing with AFDC benefits and custody matters, those figures are not suitable for the Corporation's planning purposes.

The figures with respect to migrant vary considerably. Testimony submitted for the record of these hearings by the Farm Bureau cite a recent survey by the Department of Agriculture that purportedly counted only 188,000 migrant farmworkers in the United States. A 1973 study by HEW concluded that there were 700,000 migrant farmworkers. The latter study failed, however, to include seasonal workers and persons residing in counties with a migrant population of less than 500. For these reasons, some have estimated the migrant population at considerably more than 1 million.

The variations in these figures are obviously substantial, and the Corporation is unable to rely on any of them in its planning. We have, therefore, recently commissioned a study to determine the number of migrant farmworkers who need and are eligible for legal services.

In describing our efforts to serve the elderly and migrant farmworkers, the Corporation does not mean to suggest that its performance has been better than in serving poor people generally. We are also aware that many groups of poor people—including migrants and the elderly—have unique problems or characteristics that may require special attention. We are admittedly not meeting all of those needs. Several considerations must be kept in mind, however, in evaluating the service provided to discrete groups.

First, the demand for the services of legal services programs has always greatly exceeded the resources available to them. Even programs funded substantially above the level of two attorneys for each 10,000 poor persons are forced to carry caseloads that range as high as 500 cases per year for an individual attorney, and even then must turn away clients who come to the office seeking help. It is not possible for programs in such circumstances to undertake aggressive and expensive outreach efforts toward any group.

Second, it is difficult to assess the accuracy of claims that certain groups receive less than their fair share of legal services. Detailed analyses of legal services caseloads have never been conducted and were not possible during the 1970's due to the bitter political struggle over the programs' survival. Now that establishment of the Legal Services Corporation has made survival certain, we are conducting such an analysis. The Corporation is in the process of designing and implementing a project reporting system that will provide information on each matter handled by each project funded by the Corporation. This system will tell us a good deal about our programs and the clients that they serve, and should suggest areas in which more effort is needed.

Even when that data is collected, however, it will not necessarily reflect the extent to which legal services programs serve special groups. The fact that too few resources are available to provide assistance to all poor people makes it essential that legal services programs set priorities and undertake projects that affect the largest number of people possible. Such work frequently provides benefits to large numbers of persons and groups regardless of whether they are actually clients of a legal services program. Legal services programs have been leaders, for example, in ensuring that public benefits programs are administered fairly and that the recipients receive all to which they are entitled. All poor people and groups of poor people who receive such benefits have been assisted by those efforts. No caseload statistics would reflect that fact.

ELDERLY

In our experience, the legal problems of the elderly poor do not vary significantly from those of poor people generally. With respect to the elderly, however, the problem of scarce resources is compounded by lack of physical access of legal assistance. Many elderly people are less mobile than other members of the population and may be less well informed regarding the availability of free legal services and the ways that such services can help them. Access may be particularly difficult for persons who become poor late in life and live many miles from the ghetto areas in which legal services offices are typically located.

The Corporation funds four programs devoted exclusively to legal services for the elderly poor: the National Senior Citizens Law Center in Los Angeles; the Council of Elders in Boston; Legal Services for the Elderly Poor in New York; and the Senior Citizens Project of California Rural Legal Assistance in

San Francisco. These programs have a combined budget of nearly $1 million. Their activities range from providing representation and assistance in important litigation involving elderly clients—the role of the National Senior Citizens Law Center—to concentrating upon providing general legal services directly to the elderly.

Many legal services programs funded by the Corporation, although not devoted solely to serving elderly persons, have units or individual specialists that concentrate upon such service. We do not know the exact number of such programs. We do know that 55 of our programs have received approximately $1.5 million in funds available under Title III of the Older Americans Act to provide legal services to the elderly poor. Other programs have been unable to obtain Title III funds, but have used funds from sources such as revenue sharing for some of these purposes.

Funds to provide legal services exclusively for elderly persons often have a multiplier effect. In some programs, for example, Title III money is used to hire paralegals to perform aggressive outreach and to provide advice and counsel to elderly clients. Because paralegals must be supervised by attorneys, and because attorneys and other paralegals will necessarily handle many of the cases produced by outreach efforts, the result is that a larger amount of the programs' resources is directed toward providing service to the elderly.

Corporation-funded programs have also been leaders in developing many areas of the law that particularly affect the elderly. The National Senior Citizens Law Center, the Center for Social Welfare Policy and Law, and other legal services programs have, for example, devoted a significant portion of their practice to issues relating to the Supplemental Security Income program. The Senior Citizens Law Center is a recognized expert regarding pension law issues, and the Board of Directors of the National Employment Law Center has recently made that area a priority for the program.

The Corporation plans to do more in the future regarding the particular problems of the elderly. We have recently signed an agreement with the Administration on Aging designed to enhance cooperation between our two organizations. Under this agreement it may be possible for legal services programs to take advantage of the communication and outreach efforts of the national aging network. One of the demonstration projects funded as part of our Delivery System Study is primarily concerned with serving the elderly, and several others include the problems of that group among their priorities. In the long run, however, the solution to serving the elderly poor is to provide sufficient funds for programs to overcome problems of immobility.

MIGRANTS

The Corporation funds ten programs or units of general service programs that are exclusively directed to migrants:

Maricopa County Legal Aid Society's Migrant Division in Phoenix, Arizona.

Colorado Rural Legal Assistance's Migrant Division in Denver;

Farmworkers Division of Neighborhood Legal Services in Hartford, Connecticut;

Will County Legal Assistance Program in Joliet, Illinois;

Michigan Migrant Legal Assistance Project;

Monroe County Legal Assistance Corporation's Mid-Hudson Migrant Division in Rochester, New York;

La Raza Unida de Ohio in Bowling Green;

Puerto Rico Legal Services Migrant Division;

Migrant Division of Neighborhood Legal Assistance Program in Charleston, South Carolina; and

Migrant Division of Milwaukee Legal Services.

The combined funding of these programs is $1,005,395 in fiscal year 1977, an increase of 16.5 percent over the previous year. Our rough estimate is that they handled approximately 12,000 cases last year. Two migrant units will be established in fiscal year 1977 with expansion and special needs funds. One of these units will be associated with Texas Rural Legal Assistance, and one with Florida Legal Assistance. Their combined budget will be $205,000.

All migrant programs will be eligible for the inflation adjustments and their increases available to existing programs in Fiscal Year 1978. In addition, $350,000 has been budgeted for geographical expansion of migrant programs in that fiscal year. The Corporation also funds the Migrant Legal Action Program, a support

center located in Washington, D.C. MLAP received $407,000 from the Corporation in Fiscal Year 1977. Migrant farmworkers also received assistance from many other legal services programs—such as California Rural Legal Asisstance and Evergreen Legal Services in Washington—that do not receive special funds for that purpose. Migrants will, therefore, benefit from the expansion of access funds available to existing programs and areas where no programs now exist.

The Corporation is engaged in other efforts directed at the problems of migrant farmworkers. One of the demonstration projects for the Delivery Systems Study is a contract between Volusia County, Florida Legal Services and a private attorney to provide service to farmworkers—among other clients—in a neighboring county. The Office of Program Support is designing training regarding the problems of migrants, such as a series for advanced lawyers on representing migrants in litigation to be held this year.

The Corporation is also gathering information regarding the special needs of persons "in the stream" of farmworker migration, such as identifying areas in which additional bi-lingual legal services staff is needed. We will use this information—as well as the results of our survey of the migrant population—in allocating special needs money and expansion of access funds.

We do not recommend that national priorities be set for elderly persons and migrant farmworkers. The Corporation's mandate is to provide legal services to all poor people, regardless of their age, race, or background. To the extent that national priorities for discrete groups are set, we believe it is far more efficient to do so through agencies charged with assisting those groups—much as Congress has done through the Older Americans Act.

This is true for a number of reasons. First, not all of the members of a particular group are "poor." The Corporation would either be required to adopt special eligibility regulations for such persons, thus effectively creating a double standard for legal services clients, or would be unable to deal with the entire problem. Second, setting such priorities would create substantial problems of management and accounting, both at the Corporation and in the field. The characteristics of client groups vary widely among different areas of the country. The figures cited in the statement of Legal Research and Services for the Elderly, for example, vary by more than 100 percent in the proportion of elderly poor people among the 17 states surveyed. Almost by definition, the problem is even more complex with respect to migrant farmworkers. Making and monitoring grants for these groups would, therefore, be an extremely complicated process.

Third, establishing national priorities for certain groups would establish a dangerous precedent and inevitably create competition among various factions for legal services funds. The result might well be that less influential or popular groups of poor people would be discriminated against in the distribution of legal services resources. At the very least, considerable resources would be consumed through constant revising and adjusting of national priorities.

Finally, the problems of many discrete groups cannot be neatly divided into "legal" and "nonlegal" categories. Elderly persons, for example, may require companionship and medical attention as much as legal assistance. It may well be more efficient to address all of these problems through specialized programs such as the National Aging Network.

The Corporation does, of course, require that each program that it funds establish priorities, and we would question priorities that excluded the needs of particular groups within the community. The Corporation is also attempting to coordinate its activities with those of agencies serving the needs of particular groups. We have already concluded a cooperative agreement with the Administration on Aging, and hope to achieve similar cooperation with other programs that dispense legal services funds and provide outreach to groups of poor people.

Part 1620 of the Corporation's regulations requires each recipient of Corporation funds to "adopt procedures for establishing priorities in the allocation of its resources" that, "shall ensure participation by clients and employees of the recipient, and shall provide opportunity for comment by interested members of the public." The proposed amendment to Section 1007(a)(2)(c) of the Act is consistent with that regulation.

We point out, however, that the proposed amendment removes the prior language requiring priorities "to ensure that persons least able to afford legal assistance are given preference in the furnishing of such assistance." That is the only provision in the Act that makes clear that this is a program for poor people. We have no objection to the change but urge the Committee to make clear that it does not intend to change the purpose of the Act, and that it still regards the program as being one primarily aimed at helping the poor.

6. Does Regulation—Part 1618 give the Corporation exclusive jurisdiction or only primary jurisdiction in enforcing the Act? In which situations do you believe that judicial review is allowed under the Act?

The Legal Services Corporation Act gives the Corporation primary jurisdiction to enforce its provisions. The Corporation is authorized under Section 1006(b) (1) to enforce the Act by withholding funds. Such action is subject to judicial review in the same manner and to the same extent that similar actions undertaken by executive agencies would be reviewable pursuant to Chapter 7 of Title 5 of the U.S. Code.

7. What affirmative action policies have you instituted for minority hiring including Hispanics and the sub-category of Mexican-Americans, in Corporation and program offices? What efforts have you made to insure affirmative action by contractors and other groups with which you deal? Are you planning to use the alternative delivery system study to reach underfunded segments of the population, e.g. Hispanics? What bilingual assistance has the Corporation provided in the delivery of legal services?

The Corporation has adopted a comprehensive equal employment and affirmative action plan to achieve equal treatment of all minorities and women throughout its work force. A copy of that plan is attached. Also attached is a table showing the Corporation workforce by sex and race.

The most recent data regarding employment of minorities and women by legal services programs are from a survey conducted by the CSA Office of Legal Services in June, 1974. The survey indicated that there were 2830 staff attorneys in legal services programs. 17 percent of the attorneys were female, 9 percent were black, and 7 percent were Hispanic Americans. Black attorneys were employed in 101 programs, and 110 programs employed at least one female attorney. Hispanic American attorneys were employed in 56 programs.

The Corporation is undertaking to determine the extent to which women and minorities are currently employed by legal services programs, and to remedy any shortcomings that exist. The Office of Equal Opportunity is compiling and analyzing employee profile data submitted by programs to assess the race and sex characteristics of governing bodies, staff personnel, clients, persons eligible for legal assistance in areas served by programs, and the population of the area served by programs. The Office of Program Support is developing a national recruiting effort that will focus upon attracting and retaining women and minority attorneys. Further, the Corporation is conducting a study to determine the duration of employment of legal services attorneys, the reasons attorneys accept and reject employment with programs, why they leave, and what efforts can be undertaken to recruit and retain women and minority attorneys.

The Corporation is also undertaking a survey to determine the extent to which legal services programs employ bi-lingual personnel, and where additional bilingual personnel are needed. The results of this survey will provide the basis for enforcement of Section 1006(b) (6) of the Act.

The primary responsibility for developing and implementing equal opportunity policies and procedures in the field rests with the board of directors and managers of local legal services programs. The Corporation has developed procedures to ensure that the programs are carrying out this responsibility. All grant applications require the applicant to assure that it will not discriminate in employment and in the delivery of legal assistance. Each legal services program is required to develop equal opportunity policies and submit them to the Corporation's Office of Equal Opportunity within 45 days after its grant is approved. Those policies are evaluated to ensure that they are adequate to achieve the goal of equal opportunity. Each Legal Services program is also required to submit to the Corporation a workforce analysis with its grant application. Every such workforce analysis is evaluated by the Corporation's Office of Equal Opportunity to determine if the program's utilization of women and minorities conforms to its equal opportunity policies.

The Corporation insists that its contractors follow a policy of equal employment opportunity. We require assurances to that effect before a contract is entered into and, where relevant, the contract contains an equal opportunity clause.

8. Do you believe that under the present statute and Regulation—Part 1612.4 that personnel of a recipient may make comments on pending bills or regulations which affect the Corporation, or the recipient, but which do not directly affect an eligible client? If not, would you support an amendment which would allow such comment?

It is our interpretation that legal services programs may comment on pending bills or regulations that affect their activities—including most bills or regulations affecting the Corporation—regardless of whether they are acting on behalf of eligible clients. We believe there will be few instances in which pending bills or regulations affecting the Corporation will not also affect the activities of programs that we fund.

9. What comments does the Corporation have on the following proposed amendments?

The Corporation's Board of Directors has not specifically addressed the proposed amendments described by this question. The comments that follow, therefore, are based on the Corporation's general policy and regulations.

(*a*) Removal of the restriction on organizing, § 1007(a)(6)? There is no regulation on the subject, despite Mr. Cramton's statement to the contrary.

Section 1007(b)(6) of the Legal Services Corporation Act states that legal services attorneys may provide "legal assistance to eligible clients in accordance with guidelines promulgated by the Corporation." Part 1611 of the Corporation's regulations make clear that legal assistance may be provided to a group, corporation, or association that cannot retain private counsel and is primarily composed of eligible clients or is dedicated to their interests. Part 1612 of the Corporation's regulations make clear that legal services lawyers are obligated to advise their clients about lawful alternatives to litigation; they are prohibited only from knowingly participating in unlawful public demonstrations, picketing, boycotts, or strikes and intentionally exhorting, directing or coercing others to engage in such activities.

We believe that these provisions of the Act and regulations properly define the role of legal services lawyers with respect to organizations of poor people. Some have contended, however, that the current restriction on organizing in Section 1007(b)(6) has a chilling effect on legal services lawyers. We have no information regarding whether this contention is true.

The Corporation has not yet issued a specific regulation under Section 1007(b)(6). In Dean Cramton's testimony mention in the question, he was referring to Part 1612, which implements Section 1006(b)(5) of the Act.

(*b*) Removal of the restriction on juvenile representation, § 1007(a)(4)—which is supported by several groups including the A.B.A.?

Part 1614 of the Corporation's regulations provides, in essence, that legal services programs may represent juveniles in virtually all matters in which the child's parent or non-institutional guardian is not a party when representation begins, or in which the parent or guardian makes a written request that the child be provided with such assistance. In our experience, legal services programs receive few, if any, requests for assistance in prohibited matters. We believe, therefore, that the proposed amendment on this subject will not change existing practice in any significant respect.

(*c*) Sec. 3 of H.R. 3719 which specifically subjects the Corporation and the State Advisory Councils to the Sunshine Act?

We do not believe that this amendment is necessary. The Sunshine Act established four major principles under which meetings of agencies must be conducted: 1) all meetings of the Board should be open to the public, 2) the public should be fully informed of all vital information about Board meetings, 3) meetings should be closed to the public only when it is in the public interest to do so, and 4) accurate accounts of all discussions that are closed to the public should be preserved. All meetings of the Board of Directors of the Legal Services Corporation have been conducted in a manner that complies substantially with these principles.

Section 1601.22(a) of the Corporation Regulations requires that "all meetings of the Board be open to the public unless two-thirds of the directors eligible to vote determine that consideration of a specific matter on a specific occasion should be closed to the public". Subparagraph (b) of that section establishes the principle that "the public is entitled to the fullest information regarding the decision-making process of the Corporation consistent with the protection of personal privacy or with compelling interests of the Corporation or the public". These provisions parallel substantially the open meetings provision of the Sunshine Act.

Section 1601 of the Corporation By-laws requires that notice of the time and place of each meeting of the Board of Directors of the Corporation be published in the Federal Register, and in addition, be mailed to each member of the Board, state advisory chairpersons, and legal services programs receiving funds from

the Corporation. This provision complies substantially with Section 3(e) of the Sunshine Act, which requires that an agency make available to the public certain information about each meeting of its Board.

The Sunshine Act allows an agency to close its meetings when it is in the public interest to do so and if information is likely to be disclosed that comes within one of ten specific categories. The exemptions are for discussions involving: national defense or foreign policy; the internal personnel rules and practices of the agency; information that is required by a federal statute to be withheld from the public; trade secrets and commercial or financial information obtained in confidence; criminal accusations or the formal censuring of an individual; information that if disclosed would be an unwarranted invasion of an individual's privacy; investigatory records compiled for law enforcement purposes; the regulation of financial institutions; information that if prematurely disclosed would frustrate the implementation of a proposed agency action; and the agency's participation in some legal process.

Since July, 1975, the Board has held 14 meetings. It voted to go into executive session at 11 of those meetings. At 10 of the sessions, personnel matters that involved specific individuals were discussed. At seven of the sessions, the Board received legal advice from the Corporation's General Counsel or Temporary General Counsel. These included discussions about the proper interpretation of provisions of the Act and status reports on pending or contemplated litigation. Aside from the exemptions in the Sunshine Act, some of these discussions involved matters that are protected by the attorney-client privilege.

At a number of executive sessions matters were also discussed that may not have been within the Sunshine Act's exemptions. These included a discussion of the Corporation's appropriation and authorization legislation at the January 1977, Board meeting and a discussion at the November, 1975, meeting of the ground rules for public disclosure of personnel matters discussed at executive sessions. In these instances, however, the nature of discussions were publicly disclosed and the discussions were placed on the public discussion agenda that followed. The Sunshine Act establishes a similar procedure for disclosing the substance of non-exempt discussions that take place at closed meetings.

If the Corporation is made subject to the Sunshine Act, there would be no substantive changes in present policy; most changes would be procedural in nature. For example, the ten statutory exemptions would be formally adopted in regulations to replace the general provision that now allows the Board to go into executive sessions for the protection of personal privacy or when warranted by a compelling interest of the Corporation or the public. Transcripts or electronic recordings would be made of executive sessions and certain record-keeping procedures would have to be established to preserve transcripts and minutes of executive sessions of the Board of Directors. The announcements of Board meetings and the subjects to be discussed would be subject to slightly different time requirements. Finally, Section 1004(g) of the Legal Services Corporation Act would have to be amended to eliminate the two-thirds vote requirement for executive sessions since the vote of only a majority of the Board is necessary to close a meeting under the Sunshine Act.

(*d*) Eliminating Section 1006(f) which authorizes recovery of costs and fees against the Corporation?

The Corporation believes that Section 1006(f) is essentially declaratory of the common law in most American jurisdictions, which permits prevailing parties to recover their costs and fees in litigation brought in bad faith or for purposes of harrassment. The single change made by the statute is that such costs and fees are recovered against the Corporation rather than the legal services client. We are aware of only one case in which a claim under Section 1006(f) has been made, and that claim has not been decided because the case is now on appeal. If the Subcommittee believes that Section 1006(f) goes beyond existing law, however, we urge that the provision be clarified or repealed.

(*e*) Elimination of the preference for hiring qualified local attorneys in Section 1007(a)(8)?

The Corporation believes strongly that it is desirable for legal services programs to hire qualified attorneys from local areas. Such as practice may increase a program's credibility in its community, and could reduce the turnover problem. We stress, however, that local programs have considerable discretion in determining the qualifications of their personnel and that the local hiring requirement in no way diminishes the programs' ability to recruit specialists or their obligation to meet affirmative action goals.

Equal Employment and Affirmative Action Plan for the Legal Services Corporation

I. Purpose of Equal Employment and Affirmative Action Plan and Statement of Policies

A. Purpose of plan

The purpose of the Legal Services Corporation's Equal Employment and Affirmative Action Plan is to describe the practical application of key policies and procedures to assure the right of all persons to work and to advance on the basis of ability. This plan has been developed by the Corporation to achieve the full use and equal treatment of minority groups and women at all levels and in all sectors of the work force.

B. Statement of policies

Equal employment.—The Corporation's employment policy is to make no distinction in treatment, hiring, or advancement on the basis of race, religion, color, sex, age, marital status, national origin, physical handicap, political affiliation, or any other basis prohibited by law.

Affirmative action.—The Legal Services Corporation's Board of Directors, President, and all officers of the Corporation will affirmatively implement the policies and procedures in this Plan with regard to minorities and women, and will regard those policies and procedures as requirements for the sound administration of legal assistance to the poor. The Corporation recognizes minorities to include American Indians, Blacks, Hispanic Americans, and Orientials.

II. Dissemination of the Plan and Policies

A. Internal

The Legal Services Corporation will communicate to its employees the Plan and its equal employment and affirmative action policies through the following procedures:

1. Upon request, the Corporation will give to any new employee a copy of the Plan.
2. The existence and requirements of the Plan will be communicated to all employees from time to time through such internal publications as may be appropriate.
3. The Employee's Personnel Policies Manual will include the Statement of Policies and highlights of the Plan.
4. A copy of the Statement of Policies will be given to all applicants for employment upon their request for an employment application.
5. Implementation of the Plan will be discussed during management staff meetings.
6. Periodically, the Director of Equal Opportunity will meet with each division director and the director's immediate staff to give them assistance in implementing the Plan.
7. The Director of Equal Opportunity will prepare an annual report concerning current implementation of the Plan.
8. Posters relevant to the Plan will be displayed in conspicuous places in all buildings in which employees are located, and particularly in employment, testing, and reception areas.

Example: EPO19700-387-525, Equal Employment Opportunity is The Law.

B. External

The Legal Services Corporation will communicate the Plan and the Statement of Policies to the public by the following procedures:

1. Recruiting sources such as community organizations, personnel agencies, law schools, colleges, and training institutes will be informed of the basic aims of the Plan and the Statement of Policies and will be requested to include minorities and females in their referrals.
2. Advertisements for employment will be placed in news media chosen to reach all qualified candidates, including minorities and women. All employment advertisements will contain the phrase, "An Equal Opportunity Employer."
3. The Corporation's recruitment and hiring practices will include:

(a) the avoidance of any help-wanted advertising in sex-segregated columns in newspapers or other publications,

(b) the avoidance in recruitment letters, or other materials of any reference to "male" or "female" or any indication of preference for men or women in certain jobs.

4. It is the policy of the Corporation to make available to the public the Plan and other relevant information in accordance with the Freedom of Information Act.

5. The Corporation will communicate to prospective employees information about the Plan and how they can avail themselves of its benefits.

III. ADMINISTRATION

Applicability.—The Plan applies to all offices and employees of the Corporation throughout the country.

A. Legal Services Corporation

The Corporation's Board of Directors has the overall responsibility for the policies included in the Plan. The President of the Corporation has the primary responsibility for the successful implementation of the Plan. The President appoints a Director of Equal Opportunity with delegated responsibility for program planning, direction, and operation. In performing all duties related to the Plan, the Director of Equal Opportunity is a direct representative of the President.

B. Office of the Director of Equal Opportunity

1. The Equal Opportunity Office is a part of the Office of the President, headed by a Director responsible for developing, recommending, and administering nationwide policies and directives relating to equal opportunity and affirmative action.

2. In addition, the Equal Opportunity Office has the responsibility to require that all necessary action is taken by all directors and supervisors to achieve the objectives in the Plan.

3. An Equal Opportunity Advisory Council may be established:

(a) To review periodically the implementation of the Plan;

(b) To advise the Corporation on the formulation of equal employment opportunity and affirmative action action policies and procedures; and

(c) To advise the Corporation on the general development and application of equal employment opportunity and affirmative action policies, long-range developments in those policies, and interpretation of the Corporation's efforts in a larger perspective.

4. Duties of the Director—The Director of Equal Opportunity:

(a) Manages, coordinates, supervisers, and integrates day-to-day operations and activities in implementing the Plan at all offices of the Corporation;

(b) Maintains broad oversight of activities and operations under the Plan through close coordination with regional assistants;

(c) Informs the President of new federal, state, and local requirements relating to equal employment opportunity and affirmative action policies, and recommends any program changes that should be made as a result of those requirements;

(d) Develops programs and policies for securing compliance at all Corporation offices with equal employment opportunity and affirmative action policies of the Corporation;

(e) Assists the Corporation's contractors and grantees to establish and maintain equal employment and affirmative action plans;

(f) Directors national compliance activities for the Corporation including compliance reviews and investigations of complaints of discrimination;

(g) Develops and implements an EEO data system that will enable the Corporation's officers to monitor the implementation and effect of the Plan;

(h) Prepares and issues statistical data and evaluation of progress in equal opportunity and affirmative action;

(i) Recommends to the President the appointment of a Corporation employee at each Regional Office of the Corporation as Regional Equal Opportunity Assistant with responsibility to supervise the implementation of the Plan at the regional level;

(j) Gives direct technical guidance to a staff who assist in carrying out assigned tasks;

(k) Maintains liaison with national and state equal employment opportunity agencies to help insure that the Corporation's grantees and contractors are complying with the requirements of those agencies.

5. *Regional Equal Opportunity Assistants:*

(*a*) *Purpose:* Regional Equal Opportunity Assistants shall be appointed to assure implementation of the Plan.

(*b*) *Duties—The Regional EO Assistant*

(1) Develop and recommend policies and programs to facilitate the administration and effectiveness of the Plan within the regions;

(2) Plan, direct, conduct, and control compliance operations within the regions;

(3) Maintain appropriate contacts with civil rights groups and community organizations.

C. Directors and Supervisors

It is the personal responsibility of each director and supervisor to provide equal opportunity for all employees with regard to work assignments, training, transfers, advancements, and other conditions and privileges of employment. If it is determined that discrimination on any basis herein prohibited has occurred, those responsible will be subject to appropriate disciplinary action, up to and including dismissal, depending upon the severity of the case.

IV. UTILIZATION AND WORK FORCE ANALYSIS

A. Utilization analysis

The purpose of the utilization analysis is to identify job classifications within the Corporation's work force in which minorities and women are being underutilized. The utilization analysis will include an examination of the Corporation's work force and a comparison of the availability of minorities and women in the job classifications and geographic areas where the Corporation can reasonably be expected to recruit.

In determining if minorities and women are underutilized in any of the Corporation's job classifications, the Director of Equal Opportunity shall evaluate the following factors within regions and states:

1. The number of persons and the percentages of the population below the poverty levels; and the race, sex, training, occupation, and employment status of those persons;

2. The availability of minorities and women having requisite skills in the labor area where the Corporation can reasonably be expected to recruit for the job classifications involved;

3. The numbers and percentages of minorities and women enrolled in approved law schools;

4. The minorities and women employed by the Corporation with the requisite skills for the job classifications involved;

5. The existence of training institutions capable of training persons in the requisite skills;

6. The degree of training that the Corporation can reasonably undertake as a means of making all job classifications available to minorities and women.

B. Work Force Analysis

The Director of Equal Opportunity will develop an analysis of job titles and job classifications held by minorities and women which shall include a listing of each job title including the wage rate or salary range, as it appears on Legal Services payroll records, ranked from the lowest paid to the highest paid within each division and the total number of incumbents by sex and minority group in each job title.

C. Identification of Problem Areas

The Director of Equal Opportunity will be responsible for the periodic analysis of the entire employment process in order to identify problem areas. Among the subjects covered will be:

1. The recruitment process;

2. Concentration of women and minorities in various job titles and job classifications;

3. Selection standards and procedures;

4. Upward mobility systems, promotions, and training;

5. Wage and salary structure;
6. Benefits and conditions of employment, including maternity leave policies and fringe benefits;
7. Terminations and disciplinary actions.

V. GOALS AND TIMETABLES

The final process in the utilization and work force analyses is the formulation of goals and timetables for employment of minorities and women. The Corporation will use the following process in establishing goals and timetables:

A goal will be established when the percentage of total minorities and women in a job classification within the Corporation is lower than the total percentage of minorities and women available in that job classification within the surrounding labor market area.

The goal will be stated as a percentage of the total employees in the job classification and will be equal to the percentage of minorities and women available for work in the job classification in the surrounding labor market area.

For each job classification with a goal, a specific timetable will be established for reaching the goal in the minimum feasible time period.

VI. EXECUTION OF THE EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

A. Recruitment

The Legal Services Corporation will continue actively to seek minorities and women for employment. The Corporation will follow this commitment in recruiting professionals, non-professionals, students, law clerks, and interns. The following techniques will be used to insure that personal practices of the Corporation are not discriminatory:

1. The Corporation will analyze and review recruitment procedures for each job title to identify and eliminate discriminatory barriers;
2. The Corporation will establish objective measures to analyze and monitor the recruitment process. These shall include:

Applicant Records, indicating for each job applicant: name, race, sex, referral source, date of application, position applied for, whether a job offer was made, and selecting official(s);

3. Recruitment sources will be listed to ensure that the Corporation is making contact with recruitment sources that provide the widest range of applicants;
4. Special recruiting programs for students, interns, and law clerks will include colleges, secondary and technical schools and law schools with substantial enrollments of minorities and women;
5. Application forms used by the Corporation will be reviewed on a regular basis to insure compliance with all applicable federal, state, and local equal employment opportunity laws;
6. Prior to filling any position for which goals and timeables have been established, the Director of Equal Opportunity will review the number of minority and women applicants who applied for the position.

B. Selection Standards and Procedures

The Legal Services Corporation will carefully review and evaluate every step of its hiring process to insure that the job requirements, hiring standards, and methods of selection and placement do not discriminate, but instead contribute toward the goals of this Plan.

C. Upward Mobility, Promotions, Training

In order to assure the absence of discrimination against the employment of minorities and women in all positions, the Legal Services Corporation will review all practices—both formal and informal—affecting promotions and training in management and non-management postions. The following records and procedures will be used, developed, and implemented in order to insure compliance:

1. The number and percentage of minorities and women in all training programs for employees of the Corporation;
2. Employees will be informed of all job opportunities;
3. A reclassification procedure that provides for promotions to vacant and new positions, as well as for changes required as a result of increased responsibilities.

D. Wage and Salary Structure

The Legal Services Corporation will periodically review and monitor its wage and salary structure to assure equal compensation benefits and conditions of employment. In order to assure equal pay for jobs of equal skill, effort, and responsibility, the Office of Administration will carry out the following procedures:

1. Compile a periodic comparison of job descriptions and actual functions of jobs held by minorities and women;
2. Develop a comprehensive Personnel Policies and Procedures Manual that covers compensation, working conditions, and personnel management; and
3. Develop an employee classification schedule and related pay scales.

E. Layoffs, Discharge, Demotion, Disciplinary Action

The standards for deciding when an employee will be terminated, demoted, or disciplined, will be the same for all employees of the Corporation and will not be applied differently for minorities and women. The Corporation will keep a record of:

1. *All Terminations*, indicating total, name, date, number of members of minority groups and women by job category and reason for termination; and
2. *All Layoffs and Demotions*, indicating total, name, date, number of members of minority groups and women by job category and reasons for action.

F. Equal Employment Opportunity Grievance Procedure

The Legal Services Corporation will develop and implement an employee grievance procedure that will:

1. Provide orderly methods for the prompt and peaceful settlement of complaints;
2. Create simple but authoritative routes for the disposition of employee complaints and problems; and
3. Establish over a period of time the basic Corporation rules, practices, interpretations, and customs for the successful operation of a grievance procedure and arbitration process.

VII. AUDITS AND REPORTS

The Corporation will monitor all appropriate personnel records and reports to insure a policy of equal opportunity and to insure compliance with Corporation goals and timetables.

Comprehensive Reporting Procedure.—The Legal Services Corporation will develop and implement a comprehensive reporting procedure that will provide for the continual auditing, monitoring, and evaluation of regional offices, grantees, and contractors. Designing and implementing this procedure is a key responsibility of the Director of Equal Opportunity.

VIII. PROPERTY, SUPPLIES, SERVICES

It will be the policy of the Legal Services Corporation to recruit and give equal consideration to women and minority firms and consultants to provide personal services or supplies to the Corporation. The Office of Equal Opportunity will:

Develop a listing of women and minority firms and consultants that provide services for which the Corporation normally contracts;

Periodically review and monitor the Corporation's use of suppliers, consultants, and services in order to insure fair use, consideration, and treatment of women and minority suppliers, consultants, and services.

IX. GRANTEES AND CONTRACTORS

The Corporation recognizes its responsibilities in the areas of equal opportunity and affirmative action with respect to grantees and contractors of the Corporation, and the Director of Equal Opportunity will develop and implement policies and procedures to ensure that those responsibilities are met.

X. COMMUNITY PROGRAMS

The Corporation recognizes its role as a corporate citizen in the community and an obligation to become involved in community programs. The Corporation will actively support local and national programs designed to improve employment opportunities of minorities and women.

XI. STATEMENT OF COMMITMENT

It is the policy of the Legal Services Corporation to provide equal employment opportunity in all aspects of the employer-employee relationship, without discrimination because of race, color, religion, national origin, sex, age, marital status, physical handicap, political affiliation, or other basis prohibited by law.

Equal employment opportunity as defined in law and governmental regulations, requires affirmative steps to insure the full utilization and nondiscriminatory treatment of minorities and women in our work force. It is the intention of the Corporation to adhere to both the letter and the spirit of these laws and regulations. This Plan sets forth our present interpretation of the course of action the Corporation must take in order to fulfill its intention to meet fully its lawful obligations.

This Plan will be updated and revised in the light of experience, revised laws and regulations and their evolving interpretation, and better understanding of effective approaches that will assure truly equal employment opportunities for all. Any questions relating to details of this Plan should be referred to the Director of Equal Opportunity who has been designated as the Corporation's Equal Employment Opportunity Officer.

THOMAS EHRLICH,
President.
E. CLINTON BAMBERGER, JR.,
Executive Vice President.

JUNE 9, 1976.

GLOSSARY

1. *American Indian.*—A person having origins in any of the original peoples of North America.
2. *Blacks.*—Persons of African descent as well as those identified as Jamaican, Trinidadian, and West Indian.
3. *Goal.*—An employment target such as a range or ratio desirable in a given instance, the achievement of which is to be attempted in all good faith.
4. *Hispanic Americans.*—A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
5. *Job Classification.*—All positions that are sufficiently similar in kind or subject matter of work, level of difficulty and responsibility, and the qualification requirements of the work to warrant similar treatment in personnel and pay administration.
6. *Job Description.*—Minimum applicant qualifications necessary for the performance of a particular job.
7. *Marital Status.*—The state of being married, single, divorced, separated, widowed and the conditions usually associated therewith, including pregnancy or parenthood.
8. *Oriental.*—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Isalnds, and Samoa.
9. *Political Affiliation.*—The state of belonging to, or endorsing, any political party.

LEGAL SERVICES CORPORATION MEMORANDUM

Date: January 10, 1977.

To: Tom Ehrlich.

From: Charles White.

Subject: Comparative Race and Sex Profiles Report of the Legal Services Corporation.

This memorandum is an analysis comparing the July 1, 1976 employment patterns of the LSC workforce with the January 1, 1977 employment patterns. Special attention has been given to women and minority employees to provide

the Corporation with an assessment in the achievement of equal employment opportunity objectives. To this end, the following surveys have been developed:

1. Comparative Statistical Summary: Headquarters and Regional Offices.
2. Comparative Statistical Summary: Corporation Headquarters.
3. Comparative Statistical Summary: Regional Offices.
4. Comparative Statistical Survey: Regional Offices.
5. Comparative Race and Sex Profiles of Legal Services Corporation.

All Corporation personnel have been identified according to job classifications. The job classifications refer to positions that are sufficiently similar in kind or subject matter of work and level of responsibility that warrant similar treatment in personnel and pay administration. A description of the job classifications are as follows:

1. *Executive Classification.*—The executive personnel set broad policies, exercise overall responsibility for the execution of these policies, and direct a special phase of the Corporations' operations. Includes: Corporation officers and office directors.

2. *Administrative Classification.*—The administrative personnel assist in setting Corporation policies and have decision-making responsibility for the execution of these policies. Includes: regional directors, deputy regional directors, assistant office directors and special assistants to the Corporation officers.

3. *Professional Classification.*—The professional personnel have formal college training, or other training, and work experience of a specialized nature. Includes: lawyers, auditors, librarians, accountants and evaluation specialists.

4. *Paraprofessional Classification.*—The paraprofessional personnel perform some of the duties of a professional in a supportive role that requires less formal training and/or experience required of a professional. Includes: paralegals, law students, research assistants, office managers, library assistants, administrative assistants, executive assistants, editorial assistants, and program specialists.

5. *Clerical Classification.*—The clerical personnel are responsible for all routine office and clerical type work required in an office. Includes: bookkeepers, office machine operators, secretaries, telephone operators, messengers, typists, clerks, and receptionists.

I. EMPLOYMENT PATTERNS: TOTAL LSC WORKFORCE

The analysis comparing the employment patterns of the Corporation reflect certain trends in regard to the hiring of women and minority personnel. The highlights of these trends are:

A. Total Workforce: LSC Headquarters and Regional Offices

1. Currently the LSC workforce numbers 134 employees at headquarters and regional offices. This represents a 44 percent increase in personnel since July 1, 1976;

2. Women employees comprise 58 percent of the LSC workforce which represents a 50 percent increase in the employment of women applicants since July 1, 1976;

3. White employees comprise 51 percent of the LSC workforce representing a 35 percent increase in the employment of white applicants;

4. Black employees comprise 36 percent of the LSC workforce representing a 37 percent increase in the employment of black applicants since July 1, 1976;

5. Hispanic Americans make up 10 percent of the LSC workforce which represents a 133 percent increase in the employment of Hispanic applicants.

B. Executive Job Classification

1. There are 13 LSC executive employees representing 10 percent of the total LSC workforce. One executive male was added to the LSC executive workforce;

2. There are 3 women employed in an executive capacity with LSC. This represents 23 percent of the executive employee workforce;

3. Minority executive employees comprise 31 percent of the executive workforce: 2 Black executive employees and 2 Hispanic American executive employees.

C. Administrative Job Classification

1. Currently there are 22 administrative employees in the LSC workforce representing 16 percent of the LSC workforce. The administrative workforce has increased by 10 percent since July 1, 1976;

2. There are 3 women administrative employees which represent 14 percent of the administrative workforce;

3. White employees comprise 59 percent of the administrative workforce and Black employees comprise 27 percent, an increase of 1 Black administrator since July 1, 1976. Hispanic American employees make up 14 percent of administrative personnel. an increase of 1 Hispanic American administrator since July 1, 1976.

D. Professional Job Classification

1. Currently, employees hired in a professional capacity comprise 34 percent of the LSC workforce representing a 161 percent increase in professional employees since July 1, 1976;

2. Women professional employees comprise 49 percent of the LSC professional workforce. This represents a 175 percent increase in women professional employees since July 1, 1976;

3. White professional employees comprise 60 percent of the LSC professional workforce representing a 108 percent increase in white professional employees since July 1, 1976;

4. Black professional employees comprise 29 percent of the LSC professional workforce represe[illegible]g a 333 percent increase in black professional employees since July 1, 1976;

5. On July 1, 1976, there were no Hispanic American employees in the LSC workforce. Currently, 9 percent of the LSC professional employees are Hispanic Americans. There is one American Indian professional employee in the LSC workforce.

E. Paraprofessional Job Classification

1. Paraprofessional employees comprise 9 percent of the LSC workforce representing a 44 percent decline in the paraprofessional workforce. There are no male paraprofessionals in the LSC paraprofessional workforce;

2. White paraprofessional employees comprise 42 percent of the LSC paraprofessional workforce; Black paraprofessional employees comprise 50 percent, and Hispanic American paraprofessional employees comprise 8 percent of the LSC paraprofessional workforce.

F. Clerical Job Classification

1. Clerical employees comprise 31 percent of the total LSC workforce representing a 35 percent increase in clerical employees since July 1, 1976;

2. Women employees comprise 90 percent of the LSC clerical workforce representing a 58 percent increase since July 1, 1976. Male clerical employees represent 10 percent of LSC clerical workforce;

3. White clerical employees comprise 36 percent of the LSC clerical workforce representing a 50 percent increase since July 1, 1976;

4. Black clerical employees comprise 50 percent of the LSC clerical workforce; Asian American 5 percent and Hispanic American clerical employees 10 percent. All total, minority clerical employees make up 64 percent of clerical employees.

II. EMPLOYMENT PATTERNS: LSC HEADQUARTERS

1. January 1, 1977 employee figures indicate that there are 90 employees at LSC headquarters representing a 32 percent increase in the total employee workforce at LSC headquarters since July 1, 1976;

2. Women employees comprise 63 percent of LSC headquarter's personnel, representing a 39 percent increase of women employees at LSC headquarters since July 1, 1976;

3. White employees comprise 51 percent of the LSC headquarters personnel, representing a 28 percent increase in white employees at LSC headquarters since July 1, 1976;

4. Black employees represent 40 percent of the LSC headquarter's personnel. This indicates a 33 percent increase in Black personnel at LSC headquarters since July 1, 1976;

5. Hispanic employees comprise 8 percent of the personnel at LSC headquarters, representing a 75 percent increase of Hispanic employees at LSC headquarters since July 1, 1976;

6. All total, minority employees comprise 49 percent of the employee workforce at LSC headquarters. This represents a 38 percent increase of minority employees at LSC headquarters since July 1, 1976.

III. EMPLOYMENT PATTERNS: LSC REGIONAL OFFICES

1. January 1, 1977 employee figures indicate that there are 44 employees in the LSC regional offices. This represents a 76 percent increase in the regional office workforce since July 1, 1976;

2. Women employees constitute 48 percent of the LSC regional office workforce, representing a 91 percent increase of women employees in LSC regional offices since July 1, 1976;

3. White employees represent 52 percent of the LSC regional office workforce, representing a 53 percent increase of white employees in LSC regional offices since July 1, 1976;

4. Black employees make up 27 percent of the LSC regional office workforce, representing a 50 percent increase of Black employees in regional offices since July 1, 1976;

5. Hispanic American employees represent 16 percent of the LSC regional office workforce, representing a 250 percent increase in the employment of Hispanic Americans at LSC regional offices since July 1, 1976;

6. All total, minority employees comprise 48 percent of the regional offices personnel. This represents a 110 percent increase in the employment of minority employees at LSC regional offices since July 1, 1976.

JOB CLASSIFICATION

	Executive			Administrative			Professional			Paraprofessional			Clerical			Totals		
	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent
Total	12	13		20	22		16	45		14	12		31	42		93	134	
Male	9	10	(78)	17	19	(86)	8	23	(51)				7	4	(10)	41	56	(42)
Female	3	3	(23)	3	3	(14)	8	22	(49)	14	12	(100)	24	38	(90)	52	78	(58)
White	8	9	(69)	13	13	(59)	13	27	(60)	7	5	(42)	10	15	(36)	51	69	(51)
Black	2	2	(15)	5	6	(27)	3	13	(29)	6	6	(50)	19	21	(50)	35	48	(36)
American Indian								1	(2)								1	(0.7)
Asian American													1	2	(5)	1	2	(1)
Hispanic American	2	2	(15)	2	3	(14)		4	(9)	1	1	(8)	1	4	(10)	6	14	(10)

II. STATISTICAL SUMMARY: CORPORATION HEADQUARTERS

Total	12	13		6	6		15	30		11	11		24	30		68	90	
Male	9	10	(77)	5	5	(83)	8	14	(47)				5	4	(13)	27	33	(37)
Female	3	3	(23)	1	1	(17)	7	16	(53)	11	11	(100)	19	26	(87)	41	57	(63)
White	8	9	(69)	3	3	(50)	12	19	(63)	6	5	(45)	7	10	(33)	36	46	(51)
Black	2	2	(15)	3	3	(50)	3	9	(30)	4	5	(45)	15	17	(57)	27	36	(40)
American Indian																		
Asian American													1	1	(3)	1	1	(1)
Hispanic American	2	2	(15)					2	(7)	1	1	(9)	1	2	(7)	4	7	(8)

III. STATISTICAL SUMMARY: REGIONAL OFFICES

Total				14	16		1	15		3	1		7	12		25	44	
Male				12	14	(88)		9	(60)				2			14	23	(52)
Female				2	2	(13)	1	6	(40)	3	1	(100)	5	12	(100)	11	21	(48)
White				10	10	(63)	1	8	(53)	1			3	5	(42)	15	23	(52)
Black				2	3	(19)		4	(27)	2	1	(100)	4	4	(33)	8	12	(27)
American Indian								1	(7)								1	(2)
Asian American														1	(8)		1	(2)
Hispanic American				2	3	(19)		2	(13)				2	2	(17)	2	7	(16)

JOB CLASSIFICATION—Continued

	Administrative			Professional			Clerical			Totals		
	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percen
BOSTON REGIONAL OFFICE												
Total	2	2		2			1	2		3	6	
Male	1	1	(50)	2	(100)					1	3	(50)
Female	1	1	(50)				1	2	(100)	2	3	(50)
White	2	2	(100)	1	(50)		1	2	(100)	3	5	(83)
Black				1	(50)						1	(17)
American Indian												
Asian American												
Hispanic American												
NEW YORK REGIONAL OFFICE												
Total	2	2		1	1		2	1		5	4	
Male	2	2	(100)							2	2	(50)
Female				1	1	(100)	2	1	(100)	3	2	(50)
White				1	1	(100)				1	1	(25)
Black	1	1	(50)				2	1	(100)	3	2	(50)
American Indian												
Asian American												
Hispanic American	1	1	(50)							1	1	(25)
PHILADELPHIA REGIONAL OFFICE												
Total	1	1		2			1	1		2	4	
Male	1	1	(100)	1	(50)					1	2	(50)
Female				1	(50)		1	1	(100)	1	2	(50)
White	1	1	(100)	2	(100)					1	3	(75)
Black							1	1	(100)	1	1	(25)
American Indian												
Asian American												
Hispanic American												

NORTHERN VIRGINIA REGIONAL OFFICE

Total	2		2		1		5	
Male	2	(100)	1	(50)			3	(60)
Female			1	(50)	1	(100)	2	(40)
White	1						1	(20)
Black	1	(50)	2	(100)	1	(100)	4	(80)
American Indian								
Asian American								
Hispanic American								

CHICAGO REGIONAL OFFICE

Total	2		1		1		1		5	
Male	2	(100)	1	(100)					3	(60)
Female					1	(100)	1	(100)	2	(40)
White	2	(100)	1	(100)	1	(100)			4	(80)
Black							1	(100)	1	(20)
American Indian										
Asian American										
Hispanic American										

ATLANTA REGIONAL OFFICE

Total	1		1		1		2		2	
Male	1	(100)					1		1	(50)
Female					1	(100)	1		1	(50)
White	1	(100)					1		1	(50)
Black					1	(100)	1		1	(50)
American Indian										
Asian American										
Hispanic American										

DENVER REGIONAL OFFICE

Total	2		2		3		1		2		3		7	
Male	2	(100)	2	(67)			2		4	(57)
Female			1	(33)	1	(100)	1		3	(43)
White	1	(50)	1	(33)	1				2		2		2	(29)
Black			1	(33)							1		1	(14)
American Indian			1	(33)							1		1	(14)
Asian American														
Hispanic American	1	(50)					2	(100)	1		3		3	(43)

JOB CLASSIFICATION

	Administrative			Professional			Clerical			Paraprofessional			Totals		
	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent
SAN FRANCISCO REGIONAL OFFICE															
Total	2	2		2	2		1	1		3	5				
Male	2	2	(100)	1	1	(50)	1			3	3	(60)			
Female				1	1	(50)		1	(100)		2	(40)			
White	2	1	(50)	1	1	(50)		1	(100)	2	3	(60)			
Black							1			1					
American Indian															
Asian American															
Hispanic American		1	(50)	1	1	(50)					2	(40)			
SEATTLE REGIONAL OFFICE															
Total	2	2		2	2		1	2		3	6				
Male	1	1	(50)	1	1	(50)				1	2	(33)			
Female	1	1		1	1	(50)	1	2	(100)	2	4	(67)			
White	1	1	(50)	1	1	(50)	1	1	(50)	2	3	(50)			
Black	1	1	(50)							1	1	(17)			
American Indian															
Asian American								1	(50)		1	(17)			
Hispanic American				1	1	(50)					1	(17)			

IV. RACE AND SEX PROFILES OF LEGAL SERVICES CORPORATION OFFICES

Job Classification	Total		Minority			Female		
	July 1, 1976	Jan. 1, 1977	July 1, 1976	Jan. 1, 1977	Percent	July 1, 1976	Jan. 1, 1977	Percent
1. Office of the President:								
Executive	2	2						
Administrative	2	2	1	1	(50)			
Paraprofessional	1	2		1	(50)	1	2	(100)
Clerical	3	2	1	1	(50)	3	2	(100)
Total	8	8	2	3	(38)	4	4	(50)
2. Office of Equal Opportunity:								
Executive	1	1	1	1	(100)			
Professional		1		1	(100)		1	(100)
Clerical		1					1	(100)
Total	1	3	1	2	(67)		2	(67)
3. Office of Fiscal Planning:								
Executive	1	1						
Professional		1					1	(100)
Total	1	2					1	(50)
4. Office of Program Planning:								
Executive	1	1						
Professional	1	1	1	1	(100)	1	1	(100)
Clerical	1	1	1	1	(100)	1	1	(100)
Total	3	3	2	2	(67)	2	2	(67)
5. Office of General Council:								
Executive	1	1				1	1	(100)
Professional	1	1		1	(100)			
Clerical	1	2	1	1	(50)	1	2	(100)
Total	3	4	1	2	(50)	2	3	(75)
6. Office of Field Services:								
Executive	1	1	1	1	(100)			
Administrative	1	1	1	1	(100)			
Professional	5	8	1	2	(25)	3	4	(50)
Paraprofessional	1	2				1	2	(100)
Clerical	2	3	2	2	(67)	2	3	(100)
Total [1]	10	15	5	6	(40)	6	9	(60)
7. Office of Public Affairs:								
Executive	1	1				1	1	(100)
Professional	1	1						
Paraprofessional	1	1				1	1	(100)
Total	3	3				2	2	(67)
Office of the Comptroller:								
Executive	1	1	1	1	(100)			
Administrative	1	1	1	1	(100)			
Professional	4	6	1	2	(33)	1	3	(50)
Clerical	3	3	2	3	(100)	3	3	(100)
Total	9	11	5	7	(64)	4	6	(55)
9. Office of Administration:								
Executive	1	1	1	1	(100)			
Professional		1					1	(100)
Paraprofessional	2	2		1	(50)	2	2	(100)
Clerical	6	7	4	4	(57)	4	5	(71)
Total	9	11	5	6	(55)	6	8	(93)
10. Office of Program Support:								
Executive	1	1						
Administrative	2	2				1	1	(50)
Professional	3	9		4	(44)	2	5	(56)
Paraprofessional	4	4	4	4	(100)	4	4	(100)
Clerical	9	9	7	7	(78)	6	7	(78)
Total [2]	19	25	11	15	(60)	13	17	(68)

CONTINUED

4 OF 6

IV. RACE AND SEX PROFILES OF LEGAL SERVICES CORPORATION OFFICES—Continued

Job Classification	Total		Minority			Female		
	July 1, 1976	Jan. 1, 1977	July 1, 1976	Jan. 1, 1977	[1] Percent	July 1, 1976	Jan. 1, 1977	[2] Percent
11. Office of Government Relations:								
Executive	1	1				1	1	(100)
Clerical	1	1				1	1	(100)
Total	2	2				2	2	(100)
12. Research Institute on Legal Assistance:								
Executive		1						
Professional		1						
Clerical		1		1	(100)		1	(100)
Total		3		1	(33)		1	(33)

[1] The totals include the alternative delivery systems study personnel. The following is a separate staff breakdown of personnel working in the alternative delivery systems study unit:

	Total	Minority	Percent	Female	Percent
Professional	4	1	(25)	2	(50)
Clerical	1			1	(100)
Total	5	1	(20)	3	(60)

[2] The totals include the Chicago Office (Clearinghouse) personnel. The following is a separate staff breakdown of personnel in the Chicago Office (Clearinghouse).

	Total	Minority	Percent	Female	Percent
Administrative	1			1	(100)
Professional	4			3	(75)
Paraprofessional	2	2	(100)	2	(100)
Clerical	5	4	(80)	3	(60)
Total	12	6	(50)	9	(75)

APPENDIX 2.—CORRESPONDENCE, ARTICLES, AND OTHER MATERIALS RELATING TO AMENDMENTS TO THE LEGAL SERVICES CORPORATION ACT

John M. Wiley, Director, Wisconsin, Judicare Inc., June 1, 1976.
John M. Ferren, Chairman, The Committee for Public Advocacy, Feb. 17, 1977.
Thomas R. Adams, Directing Attorney, Legal Aid Society of San Mateo County, Feb. 22, 1977.
Manuel D. Fierro, President, National Congress of Hispanic American Citizens, Feb. 24, 1977.
Hon. Richardson Preyer, March 2, 1977.
Clarence Mitchell, Director, Washington Bureau, National Association for the Advancement of Colored People, March 2, 1977.
Hon. Donald M. Fraser, March 4, 1977.
Howard G. Paster, Legislative Director, U.A.W., March 4, 1977.
Charles R. Halpern, Executive Director, Council for Public Interest Law, March 7, 1977.
Congressional Black Caucus, March 8, 1977.
Lola McAlpin-Grant, President, Western Center on Law and Policy, March 9, 1977.
Editorial, *The Sacramento Bee*, March 10, 1977.
Andrew J. Biemiller, Director, Department of Legislation, A.F.L.-C.I.O., March 10, 1977.
William F. Ware, Legislative Staff Counsel, American Civil Liberties Union (Washington Office), March 10, 1977.
Paul G. Dembling, General Counsel, U.S. General Accounting Office, March 14, 1977.

Joanne S. Faulkner, Attorney, Legal Aid Bureau, New Haven Legal Assistance Association, Inc., March 14, 1977.
Hon. Tom Bradley, Mayor, Los Angeles, Calif., March 24, 1977.
John N. Doggett III Director, Office of Legal Services, the State Bar of California, April 15, 1977.
Hon. Patricia M. Wald, Assistant Attorney General, Legislative Affairs, Dept. of Justice, April 19, 1977.

WISCONSIN JUDICARE INC.,
Wausau, Wis., June 1, 1976.

MS. ALICE DANIEL,
General Counsel, Legal Services Corp.,
Washington, D.C.

Subject: Continuing Representation of Native Americans in Protection of Treaty Hunting and Fishing Rights.

THE PROBLEM

The are six Indian tribes in Wisconsin residing on eleven reservations. The State of Wisconsin asserts jurisdiction over ten of the reservations by virtue of Public Law 280 (18 U.S.C. 1162 and 28 U.S.C. 1360).

In the past and at the present time, Wisconsin Judicare staff attorneys have vigorously advocated the treaty hunting and fishing rights of Native Americans. See for example, *State* v. *Gurnoe*, 53 Wis. 2d 390.

These cases frequently arise after Indians have been charged with violations of the Wisconsin Administrative Code which technically are misdemeanors.

Part 1613 of the proposed LSC rules, Restrictions on Legal Assistance in Criminal Proceedings, prohibits use of Corporation funds to provide legal assistance in a criminal proceeding unless authorized by Section 1613.4.

The purpose of this memorandum is to request that an additional exception be added to Section 1613.4.

REQUESTED EXCEPTION

We request that a subparagraph be added as follows:

(Legal assistance may be provided to a defendant in a criminal proceeding) "where the defendant is a Native American charged with an offense involving hunting, fishing, trapping, or gathering fruits of the land and the defense asserted involves treaty rights."

Note that the class of people and nature of the case make the exception very narrow:

1. It limits representation to Native Americans only.
2. It limits the cases covered to hunting, fishing, trapping, and gathering fruits of the land.
3. It limits the cases to those where the defense is based on a treaty right.

CULTURAL AND LEGAL BACKGROUND

Hunting and fishing are culturally and economically important rights of Indian people. Since time immemorial Indians have hunted, to maintain their status as warriors as well as for subsistence. For instance, hunting takes on the attribute or a religious activity in the case of the Winnebago Clan War Bundle Feast which is a year around activity and not just during open hunting seasons set by the Department of Natural Resources.

The Feast involves the killing and consumption of venison which put the participants in the position of having to violate the law if they are to pursue their cultural and religious heritage.

There is also an important economic reason for Indian hunting and fishing: The average annual income of Indians is $1500 to $2000 and the Indian unemployment rate ranges from 40 percent to 75 percent. The Gurnoe case reaffirmed the right of Chippewa Indians to fish commercially in Lake Superior and many families are now supported by that activity.

These cases are virtually civil in nature because they ultimately involve the protection of historically valuable property rights that are oppressed by state action in the context of a criminal prosecution.

These rights have been recognized as property rights by the Courts. For example, when the Dalles Dam Project inundated some valuable Indian fishing stations, Congress compensated the Indians affected $27,000,000 for the loss of

the right to fish there. See *Whitefoot* v. *United States*, 293 Fed 2d 658 (Ct. Cl. 1961), cert. denied 369 U.S. 818 (1962).

See also *Menominee Tribe* v. *U.S.*, 391 U.S. 404 (1968) at 413 where upholding Menominee treaty rights to hunt even after termination, the Court said that Congress would not lightly "subject the U.S. to a claim for compensation by destroying property rights conferred by treaty."

The United States Supreme Court once described Indian hunting and fishing activities as "not much less necessary to the existence of the Indians than the atmosphere they breathe." U.S. v. Winans, 198 U.S. 371, 381 (1905).

The right of Indian people to be culturally diverse even though in conflict with state law was recognized in People v. Woody, 61 Cal. 2d 716 (1964) where use of peyote by Indians was permitted as a bona-fide religious practice, while such drug-related conduct is criminal for non-Indians.

Consequently, it is critically important that Native Americans be given access to the legal system to protect them from erosion and oppression of rights which are culturally and economically important.

The assertion of a treaty right defense is complex and requires having access to a highly technical and little-known body of law. Expertise in the field is very limited outside of LSC-funded programs.

JUSTIFICATION FOR THE EXCEPTION

There are several basis upon which an exception can rationally and legally be founded.

Congress did not consider the implications of the broad prohibition against representation in criminal cases as it affects Indian treaty rights. If they had, they undoubtably would have made an exception, since they accord special treatment to Indians in section 1010(c) of the Act which authorized use of tribal funds or foundation funds for purposes which may otherwise be proscribed the Act.

In addition, Congress specifically recognized the unique legal problems encountered by Indian people which includes advocacy of their treaty rights since no other U.S. citizens enjoy such rights.

See for example Conference Report, H.R. 7824, House Report No. 93-1039 and Senate Report No. 93-845, May 31, 1974: "The conferees understand 'criminal proceedings' to refer to proceedings brought by the Government of the United States or any of the States. It is not the intent of the conferees to prohibit representation of Indians charged with misdemeanor offenses in tribal courts, as distinct from criminal charges in Federal or State courts. Due to the unique legal problems encountered by Indians on reservations, this provision should not be construed to limit representation of Indian clients in tribal courts such as is now being provided in certain legal services programs on Indian reservations." (Also reported in Section 8283, Poverty Law Reporter.)

When construing statutory language one should look to the legislative statement of purpose. The "Statement of Findings and Declaration of Purpose" of the Legal Services Corporation Act says:

> "Sec. 1001. The Congress finds and declares that—
>
> "(1) there is a need to provide equal access to the system of justice in our National individuals who seek redress of grievances;
>
> "(2) there is a need to provide high quality legal assistance to those who would be otherwise unable to afford adequate legal counsel and to continue the present vital legal services program;
>
> "(3) providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice; . . ."

Wisconsin Judicare and other legal services programs have provided "vital legal services" to Native Americans in defense of treaty rights; continued advocacy is necessary "to provide equal access to the system"; the services have been "high quality legal assistance" since the success rate has been excellent; and clearly Indian people "would be otherwise unable to afford adequate legal counsel" in these treaty cases.

The thing that Congress sought to avoid by the broad prohibition against criminal cases is to avoid having the federal government assume the obligation to provide counsel imposed by *Gideon* v. *Wainwright*, 372 U.S. 335 (1963) and *Argersinger* v. *Hamlin*, 407 U.S. 25 (1972). This is evident because the prohibition is in juxtaposition with the prohibition against fee-generating cases. It is obvious that Congress felt "if someone else can or must pay for the legal services, we won't."

This then raises the point that Courts may have to provide counsel at county or state expense for Indians charge with hunting or fishing violations. This is impractical for two reasons. As mentioned before, the defense of a treaty rights case involves a highly specialized body of law and history that simply are not within the ken of the general private practioner. To acquire the knowledge on a case-by-case basis would require literally hundreds of hours of research and local Courts simply are not going to pay for that, so that the representation Native American will get will be inadequate.

But, secondly and perhaps more important, experience has shown that Indians don't trust court appointed counsel. Local counsel who will be appointed represent the establishment that Indians view with fear and suspicion.

Legal services attorneys, such as those from Wisconsin Judicare, have spent a substantial amount of time establishing their credibility in the Indian community while developing an expertise which the Indians recognize and respect. It will be enormously damaging to the credibility and relationships enjoyed by staff attorneys doing legal work for Indians if suddenly they are prohibited from representing them in the advocacy of treaty rights.

Another rationale for the exception is the fact that the federal government has historically always accorded the Indians special treatment, based upon the trust relationship which was created when the treaties were negotiated. For example Title 25 of the United States Code relate specifically and exclusively to Indians. No other ethnic ground in the United States is given such recognition.

This was recognized by the Supreme Court in *Morton* v. *Mancari*, 417 U.S. 535 (1974) where the Court held that Indians are entitled to preference in hiring for positions with the Bureau of Indian Affairs. The Court said at page 552: "Literally every piece of legislation dealing with Indian tribes and reservations . . . single(s) out for special treatment a constituency of tribal Indians living on or near reservations. If these laws, derived from historical relationships and explicitly designed to help only Indians, were deemed invidious racial discrimination, an entire Title of the United States Code (25 U.S.C.) would be effectively erased and the solemn commitment of the Government toward the Indians would be jeopardized.

"On numerous occasions this Court specifically has upheld legislation that singles out Indians for particular and special treatment."

* * * * * * *

"As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed." Id., at 555.

As recently as April 27, 1976 in *Moe* v. *The Confederated Salish and Kootenai Tribes of the Flathead Reservation*, 44 U.S. Law Week, The U.S. Supreme Court held that tax immunity for reservation Indians does not constitute invidious discrimination against non-Indians who are subject to the tax on the reservation contrary to the Due Process Clause of the Fifth Amendment, citing *Morton* v. *Mancari*, supra.

Finally, if an exception is made for Indians involved in a criminal proceeding in an Indian Tribal Court, as in proposed Rule 1613.4(a) (and we strongly feel that this exception should be made), in order to provide equal protection of the laws to all Indians because of "the unique legal problems encountered by Indians" recognized by the Conference Report, supra, an exception should be made to protect the unique legal problems arising in the defense of treaty rights.

JOHN M. WILEY, *Director.*

THE COMMITTEE FOR PUBLIC ADVOCACY,
Washington, D.C., February 17, 1977.

Hon. ROBERT KASTENMEIER,
Chairman, House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Washington, D.C.

Dear Congressman Kastenmeier: The Committee for Public Advocacy, representing a cross section of attorneys and private citizens concerned about equal access to justice, strongly supports an appropriation for the Legal Services Corporation in the amount of $264 million.

With the inception of the national program to provide legal assistance to the poor in 1965, legal services programs began to be established in many communities throughout the country. But from 1971 through 1975, the appropriation for the national legal services program was frozen, resulting in the closing of

dozens of neighborhood legal services offices, as well as the deferment of the creation of new programs. At the beginning of fiscal year 1976, the first full year of the Legal Services Corporation's operatings, roughtly 11.7 million out of the 29 million poor persons counted in the 1970 census had an access to a Corporation-funded legal services program. Many of the remaining 17.3 million living in areas theoretically covered by legal services programs had no meaningful access to legal representation because the programs in those areas were so underfunded.

At least $264 million is the amount required to meet the Legal Services Corporation's interim goal of providing access to legal assistance at the minimal rate of two attorneys per 10,000 poor persons, as compared to 11.2 attorneys per 10,000 persons in the population at large.

If this nation's commitment to equal access to the system of justice, as expressed in the Statement of Findings and Declaration of Purpose of the Legal Services Corporation Act, is to be given meaning, a fiscal year 1978 appropriation of $264 million for the Legal Services Corporation is essential.

Sincerely,

JOHN M. FERREN, *Chairman.*

LEGAL AID SOCIETY OF SAN MATEO COUNTY,
Daly City, Calif., February 22, 1977.

Re Legal Services Corporation.
ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Rayburn Building, Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: I am writing to discuss budgetary priorities of the Legal Services Corporation (LSC). So far as I can tell the LSC budget request of $217 million is based on two priorities. First, the Corporation wishes to open new offices in areas where poor persons presently have no access to legal services. Secondly, the Corporation wishes to equalize the funding of the various programs presently in existence. I do not dispute that these are important priorities, but there should also be a priority for needed funding in established programs of demonstrated professional quality.

Our program in San Mateo County seems comparatively wealthy on a per capita poor person basis. To look at funding on comparative basis, however, means overlooking serious needs. Frequently our clients have to wait months in order to get appointments for certain kinds of cases. In many areas of casework we have greatly reduced the kinds and amount of service provided in order to maintain professional standards. Although inflation and unemployment have greatly increased our client population, budgetary restriction have forced us to impose stricter eligibility standards. Although we believe we could gain important benefits for our clients, our limited resources allow us to provide representation on only a few of the really important problems our clients face. Nevertheless, in order to do as much as we do, we constantly work overtime and seldom take all of our allotted vacation time.

On a more mundane level, we cannot obtain enough typewriters to efficiently use our attorney resources. Our office has been burglarized so often we no longer can afford insurance and we cannot afford to replace the equipment if we have another serious burglary. Our clerical staff is so grossly underpaid that one of them can remain on welfare while working in our office. There are no retirement benefits, so that the more experienced secretaries frequently look for other jobs. Our attorneys are so grossly underpaid, it is ridiculous. A starting attorney in our program is paid about half as much as an attorney in a comparable public service job. I, myself, have been offered a job paying 2½ times more than my Legal Aid salary. So far as I can tell, none of the presently contemplated funding proposals would enable our program to pay its clerical or professional staff salaries comparable with other public agencies. In fact, we have been told that our program is so comparatively wealthy that we shouldn't expect any significant budget increase in the foreseeable future.

In spite of these difficulties our program has maintained an unusually high professional quality. We have been fortunate to retain an unusually large number of experienced, capable attorneys. The number of service cases has actually increased, and yet we have conducted a substantial amount of impact litigation and community representation. Our program has argued eight cases in the U.S. Supreme Court and the California Supreme Court in the last nine years, and

we have prevailed in four of them. These cases and our other work has resulted in an economic value to our clients far in excess of our program's budget.

It seems to me that there is a serious need in our program for increased funding. Although the Corporation appears to be concerned about its ability to manage an increased budget, there would be few significant management problems to increase funding for already operating, professionally administered programs. If the sole criteria for budget increases was management ability, most of any budget increase would go to existing programs instead of to create new programs.

However, there are a variety of needs. There is a need for new programs, and for money for grossly under-funded programs. There are also serious needs in older, more established programs. The Corporation's budget reflects pursuit of the first two goals to the unreasonable exclusion of the third. I believe that any long-term funding plans for adequate legal services must include progress on all these goals.

Many people agree that the Legal Services programs has been unusually successful. This is due in large part to the skill and motivation of the staffs in neighborhood offices. The attorneys in these offices cannot work at half-pay forever. The secretaries and paralegals cannot ignore other opportunities forever. More importantly, the people with skill and experience will not be able to keep their motivation and sense of sacrifice if the Legal Services Corporation itself turns its back on their needs

I urge you and your Subcommittee to carefully examine the priorities established in the Legal Services Corporation budget request for fiscal year 1977-1978, and to suggest that new priorities be established which include a broad approach to meeting the needs of the poor for legal representation.

Yours very truly,

THOMAS R. ADAMS,
Directing Attorney.

NATIONAL CONGRESS OF HISPANIC AMERICAN CITIZENS,
Washington, D.C., February 24, 1977.

HON. ROBERT W. KASTENMEIER,
Chairman, House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: Your subcommittee recently held oversight hearings concerning the Legal Services Corporation. As you know, the task of providing legal services to an estimated 29 million poor people in the United States is one which requires a great deal of manpower and financial resources. We certainly commend the job Legal Services Corporation has done thus far and support its efforts to receive the necessary funding required to carry out its objectives.

However, as an organization which represents the concerns of the Hispanic community in this country, we must focus our attention on the effectiveness the Legal Services Corporation has had, or is planning in providing legal services to the Hispanic population.

Using data provided to us by the Bureau of Census, it is estimated that as of 1975 there were over 3 million poor persons of Hispanic origin residing in the United States. This estimate increases when we include the untold numbers of Hispanics who are not classified as being poor by the Office of Management and Budget, but are unable to afford legal services. It is our contention that if the Legal Services Corporation is to provide the Hispanic community with quality and effective legal services it must have sufficient Hispanic input and its staffing pattern must reflect towards this effort.

Therefore, we ask of the Legal Services Corporation to inform us as to its affirmative action policies in recruiting Hispanics for its national office and regional offices. We are aware of the recent appointment of Mr. Albert Moreno as Regional Director from San Francisco, and of the hiring of a fellow Hispanic in the General Counsel's office in Washington. We feel that additional capable Hispanics must be recruited and placed in positions which will be of benefit to all but especially will go far in meeting the bilingual/bicultural needs of the Hispanic community.

Second, we recognize that the Legal Services Corporation has various grants and contracts with many private industries, and companies. Has the Corporation made an effort to insure that all people, all of the companies, that deal with the

Corporation also adhere to affirmative action objectives; that they have established their own affirmative action plans and are performing them? It is imperative that all contractors and/or subcontractors dealing with the Corporation effectively deal in the area of affirmative action for Hispanics.

Furthermore, the Corporation is an extensive study of alternative delivery systems. We understand that it is presently studying various ways for providing more and efficient ways of providing legal services to individuals and groups of people. We would like to know what the Corporation is presently doing in this area and what could be done to insure that programs eventually selected and funded are going to be effective in providing legal services to the Hispanic community.

Finally, and perhaps most important. the statute itself provides that the Corporation shall provide bilingual assistance in its legal programs. We would like to know and the committee should know if the Corporation has provided bilingual services where they are necessary, where they are needed, and where they are desired.

It has come to our attention that the Corporation has not examined the delivery of bilingual legal services until recently when it initiated a study into these matters. Nevertheless, it is important that it be known to what extent the Corporation has provided bilingual assistance to Hispanic clients as directed by the statute.

In conclusion, we praise the efforts and enthusiasm the Legal Services Corporation has demonstrated in meeting the great challenge of providing legal services to America's poor. We are however, concerned that the Hispanic community receive necessary and adequate legal assistance. We are ready to provide input and assistance in this effort.

We thank you for your time and attention regarding this matter.

Respectfully,

MANUEL D. FIERRO,
President.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 2, 1977.

HON. ROBERT KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Rayburn Building, Washington, D.C.

DEAR MR. CHAIRMAN: I understand from the staff of your subcommittee that you are presently considering legislation extending the authorization of the Legal Services Corporation ("Corporation") and that you desire our opinion as to whether the Corporation is subject to the open meeting provisions of the Government in the Sunshine Act ("Act"). As you know, the Act originated in this subcommittee and we have oversight and legislative jurisdiction over it.

The Act's definition of "agency" is "any agency, as defined in section 552(e) of this title, headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency." 5 U.S.C. 552b(a)(1).

Section 552(e) includes in the definition of "agency" "any . . . Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency." 5 U.S.C. 552(e). The reference to the Freedom of Information Act definition was employed in the Act and in the Privacy Act, 5 U.S.C. 552a(1), in an effort to provide for uniform applicability of these three related statutes (except, of course, for the collegial requirement of the Act).

Although the issue is not free from doubt, I believe that the Corporation is subject to the open meeting provisions of 5 U.S.C. 552b, as added by the Act. The Corporation's organic statute provides that it is subject to the Freedom of Information Act, thus bringing it within the class of agencies we generally intended to cover. 42 U.S.C. 2996d(g). Further, the enabling legislation *establishes* the Corporation, 42 U.S.C. 2996d(a), while the analogous provisions relating to the National Railroad Passenger Corporation, 45 U.S.C. 451, which is covered by the Act, H. Rep. 94-1441, pp. 10-11, and the Corporation for Public Broadcasting,

47 U.S.C. 396(b), which probably is not covered, only *authorizes* their establishment.

The corporation's enabling statute also provides, though, that it "shall not be considered a department, agency, or instrumentality of the Federal Government, 42 U.S.C. 2996d(e). In view of this, the best course might be to clarify the issue by amending 42 U.S.C. 2996d(g) to expressly cover the Corporation and by repealing 42 U.S.C. 2996c(g) as superfluous.

The amended Section 2296d(g) would read as follows (new language italicized):

"(g) Freedom of information; *privacy; open meetings.*

"The Corporation and its officers and employees shall be subject to the provisions of section 552 of title 5 (relating to freedom of information), *section 552a of Title 5 (relating to records about individuals), and section 552b of Title 5 (relating to open meetings).*"

I hope that this is of assistance to your subcommittee in its consideration of this legislation and trust that you will feel free to call on me if I may be of any further help.

Sincerely,

RICHARDSON PREYER, *Chairman.*

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Washington, D.C., March 2, 1977.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, U.S. House of Representatives, Washington, D.C.

DEAR CHAIRMAN KASTENMEIER: Thank you for your letter of February 25 in which you give us an opportunity to comment on the reauthorization hearings for the Legal Services Corporation. The Corporation is a valuable asset in our country. There are many examples of its good works and I am sure these have been set forth in reports to your subcommittee. We urge that the Corporation be continued and fully supported financially.

This letter is sent by me as Director, Washington Bureau of the National Association for the Advancement of Colored People. In January 1977, I was elected Chairman of the Leadership Conference on Civil Rights. The Leadership Conference on Civil Rights also supports extension of the legal Services Corporation and we have sent a letter to that effect.

Sincerely yours,

CLARENCE MITCHELL, *Director.*

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., March 4, 1977.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Rayburn House Office Building, Washington, D.C.

DEAR BOB: I am aware that H.R. 3719, the Legal Services Corporation Amendments Act of 1977, is due to be marked up by your Subcommittee on March 8 and 9.

I would like to comment on the bill, which I see as an important amendment of the original Act. I'm particularly pleased to note that the prohibitive restrictions against cases involving abortion, school desegregation, indigent juveniles and selective service would be removed by your bill. The Act should equalize access to legal services for the poor. Even though the caseload per LSC attorney is already extremely high, local services, not Congress, should determine priorities in accepting cases. If we disallow LSC attorneys to handle cases involving the above unpopular causes now, the list of restrictions could grow as fast as a new issue becomes controversial.

Subsection (b)(1) of section 1007 (Section 7 in your bill) concerns me. I hope that this prohibition against fee-generating cases is not meant to prohibit SSI or Truth-in-lending cases. I understand that current regulations do prohibit LSC attorneys from taking SSI cases unless a reasonable search has been made for a private attorney. These and other cases involving the return of statutory benefits should not be considered "fee-generative," since the fee to the private attorney would come out of the benefits to which the client is entitled.

Thank you for allowing me to comment on this bill, which is an outstanding clarification of the spirit and purpose of the Legal Services Corporation Act.

Sincerely,

DONALD M. FRASER.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW,
Washington, D.C., March 4, 1977.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Since its inception the UAW has fought to attain for our society and all of its citizens equal access to justice and equal justice under the law. We have recognized that we can only protect the rights of our citizens to the extent that we provide them full access to the institutions that make and enforce the laws. The poor of our country bear citizenship and the obligations of citizenship as do the rich, yet millions of poor Americans are denied their rights as citizens only because they are poor.

The Legal Services Corporation Act has worked to rectify this injustice to the poor of our land. The success of the program justifies extension of the Act through FY 1980. At present the statute contains the goal of providing two attorneys for every 10,000 poor persons, a ratio which has meant inadequate access to legal assistance. Therefore we urge your Subcommittee's approval of the Corporations FY '78 budget request of $217 million in order to better provide legal services to those in need. The Act also sets forth restrictions on the nature of legal services a poor person may receive; such restrictions do violence to the goal of equal justice and should be eliminated.

The Legal Services Corporation Act of 1974 has helped to assure the poor equal access to our system of justice. We feel the Congress should provide the Corporation with the authority and resources to fulfill its important mission. We urge you and your Subcommittee to support fully the needs of the Legal Service Corporation to this end. We would appreciate this letter being made a part of the Subcommittee record.

Sincerely,

HOWARD G. PASTER, *Legislative Director.*

COUNCIL FOR PUBLIC INTEREST LAW,
Washington D.C., March 7, 1977.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: The Council for Public Interest Law is an independent organization established to advance the cause of legal representation for those individuals and interests which would otherwise go unrepresented in the judicial forums and administrative agencies of government. We understand that the Subcommittee is currently considering the extension of the Legal Services Corporation Act. We would like to indicate our general endorsement of H.R. 3719, the Legal Services Corporation Act Amendments of 1977, and our pleasure at the very progressive spirit in which the Subcommittee has approached the need to extend the life of the Corporation, to prudently expand its budget, and to eliminate unneeded restrictions on the ability of the Corporation and its grantees to discharge the functions assigned to them.

However, we believe that there is a need for certain specific amendments to the original legislation establishing the Corporation in addition to the amendments contained in H.R. 3719. For example, section 1006f which allows the award of attorneys fees and costs against Legal Services grantees where they have filed litigation for the purposes of harassment adds nothing to the long-standing American rule that fees may be assessed against a party who has abused the judicial process. By putting this provision in the original statute, Congress appeared to demean the work of Legal Services and encourage the filing of motions for fee awards. As a result of this provision, such motions have frequently been filed. As frequently, they have been turned down by the courts as having no

factual basis behind them which would warrant fee shifting. Nonetheless, such motions must be answered at length and must be considered by the courts. This has led to a waste of time and of resources. Surely, Congress now has sufficient experience with the program to realize that there is no serious problem of Legal Services' attorneys abusing the legal process. We believe section 1006f should be removed from the Act, and Legal Services' attorneys treated in the same manner as other lawyers.

Similarly, the restriction on partisan political activities in off-duty hours by the employees of the independent corporations which are the grantees of the Legal Services Corporation should be entirely deleted. It infringes upon the rights which belong to all citizens of the United States—to educate themselves and to participate in a meaningful way in the civic life of their community and nation. The restriction is a disturbing attempt to control the off-duty activities of only one narrow group of citizens, and it sets a bad precedent for similar attempts at piecemeal restriction of basic liberties. It is not analogous to the Hatch Act, because those involved are not employees of any governmental body. It is particularly invidious because those who are subject to it are so small in numbers. Imagine the outcry in Congress were a similar restriction proposed on the political activities of the staff of an agricultural enterprise receiving federal assistance or a business with a government contract. We urge that this restriction come out of the Act.

Finally, we believe the requirement in section 1007(a)(8) of the Act that a preference be given by Legal Services programs to the hiring of lawyers who are local residents and that the advice of the local bar be solicited imposes an unnecessary burden and is not germane to the purposes of the Act. The Corporation's mandate is not to create jobs nor to spread the jobs which it does create among attorneys in the locale where a grantee is situated. The purpose of the Corporation is to provide the highest possible legal service to the largest number of poor people. Local grantees should not be saddled with the requirement that they turn to the local bar association for advice on staffing their programs. They should make their decisions on the basis of what serves the best interest of the client populations they seek to assist. We would therefore urge that this provision also come out of the Act.

Finally, we would like to urge that the sum of $264 million be authorized for appropriation to the Corporation during the next fiscal year. Considering the vast need for service, the splendid job which the Corporation has done, the clear ability to use the money wisely, and the great disparity that still exists between the access to justice which the poor have when compared with the rest of us, $264 million can hardly be viewed as excessive.

We appreciate the opportunity to comment on this legislation, and, again, we would like to commend you and your Subcommittee for the initiative and understanding you have demonstrated with regard to broadening the provision of legal representation for all citizens.

Sincerely yours,

CHARLES R. HALPERN,
Executive Director.
JACQUES FEUILLAN,
Associate Director.

CONGRESSIONAL BLACK CAUCUS PRESS RELEASE, MARCH 8, 1977

THE CONGRESSIONAL BLACK CAUCUS CALLS FOR INCREASE IN LEGAL SERVICES FUNDING

WASHINGTON, D.C.—The two members of the Congressional Black Caucus serving on the House Budget Committee have written to President Carter calling for a major increase in funding for the Legal Services Corporation. Congressman Parren J. Mitchell (D-Md.), Chairman of the Caucus, and Congressman Louis Stokes (D-Ohio), described the Administration's proposed appropriation of $150 million for the Legal Services "grossly inadequate". Speaking on behalf of the Caucus, Congressman Mitchell and Stokes called for an appropriation of $217 million, the amount requested by the Corporation.

In urging the President to "move boldly" and to "look deeply at the true needs of low income people", Caucus members Mitchell and Stokes stated that "this is not the time to say to millions of Black, Chicano, and white, urban and rural low-income citizens that they must wait another year, or longer, before they can have access to the justice system".

The Legal Services Corporation is a private non-profit organization created and funded by Congress to provide free legal assistance in non-criminal matters. It began operating in October, 1975 and assumed all the grants which were formerly funded through the Office of Economic Opportunity (OEO). OEO has since been re-named the Community Services Administration. Since the program of free legal services for the poor began 12 years ago, it has been the object of various pressures to restrict its activities. In 1967, former Republican Senator George Murphy's defeated "Murphy Amendment" was an attempt to prevent legal services attorneys from suing governmental agencies. Later attacks to discredit the free legal services concept were also defeated. These included elimination of programs, restrictions on support and backup centers, cutbacks in funding and an all out attack on the structure and intent of the program.

Congressmen Mitchell and Stokes told the President that "it was only through the efforts of individuals such as Vice-President Mondale, people in the House, such as the Members of the Congressional Black Caucus, and the Senate leaders, such as Senator Cranston that the program survived at all".

It is clear, stated the Congressmen, that "the working poor have been hard hit by the factory closings, the layoffs and the shut-off of gas heating". The $217 million request is needed to provide for low-income persons legal assistance and to "counsel them in matters such as their rights under their mortgage agreements, the restructuring of credit obligations, the protection of their rights to return to their former jobs, or the pursuit of denials of entitlement to Government benefit programs on which they may now have to depend".

Members of the Congressional Black Caucus believe that the Legal Services Program has been one of the most successful programs initiated during the 1960's. A Caucus review of the Legal Services Corporation hiring record shows, however, an egregious lack of minorities among its professional staff, a situation that the Corporation must correct. Providing adequate support for its continuation would be a clear signal that this Administration truly wishes the doors of justice to be opened wide in all respects.

[Telegram]

LOS ANGELES, CALIF., *March 9, 1977.*

ROBERT W. KASTENMEIER,
Rayburn House Office Building, Washington, D.C.

Whereas the House Committee on the Judiciary is considering an amendment to add client representatives to the Board of Directors of the Legal Services Corporation; and

Whereas the Western Center on Law and Poverty, Incorporated encourages consumer representation on public service boards and has client representatives on its board, as do all Legal Services programs in California; and

Whereas the California State Bar has several public members on its board of governors as provided by statute; therefore be it

Resolved, That the Members of Congress be requested to vote for substantial client representation on the Board of Directors of the Legal Services Corporation; and be it further

Resolved, That copies of this resolution be sent to all members of the House and Senate Judiciary Committees, and to the President and Vice President of the United States.

LOLA MCALPIN-GRANT,
President,
Western Center on Law and Poverty, Incorporated.

[From the Sacramento Bee]

LEGAL SERVICES REFORM

The rules of evolution shape not only biology but politics and social reform as well. A case in point is the federal law creating an independent corporation to provide legal aid to the poor established in 1974.

The bill setting up the Legal Services Corporation was passed after weathering more opposition, snarls and setbacks than most legislation could survive.

When it was finally signed into law, the bill was laden with arbitrary restrictions on what legal services lawyers could perform for the poor. Under the act, Legal Services lawyers were prohibited from representing clients in connection

with the military draft, desegregation, labor, abortion cases, criminal matters and, with a few exceptions, juvenile matters.

Now, 2½ years later, through the process of political and social evolution, there is a move, being led by the prestigious American Bar Association, to give attorneys working for the poor the same kind of freedom enjoyed by attorneys representing paying clients.

The House judiciary subcommittee, which will hold hearings on the reauthorization of the federal Legal Services Corporation, should heed the bar association's plea.

Congress should remove the shackles it placed on the Legal Services program attorneys in 1974 and permit them to exercise fully their independent professional judgment.

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS
Washington, D.C., March 10, 1977.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, U.S. House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: This is in reference to H.R. 3719, "The Legal Services Corporation Amendments Act of 1977". This legislation would provide authorization for renewal of the Legal Services Corporation and make certain changes in the authorizing statute.

The AFL–CIO has a long history of concern for the achievement of justice in our society, a goal which we believe must be achieved on behalf of all of our citizens, regardless of income level. We believe the goal set by the Legal Services Corporation, that of providing at least two attorneys per every ten thousand poor persons, is both realistic and attainable. Accordingly, we support a target authorization, designed to achieve that goal within the fiscal year ending September 30, 1978, of $264.6 million. In our view the desirable appropriation levels should be as follows:

Fiscal year:	*Appropriation in millions*
1978	$264.6
1979	263.7
1980	520.7

While we appreciate that the Corporation is deferring the attainment of the two attorneys per ten thousand goal until fiscal year 1979, and thus has requested only $217 million for fiscal year 1978, we cannot endorse a position which leaves millions of citizens unserved for a period of several years.

In addition to the question of adequate financing of the Legal Services Corporation, there are a number of other issues on which we feel strongly. Principal among these is the repeal of the so-called "Green Amendment", and we heartily endorse the action taken by the subcommittee on March 8 to eliminate the restrictions 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 it will carry out its obligations and thus support the specific corrective language contained in Section 4 of H.R. 3719 (relating to amendment of Section 1006 (a) (3) of the Legal Services Corporation Act).

We understand that the subcommittee has modified some of the present act's restrictions on political activities of staff attorneys on their own time. The restrictions that would remain, however, would continue to constitute intolerable interference with basic civil and political rights. We urge that these restrictions be stricken from the statute.

H.R. 3719 contains a number of additional provisions with which we are in agreement, and which we believe should be included in the legislature to be reported by your subcommittee. These provisions are as follows:

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 understand that the amendments proposed to Section 1007(c) would merely codify an existing Corporation regulation.

We support the proposed amendment to Section 1007 (a) (5) (A) which would preserve the ability of paralegals to appear before administrative forums, where permitted.

We support the proposed amendment 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 circumstances.

We support the proposed additional language to Section 1006(d) which would prevent court appointment of legal services attorneys except on a non-discriminatory basis with other practicing attorneys.

Finally, we endorse the effort to eliminate 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-supprted legal services program.

I would appreciate it if you would include this expression of our views in the record of your proceedings in connection with this important legislation.

Sincerely yours,

ANDREW J. BIEMILLER,
Director, Department of Legislation.

AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., March 10, 1977.

HON. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, Committee on the Judiciary, Rayburn House Office Building, Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: We are writing to you to express our support of the amendments to the Legal Services Corporation Act, proposed by the National Legal Aid and Defender Association. With but one exception—the proposed amendment to section 1004(a) requiring that one-third of the members of the Corporation's Board of Directors meet the income eligibility requirements for recipients of legal services—we strongly support each of the requested amendments. However, with respect to the proposed amendment to section 1004 (a), while we agree that the Board should be more broadly representative of the interests and special perceptions of the legal services client population, we doubt that this highly artificial way of achieving such representation will necessarily result in the selection of individuals who are most capable of effectively representing those interests. We do feel, however, that Congress should ensure that the Board includes representatives of minority groups, persons actively engaged in and knowledgeable about the special problems of the poor, and women, who have also been traditionally excluded from decision making positions in organizations of the established bar, and who might be especially sensitive to the problems of the poor, who are likely to be women and children.

We reserve comment on section 1011(2), except insofar as we feel that legal representation is, in this country, a right and not a privilege. Since it is a right which is not to be denied to persons solely on account of income, we feel that the thrust of the Corporation must be toward the provision of those legal services required by a program's client population. A decision not to fund a program affects the interests of the client population; it denies them access to legal representation.

Accordingly, we view the decision not to continue funding a legal services program as more than a bureaucratic decision involving only the Legal Services Corporation and the staff of the affected program. We feel that the interests of the client population must be represented in such a decision, though we do not specify the type of proceeding in which those interests must be weighed.

The American Civil Liberties Union very strongly urges the adoption of proposed amendments to:

Section 1007(b)(7) permitting legal assistance in school desegregation cases.

Section 1007(b)(8) permitting legal assistance in abortion cases.

Section 1007(b)(9) permitting legal assistance in Selective Service and discharge classification cases.

We consider the present prohibitions of these services both legally and intellectually indefensible, in that they presume that individual rights, even those secured by the Constitution, should not be supported with public funds if they

touch issues which may also be broadly characterized as political. Thus, it has been urged, one having a specific and constitutionally based cause of action in a school desegregation case should be denied publicly funded Legal Services representation, since school desegregation is, broadly defined, a political question about which the public is not of one mind. Similarly, it has been argued that individual rights asserted in connection with Selective Service and discharge classifications should not be defended with public funds, since they may be linked to a very controversial political question—the Viet Nam War.

In fact, the protection of individual rights and the enforcement of constitutionally guaranteed liberties is not something which can be made to depend on the consensus of a majority of the public that such rights ought to exist or ought to be enforceable. Constitutional liberties cannot be subject to plebiscites. Poor people ought not be denied the equal enforcement of those liberties solely because the public is said not to wish those particular liberties enforced. Similarly, we ought not to say that the assertion of the rights of a private litigant should not be permitted if the litigant is poor, because the rights he would assert raise a question which is political.

In our view, either issues are justiciable, or they are not. Where the courts agree that they are justiciable, petitions for their resolution ought not be foreclosed because of indigence. Thus we consider the restrictions embodied in the present act, which say that the poor may enforce, not those rights which we concede they have, but only those rights which we want them to be able to enforce, repugnant and contrary to both the theory and practice of our legal system. We urge that you rescind them.

We feel that the sole consideration in Section 1010(c) should be maximization of utility in the provision of legal services. Accordingly, we would support any arrangement which would result in the provision of greater services at lower public cost, including that Legal Services programs be permitted to raise additional, nonpublic funds in order to represent their client populations, and that programs be able to contract out for certain services when it would make good business sense to do so.

We consider it in the interests of efficiency and good government that groups or organizations of poor people be able to present their petitions for redress of grievances in a coherent, orderly and systematic manner, and that the activities of such groups and organizations conform to the law. We therefore urge the repeal of Section 1007(b)(6), which denies legal counsel to such groups and organizations.

Finally, we urge the adoption of a funding level which would permit the development of Legal Services programs to continue. We can think of no more fundamental issue than the degree to which all people in this country feel they can turn to its legal institutions for the fair and equitable resolution of their conflicts. We can therefore think of no more deserving appropriation.

Sincerely yours,

WILLIAM F. WARE,
Legislative Staff Counsel.

U.S. GENERAL ACCOUNTING OFFICE,
OFFICE OF GENERAL COUNCIL,
Washington, D.C., March 14, 1977.

MS. ALICE DANIEL,
General Counsel, Legal Services Corporation,
Washington, D.C.

DEAR MS. DANIEL: This is in response to your letter of January 24, 1977, in which you asked the length of time that GAO requires the Corporation to retain (1) those records referred to in section 1009(b)(2) of the Legal Services Corporation Act: and (2) those records referred to in section 1009(c)(2) of the Act that are in the Corporation's possession. While GAO has no record retention requirements that specifically relate to a private nonmembership nonprofit corporation such as the Legal Services Corporation, we belive that a 3-year retention period is reasonable and suggest that it be adopted by the Corporation for both categories of records.

I have reviewed the proposed Legal Services Corporation Amendments Act of 1977, H.R. 3719, 95th Cong., 1st Sess. (1977) and am in agreement with the amendment of section 1009(b)(2) of the Legal Services Corporation Act that is proposed in section 9(b) of the bill.

If I can be of further assistance, please let me know.
Sincerely yours,

PAUL G. DEMBLING,
General Counsel.

NEW HAVEN LEGAL ASSISTANCE ASSOCIATION, INC.,
New Haven, Conn., March 14, 1977.

Re Legal Services Corporation.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Rayburn Office Building, Washington, D.C.

DEAR SIR: As you are aware, many of us involved in the delivery of legal services to the poor in Connecticut are extremely concerned about the Legal Service Corporation's penchant for consolidation and centralization as illustrated by the forced merger of six formerly independent programs recently implemented in our State. We do not believe that Congress, in passing the Legal Services Corporation Act intended the demise of the many local legal service programs which had been formed and developed over the decade preceding passage of the Act. Rather, we feel that merger should not occur without the consent of local programs unless there has been a finding that a particular program or group of programs is performing inadequately as measured against established standards.

We believe mergers, such as the one being implemented in Connecticut, which are neither voluntary nor a product of a determination of inadequate performance by any program, are not sanctioned by the Act. Unfortunately, the Corporation finds the language of section 1007(a)(3) sufficiently broad to accommodate such forced mergers. Were the proper structure for the "most economical and effective delivery of legal services" easily identified, the Corporation's view might be acceptable. However, the "evidence" presented in favor of merger in Connecticut proved to be almost entirely speculative. And the Corporation's response to your request for "evidence" of the benefits of merger was mere speculation. In addition, the diversion of resources, by LSC and by unwilling programs in litigating a forced merger situation, is not conducive to "economic and effective delivery of legal services."

Where the benefits of merger are so speculative, the views of local programs and their boards and clients as to the merits of merger ought to be given substantial weight. Regrettably, the Corporation has cast upon the local programs the burden of disproving these elusive and speculative benefits of merger to avoid defunding. Although the New Haven program has been exempted from this fate for the moment, we are troubled by the defunding of other Connecticut programs and fear the future consequences for us.

While a few groups and individuals both inside and outside the legal services community in Connecticut did support merger, which was initiated by the Regional Director, the bulk of the client groups and their representatives on the board of local programs voiced strong opposition. I am enclosing newspaper clippings which show that, at the only hearings in Connecticut, client groups strenuously opposed the merger.

No one committed to effective legal representation for the poor wishes to see demonstrably ineffective programs receiving federal support. When such ineffectiveness is identified, and a reasonable period for improvement has been unavailing, defunding should result; if merger is possible in these circumstances, it may be the preferable approach. However, local programs which have established effective delivery of service with support in the client community ought not be threatened by defunding because a corporation official in some distant city speculates that consolidation with another local program may produce an even more effective delivery system. While the instincts for institutional survival may interfere with the objectivity of local programs in judging proposed mergers, the bureaucratic tendency toward centralization is a far more ominous threat to the maintenance of locally accountable service providers organized in units of manageable size. For this reason, the refusal of a local legal service program to accept a proposed merger voluntarily ought to create a rebuttable presumption that the proposal is not in the best interest of the program's clients.

One response to this problem would be a short amendment to § 1007(a)(3) of the Legal Services Corporation Act adding the following language:

> . . . provided, no existing grantee shall be denied refunding under this Act for refusal to merger with another grantee unless, prior to such denial, an

independent evaluation of the grantee, conducted pursuant to subsection (d) of this section, has resulted in a determination that the grantee is providing ineffective and uneconomical legal assistance.

If such an amendment is not appropriate, some language should appear in the report of the Committee recommending renewed authorization of the Corporation's funding which makes clear the standard for forced merger expressed by the proposed language.

Please include this letter and the attachments in the record of your Oversight Hearings. I would be glad to provide any further information you desire.

Respectfully submitted.

JOANNE S. FAULKNER,
Attorney at Law,
Legal Aid Bureau.

Enclosures.

[From the Bridgeport Telegram, May 12, 1976]

OPINION MIXED AT HEARINGS ON LEGAL SERVICES MERGER

(By Robert L. Despres)

There was a great difference of opinion last night at the public hearing on the proposed merger of Fairfield county legal services with three other legal service agencies in the state.

Those in favor argued that there would be savings and better service to the clients with access to more experienced lawyers and specialized skills.

Those against the merger said it would result in less local representation on the governing board and generally less involvement in and from the community to be served.

The hearing was called by the board of Fairfield County Legal Services at the Southern Connecticut Gas company on Broad street, after the board could not decide whether to endorse the proposal.

ANOTHER HEARING SET

Another hearing is scheduled for Thursday at 8 p.m. in the Katz building, 50 Washington Street, Norwalk.

The Fairfield county board will meet next Tuesday, at 8 p.m. in its office at 285 Park avenue, to vote again on the proposed merger.

Under the proposal, Fairfield county legal services would merge with the legal service programs in Hartford, New Britain, and Tolland and Windham counties.

Rober Koonz, executive director of the Fairfield county branch said the proposal was drawn up by program directors who began discussing the issue in December, 1974.

Subsequently, Paul Newman, regional director of the federal legal assistance corporation, strongly endorsed the plan and offered an additional $60,000 pending the state-wide merger.

The Rev. Henry Yordon of Stamford, board chairman, told the meeting that although the board had endorsed negotiations on the proposal, it had dead-locked on endorsement.

Only four board members of 23 now serving were present at the hearing. Beside the Rev. Mr. Yordon, Emanuel Cooper, Kevin Coles and Alan Neighbor attended.

SEES BETTER SERVICE

In addition to better client service, Mr. Koonz said in his opening presentation, lawyers would become better informed through specialized task forces that would be set up to deal with special issues.

He also said he expected that unless there were funding cuts, offices would stay where they are with the same size staff.

James Trowbridge, a former director of Bridgeport Legal Services, also noted that a larger program would be less subject to local political pressure.

Speaking against the merger, Sister Mary Xavier and Mr. Cooper said the enlarged program would take away a sense of involvement from the "grass roots" people.

Mr. Cooper also contended that despite notifications to local agencies, not enough people knew about the hearing.

Walfredo Matos, of the board of Spanish American Coalition, said the merger would create "another bureaucracy in which the people would have no voice."

An attorney for two community organizations, Jose Ramirez, also said the program would get further away from the people.

Mr. Ramirez said big cities such as Bridgeport would lose from the program and that the merger into a statewide organization would make legal services a big political target.

Even the Rev. Mr. Yordon admitted his bias against the move because of the reduced local involvement, although some $60,000 in program funding would be lost if the merger is not completed.

A woman from New Haven legal services asked if anyone had checked why four other legal service agencies boards in the state had voted not to participate in the merger. There was no answer. There are 10 legal service programs in the state.

MOST SPEAKERS AT HEARING OPPOSE PROPOSED LEGAL SERVICES MERGER

(By Robert L. Despres)

NORWALK.—Most of the speakers who testified at a public hearing last night voiced opposition to a proposed merger of Fairfield County Legal Services with three other legal service programs.

The speakers said they feared a loss of local control and of a lack of response to local problems. They said this fear was based on having only three client representatives from the county on the proposed board and having a central office in Hartford, which is "600 miles away."

The merger would include Tolland-Windham, New Britain, the Legal Aid Society of Hartford, and possibly Waterbury.

The board of Fairfield County Legal Services called the hearing because it was deadlocked on the issue and wanted to hear opinions from the community. About 15 persons spoke. The hearing took place in the Katz building on Washington Street.

A hearing Tuesday in Bridgeport also produced a negative response.

The board will vote on the matter next Tuesday at 8 p.m. in the offices of Fairfield County Legal Services, 285 Park avenue, Bridgeport.

Richard Koonz, executive director of the agency, explained that with a merger, administrative costs would be reduced since not as many executive directors or bookkeepers would be needed. This would free staff members and money for legal service. He said no offices would be closed.

Further, he said the merger would yield more efficient service through lawyers becoming more expert in certain areas and through less duplication of class action cases.

The director also noted that the regional director of the national Legal Services corporation strongly backed the plan and offered the programs an additional $60,000 if they merged.

Two of five board members present, both representing clients, opposed the merger. They were the Rev. Henry Yordon of Stamford, board chairman, and Mimi Burgess of Norwalk. Two Norwalk lawyers, George Billings and Carl Burns, favor it.

Angelo Rubino, chairman of the Norwalk Equal Opportunity Now (NEON), the community action agency, spoke against the merger because he saw little savings or benefit in it.

Robert Burgess, executive director of NEON, spoke about the lack of representation on a state board, opposition of the poor to the merger and other ways to coordinate the programs in the state.

Alfredo Rodriguez said that the Norwalk Human Relations commission, opposed the merger.

The Rev. William Scheyd, vicar of vicariates I and II of the Diocese of Bridgeport, opposed the merger because he said he believed localized service would be better.

Sister Mary Xavier of Bridgeport, raised a question about client control of the board. She said that legal service lawyers should challenge the regulation which states that boards must be made up of 60 per cent lawyer aid 40 per cent client representation.

Beatrice Brown, a state department of social service employe in Norwalk, among others, expressed concern that clients were not involved in the proposal or given adequate notice of the meeting.

Former State Rep. Otha Brown of Norwalk said he had received several telephone calls and asked the board to weigh the matter carefully.

Barbara Andrews, a former member of the Norwalk Housing authority, who left her statement with the Rev. Mr. Yordon, spoke in favor because of the savings in costs.

Several others spoke including the poor and advocates for the poor, also from Stamford and Bridgeport.

[From the Hartford Courant, Sept. 27, 1976]

KEEP SERVICE IN LEGAL AID

No doubt Congress took note of how well Amtrak runs railroads and the U.S. Postal Service delivers mail before it decided in 1974 that legal aid to the poor should be dispensed by way of a government-sponsored corporation.

But that corporation is now issuing orders which sound very much like those of big government itself. Do as we say, or you'll lose your federal funding.

The orders are being issued by the National Legal Services Corporation whose regional director, Paul Newman by name, is cast as the bad actor. He insists that Connecticut's six independent legal aid associations combine themselves into a single statewide organization.

Mr. Newman has in mind the so-called economies of scale. He says a single statewide legal service organization would be easier and less expensive to administer.

Many legal aid officials see it the other way around. Says Charles Welch, director of Legacy in New London, "My experience with bureaucracy is that it means more dollars devoted to administration instead of things that are of more use."

Whichever form of organization may be less expensive, though, Mr. Welch has touched on an important point. Legal aid organizations should not be judged on how well they fit into the neat boxes and lines of an organizational chart. They should be evaluated on how well they fulfill the basic legal function of ably representing their clients.

The organization should be judged only insofar as it might help or hinder progress toward that goal. In that respect, Connecticut's existing county-based alignment seems sensible, with respect to both population patterns and the geographical jurisdictions of the courts. It has the advantage of being relatively close to the people—by and large these are local organizations run by local lawyers.

The federal corporation does have a right and a duty to see that its money is indeed used well in the service of needy clients. But it should judge the results in relation to the need, not the organizational structure with respect to some federal ideal.

At least one legal aid director, James Natalie Jr. of Middlesex County, has suggested his group go it alone, without the federal aid. That may be more easily said than done, but it is an option to be considered as the directors of several legal aid groups meet soon to determine their responses to Mr. Newman's threat. Another option is to appeal his decision to corporate headquarters—in Washington, of course.

Meanwhile, Connecticut's congressional delegation should ask itself whether the Legal Services Corporation itself is the right kind of organization to get the right kind of results.

[From the Hartford Courant, Aug. 5, 1976]

MIDDLESEX LEGAL AID GROUP OPPOSES STATEWIDE MERGER

(By Lincoln Millstein)

MIDDLETOWN.—Despite a threatened cutoff of funds, the Middlesex County Legal Assistance Association Inc., which provides free legal services for low-income county residents, is fighting a proposed merger of all legal services in Connecticut.

The board of directors of the county legal services has voted unanimously against compulsory merger with any legal services group. Director James Natalie Jr. said Wednesday. The board also voted 6 to 4 against its staff participating in further talks concerning merger.

The county legal service has been told by the Boston regional office of the federal Legal Services Corp. to move toward adopting a merger proposal by Sept. 1 or face a possible cutoff of funds.

The county legal service receives 70 percent of its funding from the Legal Services Corp.; 20 percent from a Social Security Act Title 20 grant and 10 percent from the Community Action for Greater Middletown Inc.

Paul Newman, director of the regional office in Boston, has been advocating a statewide marger based on studies done by the Connecticut Bar Association and the National Legal Aid and Defenders Association. The studies recommend that such a merger would be the most efficient way to provide legal services in Connecticut.

The merger of the nine legal services in the state would create the largest single law firm in Connecticut with 170 lawyers and 40 paralegal staff members.

Natalie said Wednesday the most important reason Middlesex County has opposed the merger is that it simply would not benefit the county.

"Three or four years ago, it might have been good for us because this office was chaotic," Natalie said. "But we're doing a damn good job now."

The county would only stand to lose funding, if the merger plan were to go into effect, Natalie said. "The county would have to help support another office in Hartford and create a "new bureaucracy," Natalie said.

"We are functioning. We are handling our caseload. And we're taking cases we never accepted before," Natalie said. For instance, he said 40 percent of all the service's cases now are family-related, such as divorces. He said three years ago, divorce applicants were denied just to reduce the number of cases.

The county legal service handles about 750 cases a year, averaging 57 new cases a month, Natalie said. When an applicant is accepted as a client, the most he or she ever pays in legal fees are court filing fees which total about $70.

Natalie said he likes the situation in Middlesex County, where the legal aid office is located in Middletown, not far from the only two county courthouses, Common Pleas Court and Superior Court.

He said he sympathizes with counties that have multiple courts, such as Fairfield, Tolland and Windham. He said a merger might be good for them while not necessarily good for Middlesex County.

Natalie said he has written Newman in Boston to tell him about the actions of the county board of directors. However, Newman has not replied and Natalie still is unsure what actions Newman will take and whether Newman will move to stop funds for Middlesex County.

The county legal service was established in 1967.

[From the Hartford Courant, Sept. 27, 1976]

BOARD TO SETTLE FUTURE OF LEGAL AID

MIDDLETOWN.—The future of Middlesex County's legal aid program for the poor may be decided Tuesday at a meeting of the board of directors of the Legal Aid Assistance Association.

Because it rejected a merger with five other Connecticut legal aid agencies, the association faces a Nov. 30 cutoff of the 70 per cent of its revenues provided by the federal Department of Housing and Urban Development (HUD).

Executive Director James Natalie Jr. and his staff have suggested conversion of the office into a private practice serving the poor, but the board of directors has not yet considered that proposal.

Natalie said the funds for the practice would come entirely from clients with payment made to "those with the ability to pay." He envisions that about 75 per cent will be able to do so, enabling the others to receive free legal services.

Fearing that the centralization of the legal aid offices would result in less time spent on the actual defense of needy clients, Natalie said, "There is a raging philosophical debate between those who believe that the function of legal service is to provide a service to poor people and those who believe that it is our function to reform the law. I fall almost entirely into the first category. It is my opinion that what you do first is supply the service, then you support law reform.

The merger was proposed by the National Legal Services Corp. whose regional director, Paul Newman, believes that program administration would be improved.

In response to Newman's belief, Natalie said "In the long run, there will just be another office added to the six which will have to be paid for." Natalie fears that this will mean less money for the individual offices.

"I don't disagree with Mr. Newman's reasons for the proposed merger insofar as it reflects the reasons that have been offered but, as a practical matter, it is

still going to be necessary to do the preliminaries with regard to administrative detail," he said.

Natalie said that the merger proposed by Newman "is a trend," but thinks that it is unnecessary and detrimental to the "autonomy" of his office.

"The board has said in effect that the operation is running very well," he said, when it voted against the merger. The proposed merger would eliminate the present board which, Natalie said, "is composed of committed community lawyers and laymen, two of whom are income-eligible clients."

Of the six state legal aid groups presently under the direction of Newman's office, only Tolland-Windham has endorsed the idea for merger outright. Waterbury has given conditional endorsement. Fairfield failed to endorse with a tie vote of its board while Legacy in New London, the Legal Aid Bureau of New Britain, and Middlesex rejected the idea outright.

[From the Hartford Courant, Sept. 29, 1976]

LEGAL AID AGENCY VOTES TO FIGHT FUNDING CUTOFF

(By Lincoln Millstein)

MIDDLETOWN.—The directors of the Middlesex County Legal Assistance Association Inc. voted Tuesday to hire an attorney to represent them in their fight to prevent the federal government from cutting off the agency's funding.

The agency also voted to write the director of the regional office of the National Legal Services Corp. in Boston to tell him the agency intends to appeal his decision to cut off funding by Nov. 30.

Paul Newman, the regional director, has told six Connecticut legal aid agencies, funded by the federal government, to merge as the Connecticut Legal Services Corp. or face loss of funds. Only one agency, the Tolland-Windham Legal Assistance Program has voted in favor of the merger.

Newman, in a letter to Kevin Kane, president of the Middlesex agency, stated that he will cut off the local agency's federal funds by Nov. 30 unless it agrees to the merger. The agency depends on the federal money for about 70 per cent of the operating expenses.

THIRTEEN PARTICIPATE

In the meeting Tuesday, 13 members of the Board of Directors discussed the agency's tactics in its fight for funding.

James Natalie Jr., legal services director, recommended that the board write Newman and inform him that it is requesting an informal conference and an appeals hearing to be conducted separately.

Natalie told the board members of the appeals process, as outlined in the federal government guidelines. He said the process could take 125 days and that the agency would continue to be funded until the appeals are exhausted.

He also suggested that the local agency might consider going to federal court if the internal appeals fail.

At the suggestion of Atty. Howard Baran, a board director, the agency considered hiring its own lawyer to guide it through the appeals process. The board then voted in executive session, to seek an attorney and directed Kane to appoint a subcommittee to further develop appeal tactics.

In answering a question by Willard McRae, Common Council member and board director, Natalie said Newman apparently has the authority to cut off funds for the agency.

AGENCY'S ROLE

The local legal services agency provides free legal services for the poor in Middlesex County. It has about 750 new cases each year.

The board has voted to reject the merger proposal, saying it won't be compelled to merge unwillingly. Legacy Inc. of New London County and the Legal Aid Bureau of New Britain are taking similar actions. The Waterbury Legal Aid and Reference Service has voted to join the merger if the other agencies agree to join, and the Fairfield County Legal Services tied in a vote on whether to approve merger.

Natalie has suggested that the Middlesex agency might enter into private practice to continue to provide legal services for the poor if the federal government cuts off funds.

[From the Hartford Courant, Aug. 20, 1976]

LEGACY REJECTS MERGER DESPITE THREAT

(By Michael London)

NEW LONDON.—Despite threats to cut its funds, Legacy Inc. has formally rejected a plan to merge with other legal aid groups in the state.

Charles Welch, executive director of Legacy, said Thursday the Board of Directors unanimously rejected the proposal to merge with nine other legal aid groups in the state.

Legacy, which provides legal services for about 3,000 persons a year in southeastern Connecticut, receives about 70 percent of its funding for the National Legal Services Corp. and the remainder from various other sources.

Welch said the Northeast regional director of the national group, Paul Newman, of Boston, will issue a directive that if Legacy does not merge to the state group by Sept. 1, Newman will "commence proceedings leading to the cutting off of funds to Legacy."

"The legacy board takes the position that it has been shown no benefits which would come to New London County as a result of the merger and sees disadvantages in that the people of New London County, including the New London County Bar Association and several community organizations which are represented by Legacy, would lose any significant say in the operation of the local legacy services program." Welch said in a prepared statement.

He said the merger proposal has already been rejected by legal aid groups in Middletown and New Britain.

Newman refused earlier this month to explain the benefits of the proposed merger.

"I see no advantage to sell the program through the press," Newman said.

Legal aid programs in Hartford and New Haven are not yet being pressed to join the merger, Welch said. "The announced reason is they would have a disproportionate voice on any directing board," he said.

Legacy's offices in New London are located at 63 Huntington St. The group offers free legal service to those who can't afford them and also operates a legal referral service.

Stop Funds

Newman said earlier this month that federal funds for Legacy would be stopped and a new federally authorized legal aid group would move into Legacy facilities if the agency doesn't agree to the merger.

Under the merger plan, one board of directors would supervise Legacy and the other similar programs in the state.

Legacy has operated in New London for 10 years and its programs are running beautifully and there is no reason to merge, Manuel Cardoza Jr., Legacy president said.

CITY OF LOS ANGELES,
OFFICE OF THE MAYOR,
March 24, 1977.

HON. ROBERT W. KASTENMEIER,
Committee on the Judiciary,
House Office Building,
Washington, D.C.

DEAR CONGESSMAN KASTENMEIER: I am writing to let you know of my strong support for the principle of including public members on the Board of Directors of the National Legal Services Corporation, and to urge that the House Committee on the Judiciary amend H.R. 3719 to provide for such membership when it considers the bill in the near future.

We in the City of Los Angeles are fortunate to be served by a number of Legal Services programs, both local and national in scope. I am highly supportive of the work of these programs, and believe that one reason for their success is the fact that their governing boards include persons from the public sector as well as attorneys. Surely, the perceptions of both are of critical importance in determining the programs' direction and the quality of their service to their clients and to the community.

On the national level I believe it is equally important that there be public representation on the governing board of the Legal Services Corporation to assure a balanced program which not only has high professional standards, but which is also responsive to the needs of the client community, and which meets these needs as effectively as possible. Without the voice of the public at high levels of deliberation it is impossible to achieve and maintain such a balance.

Therefore, I strongly urge that you make every effort to amend R.H. 3719 to provide for mandatory public representation on the Board of Directors of the National Legal Services Corporation, and that you vigorously support such inclusion when the bill reaches the floor of the House.

Sincerely,

TOM BRADLEY, *Mayor.*

THE STATE BAR OF CALIFORNIA,
San Francisco, Calif., April 15, 1977.

Hon. ROBERT W. KASTENMEIER,
Chairman, House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE KASTENMEIER: The Board of Governors of the State Bar of California recently became aware of your subcommittee's bill, H.R. 5528, The Legal Services Corporation Amendments Act of 1977. It is my pleasure to inform you that on April 14, 1977, the Board of Governors voted to support your bill and the efforts of your subcommittee to improve the quality of legal services for poor people of this country.

As expressed in the enclosed resolution, The State Bar of California remains committed to the development of a Legal Services Corporation that is funded at a level that will insure that all poor people who need legal assistance can receive that assistance *now.* The State Bar of California strongly believes that those sections of the Legal Services Corporation Act of 1974 which inject politics into the delivery of legal services to the poor and interfere with the professional duties and constitutional rights of attorneys and other legal service employees should be stricken from the Act. Finally, the State Bar of California believes that client representation on the Board of Directors of the Legal Services Corporation and salaries for Legal Services employees that are comparable with other public employees are necessary steps to insure that poor people do not receive second class service.

If The State Bar of California can be of assistance in your efforts to improve the quality of justice for poor people in America, please do not hesitate to contact me.

Very truly yours,

JOHN N. DOGGETT III,
Director, Office of Legal Services.

RESOLUTION ADOPTED BY THE BOARD OF GOVERNORS OF THE STATE BAR OF CALIFORNIA ON APRIL 14, 1977

WHEREAS, the State Bar of California has consistently supported efforts to create the Legal Services Corporation and the continued existence of the Corporation after the passage of the Legal Services Corporation Act of 1974; and

WHEREAS, The United States House of Representatives Judiciary Committee will hold hearings on H.R. 5528 on April 19–20; now, therefore it is

Resolved, That the State Bar supports H.R. 5528 and strongly urges Congress to extend the Legal Services Corporation Act of 1974 by at least two years, funding said Corporation's activities at the highest possible level, but in no case lower than the $238 million proposed by H.R. 5528 and, further, insuring that the Corporation has sufficient funds to secure salary levels for legal services program employees comparable to other parts of the public sector; and it is further

Resolved, That Congress is urged to remove all restrictions under the current Act which prevent legal services program attorneys from rendering full and effective representation to eligible clients; and it is further

Resolved, That Congress is requested to amend Section 1004(a) of the Act by inserting after "State" the following: "at least one third shall be, when selected, eligible clients who are representatives of associations, groups, or organizations of eligible clients."; and it is further

Resolved, That the President of the State Bar or his designee is authorized to communicate the position of the State Bar to the Congress and to appear before the Congress, if, in his judgment, his appearance is necessary to carry out the Board's intent as embodied by this resolution.

DEPARTMENT OF JUSTICE,
Washington, D.C., April 19, 1977.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Attorney General has asked me to respond to your recent letter concerning H.R. 3719, the proposed Legal Services Corporation Amendments of 1977.

The bill would extend the authorization for the Corporation as well as make a number of technical amendments to the Legal Services Corporation Act. The Department of Justice has no direct responsibility for the operations and funding levels of the Legal Services Corporation and, accordingly, has no specific comments on the details of this legislation.

It is the view of this Department that the Corporation and the indigent civil litigants that it represents deserve the sympathetic attention of the Congress—attention that I am certain that you and your subcommittee will provide.

The Office of Management and Budget has advised this Department that it has no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

PATRICIA M. WALD,
Assistant Attorney General.

APPENDIX 3.—MATERIALS ON LEGAL SERVICES FOR MIGRANTS, AND RELATED SUBJECTS

GARDEN STATE SERVICE COOPERATIVE ASSOC., INC.
Trenton, N.J., February 25, 1977.

Congressman ROBERT W. KASTENMEIER,
Chairman of Subcommittee on Courts, Civil Liberties and Administration of Justice, House Committee on the Judiciary, Rayburn House Office Building, Washington, D.C.

DEAR MR. KASTENMEIER: Enclosed is a copy of written testimony I have sent to the office of your subcommittee which I would appreciate being included in the Subcommittee Hearing record of Rural Legal Services Corporation, which I believed were held February 23, 1977.

I would also appreciate your Committee investigating my complaint as mentioned in the testimony. I will be more than willing to cooperate in any way possible.

Sincerely,

ARTHUR H. WEST, *President.*

STATEMENT OF THE GARDEN STATE SERVICE COOPERATIVE ASSOCIATION, INC.

It is my understanding that hearings were held on February 22 and 23 by your Committee to receive input concerning the Rural Legal Service Corporation and their proposed budget. It is also my understanding that you have left the record

open for written comment. Therefore, I am submitting our testimony to you which we hope you will seriously consider before the Committee makes any final recommendations regarding the Rural Legal Service Corporation.

The Garden State Service Cooperative Association is a cooperative of eight member farm labor cooperatives throughout the northeast, although, at the present time the Garden State Service Cooperative is serving only three of these cooperatives; namely, the Glassboro Service Association, the Farmers' and Garderners' Association, both of which are located in New Jersey, and the Wayne County Growers and Processers Cooperative near Rochester, New York. However, most of the farm workers that are recruited by Garden State are for the largest member organization, Glassboro Service Association located at Glassboro, New Jersey.

This Garden State Service Cooperative farm labor program has now been in existence for thirty years and has over that period of time annually negotiated a work agreement for our member grower associations with the Department of Labor, the Government of Puerto Rico. Over this thirty year period of time, this contract farm labor program has been looked at by many over the entire country as a model farm labor program and one which should be enlarged if at all possible, wherever it could be activated. One of the most valuable aspects of this program is that through this contract between Garden State and the Government of Puerto Rico, we have always included a clause which gave the Department of Labor, the Government of Puerto Rico access to all farm worker payroll earnings and every other condition as outlined in the contract. The farm worker has always had this service through the Puerto Rican Department of Labor with offices in both New Jersey, New York, and, of course, on the island of Puerto Rico, which were easily accessable regardless of the location of the worker at the time he felt he had a grievance. During the past three years Rural Legal Services, through its Puerto Rican Rural Legal Services offices, have filed numerous suits against Garden State Service Association, Glassboro Labor Services Association, farmers who were the ultimate employer of the farm worker, and numerous other persons were included as defendents in these various suits.

Our concern is that the farm worker or anyone else should have legal recorse to correct a situation which he feels is not suitable, or in which he feels his rights or privileges have been infringed upon. However, in filing these suits, the total at the present time over 90, we feel that Rural Legal Services has done a gross injustice to the employer group who have had the tremendous legal costs in defending themselves, but even more importantly, an injustice and a misservice has been done to the farm worker who they have represented as their plaintiffs in these suits. I am referring to the fact that in nearly every one of these instances where suits were filed, no attempt was ever made by Puerto Rican Rural Legal Services to try to correct what the plaintiff felt was an injustice through normal administrative procedures as generally practiced by the law profession. If a worker has a complaint that he was not being properly compensated or some other rights which he thought were violated, it seems that this complaint would be better settled by using the administrative procedures that are available. We would welcome such an approach as a farm worker organization and would cooperate with any meaningful practical, and timely administrative procedure. Should the worker be right in that he was improperly paid or his contract was violated in any way, by using the administrative procedure approach the problem could be rectified within a relatively short period of time, such as thirty to sixty days. However, by using the procedures of Rural Legal Service Corporation in Puerto Rico, and recognizing the delay in time by using the court procedures, some workers have waited three years for a decision on their claim. If the worker did have a justifiable claim, that worker has waited far too long for justice to be rendered. I must point out that of this large number of suits that were filed, to date 66 have come to trial, and in no instance do we feel that Rural Legal Services has won any of these cases.

I would hasten to add that on several occasions the Garden State Service Cooperative Association and Glassboro Labor Services have agreed to pay negotiated sums of monies to the plaintiff worker, which were in every instance very small amounts, in lieu of going through the costly procedure of going to trial, which would mean several people from New Jersey traveling to Puerto Rico to attend such a trial. It was far more appropriate and economical for us in several cases to pay a fifty or seventy-five dollar settlement cost even though we did not feel there was any guilt on our part, and the worker may not have been justified to these funds. However, I repeat, the farm worker had to wait several years

before his complaint got consideration only because administrative procedures were not diligently sought.

Because of the tremendous cost that our organization has had placed upon it, we are extremely concerned about the Rural Legal Services Corporation and whether or not they are at all following the intent of the Congress; namely, to help the nations poor people have proper legal assistance. It seems to us that the tactics that have been used against us are harassment tactics as opposed to helping the farm workers make sure that their rights were not infringed upon.

This is our concern and our reason for writing to this Committee and asking you to thoroughly investigate the situation which I have pointed out. We would further ask that this Committee not approve the budget increase that Rural Legal Services Corporation has requested for the fiscal year 1978 until such an investigation has been thoroughly completed by your Committee. We feel that without question, rural people are entitled to legal assistance, and we would not deny this right to any citizen of our United States, but at the same time we do believe that Rural Legal Services should practice law in the same manner that is practiced by the rest of the legal community. First by using approved administrative procedures, then if those fail, of course, the only recourse is the use of law suits and the courts. Again we maintain that the worker could far better be served in a much more timely manner if administrative procedures were ordered by the Rural Legal Services Corporation before any suits could be filed.

In summation I would reiterate what we have already stated above, that your able Committee:

1. Investigate the activities of the Puerto Rican Rural Legal Services Group, particularly regarding our situation.
2. Withhold all budget increases for fiscal 1978 for Rural Legal Services Corporation until such an investigation is completed.

STATEMENT OF JOHN C. DATT, DIRECTOR, WASHINGTON OFFICE, AMERICAN FARM BUREAU

We appreciate the opportunity to present the views of the Farm Bureau with regard to the Legal Services Corporation.

For 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 nongovernmental 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 from 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 Corportion.

Based on our own observations and on information appearing in the press, we believe:

(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 obligations.

(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.

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 CBO 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 638 offices; and that ten of them, with a combined budget of $863,000, specialize in serving "migrant workers." In addition, many of the other agencies in serveral 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. 355, 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; 16 percent did nonfarm work as their principal occupation; 45 percent worked on farms less than 25 days a year; 33 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 Agricultural 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 the 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 to 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 Senate, and the Congress as a whole.

We ask that these comments be made a part of the record of the public hearings.

[From Barron's, Jan. 24, 1977]

BAR SINISTER—THE LEGAL SERVICES CORPORATION STRETCHES ITS MANDATES

(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 the 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 thereto."

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 Adminis-

tration, 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 of 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 recission 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 1,360,000 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 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.

[From Barron's, Jan. 31, 1977]

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 governmental 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 Corpora-

tion has launched a $1.9 million study to explore various ways and means of providing legal services for the poor. They include judicare, prepaid lgeal 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 caried 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 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 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 Mc. Mathias (R., Md.), (now Vice President) Walter Mondale (D., 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 Revius 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 submitted 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-Jermany, 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 Barron'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 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 quartely 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.

[From Northeast Agriculture, December 1976]

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 on 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 repeatedly in the various reports made by the 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 Cooperation Association, the Glassboro Service Company, and Farmers and Gardners 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.

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 65 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 SALVATOR TIO, DIRECTOR, PUERTO RICO MIGRANT LEGAL SERVICES, INC.

I. INTRODUCTION

I was recently informed by a staff person of the Committee on the Judiciary that Garden State Services Cooperative Association, Inc. (hereinafter Garden State) presented a written statement to the Committee on occasion of its consideration of legislative appropriating moneys for the 1978 budget of the Legal Services Corporation. Mr. Arthur West, president of Garden State makes several assertations in his written statement to the effect that Puerto Rico Migrant Legal Services has launched a campaign to file frivolous claims against members of said cooperative for the sole purpose of harassing them. Mr. West would have the members of this subcommittee believe that Garden State operates a "model farm labor program". The exemplary qualities of said farm labor program are partly based on the existence of a complaint resolution procedure which is an effective mechanism for the protection of the rights of workers as guaranteed by standard contracts negotiated between Garden State and the Puerto Rico Secretary of Labor.

Mr. West's testimony, unsupported as it is, is purposedly misleading in that it is, in essence, a compendium of inaccuracies, half-truth's and false statements. It is the purpose of this statement to set the record straight as to the allegations made by Mr. West and others conveniently omitted by him.

II. GARDEN STATE DOES NOT OPERATE A MODEL FARM LABOR CONTRACT PROGRAM

During the past thirty years Garden State has been the principal recruiter of Puerto Rican contract labor. During the last four years, the number of contract workers recruited by Garden State annually has fluctuated from six to four thousand workers. Its recruitment efforts have accounted for 50 percent or more of the number of workers referred to the mainland by the Employment Service of the Puerto Rico Labor Department. These workers have been recruited by Garden State pursuant to the provisions of standard agricultural agreements negotiated by Garden State and the Puerto Rico Labor Depatrment. (See copy of standard contract attached as Exhibit I.)

Early during the activities of Puerto Rico Migrant Legal Services it became readily apparent that of all the growers and/or growers associations recruiting workers under contract, Garden State singled out itself as the worst offender of the rights of migrant farmworkers. We were able to establish, early on, that Garden State and its members systematically violated the rights of farmworkers as guaranteed by the contracts pursuant to which these workers had been recruited. The violations in question were not isolated instances; they formed a clear pattern of violations which not only showed that disregard to the letter of the contract but that also implied that one of the following was true. Either a calculated decision has been made to profit by the systematic violation of the contract or Garden State and its members were supremely negligent in making sure that grower members respected the language in the contract.

Whether we favor one or other interpretation, or a composite of both, the fact is that the so called "model contract program" was being unscrupulously used by Garden State as a mechanism to avoid unionization and as a guarantee of a steady supply of cheap labor that was incapable of effectively asserting its rights. In 27 years no lawsuits had been filed by Puerto Rico contract workers in Puerto Rico. Garden State enjoyed virtual immunity from any effective contract enforcement activities. Contract violations become the rule, rather than the exception and workers from Puerto Rico were quietly kept under control.

The most common contract violations made by Garden State are the following:

(*a*) *Article 4*

The contract stipulates that the employer gurantees to provide the worker with 120 hours of agricultural or related work in each successive 3 week period (or 80 for 2 weeks or 160 for 4 weeks depending on year) or to pay the worker a sum not less than 120 times the hourly or prevailing rate set forth in the contract. We have found that in those cases where Garden State does not offer the worker this minimum number of hours he seldom, if ever, pays the worker the difference between actual earnings and guaranteed income.

Ample evidence of this practice may be found in an audit report of Payroll Records made by Accountants for the Public Interest in connection with the case of *Oscar Cintrón Pérez* v. *Glassboro Service Association*. (Exhibit II)

Further evidence is found by direct inspection of the wage records obtained through discovery for the years 1971–74 are analyzed in Tables which show, page by page, the incidence of violations by Garden State to the guarantee clause and to other contract provisions ascertainable by a mere inspection of records. (Exhibit III)

(*b*) *Article 5–A*

Until 1975, said article required that the worker be furnished with a written record of the numbers of hours worked each day and of the earnings and deductions made by the grower from the workers' pay. In addition, the record given the workers had to include the number of hours worked on a piece-rate basis and the number of pieces picked each day. The members of Garden State stood out as the sole violators of this provision. The importance of this requirement was that it was practically impossible for the worker to determine grower compliance with the guarantee clause if the record given him did not include an itemized statement of the number of hours worked each day. The agreements for 1971 through 1974 included the provision we previously outlined. The 1975 agreement was amended so as to eliminate the requirement that the number of hours worked each day be itemized. During all the years prior to 1975, Garden State universally violated the rights of the migrant farm workers as guaranteed by said clause. After 1975, although the contracts were modified so as not to specifically require that the growers did not provide the worker with the information in question.

In spite of the fact that the contract was amended, there is solid ground to

argue in favor of a fact that the regulations of Law 87 presently required the grower to provide the worker with said information. Should our interpretation be correct, Garden State continues to violate the rights of workers as guaranteed by this clause.

(c) *Article 3—Termination or rehire*

One of the most common violations made by Garden State is the illegal termination from employment of workers recruited in Puerto Rico. This violation cannot be ascertained by inspecting the wage records. It is clearly one of the types of legal situations that would be very difficult to subject to any sort of administrative procedure in view of the fact that it would require a hearing with the minimum guarantees of due process in order to ascertain the facts conclusively.

(d) *Article 9—Transportation*

The contract in Article 9 requires that in the event of the employer advances advances any or all of the transportation costs to the worker, he may deduct from the workers' pay a weekly amount to cover said transportation cost. The deductions may not exceed $5.00 for the first $25 and in any week an additional $2.00 from each additional $5.00 in said week. It is made clear in the contract that said clause does not supersede or alter in any way any requirement of federal or state minimum wage laws regarding the gross or net amount required to be paid to agricultural workers. This is one of the most frequent violations incurred into by Garden State. The Fair Labor Standard Act requires that workers be paid a minimum wage set for agriculture. According to the Employment Standard Administration, employers cannot make deductions from the wages of migrant farm workers covered by the Fair Labor Standard Act for transportation from the point of hire and return if the deductions would bring the hourly rate below the minimum wage for any given weekly-pay period. This means that if the minimum wage is $1.50, $1.80 or $2.00 an hour, the deductions made from the workers' pay in any given week to cover the cost of transportation could not have the result of cutting the minimum wage. If we deduct the cost of transportation from the gross pay and divide the difference between the number of hours worked in any given weekly-pay period, we are able to determine whether the grower has complied with the provisions of the Fair Labor Standards Act. An analysis of the records of Garden State found in Exhibit III and a thorough reading of the audit report marked as Exhibit II will clearly show that there is a pattern of violations to the provisions of the FLSA.

(e) *Article 8—Housing and food*

The contract requires that the workers be provided three adequate hot meals a day. Most growers belonging to Garden State do not provide workers with the hot lunch as required by the contract.

(f) *Article 11—Medical insurance*

The contract requires that the workers be covered by a non-occupational health insurance plan. This insurance plan is paid jointly by the grower and the worker. Glassboro Service Association, the largest member of Garden State owns the hospital or clinic that provides medical services to farm workers. Mr. Arthur West, president of Garden State, was until recently a trustee of the trust fund that administered the non-occupational health insurance plan.

The quality of the medical services offered to migrant farm workers recruited by Garden State is one of the main sources of complaint by the workers we have interviewed. It was not until Puerto Rico Migrant Legal Services filed a petition for declaratory judgment in the case of *Jaime Rodriquez v. Luis Silva Recio, Garden State, Shade Tobacco, et als.*, Civil No. 75-3673, that growers members of the trust fund were removed from said board of trustees, obtained through a Consent Decree with the Puerto Rico Labor Department in which it was stated that there was a conflict of interest in the growers being at the same time members of the trust fund and owners of the hospital that submitted claims to said trust fund. A comprehensive study of the functioning of the non-occupational health insurance is presently being conducted by the Human Ecology Institute of North Carolina. This study has been commissioned by the Department of Health, Education, and Welfare and the report, when ready, will probably itemize the deficiencies inherent to the operation of said insurance fund and the deplorable quality of the medical services offered by the Glassboro infirmary to the workers recruited in Puerto Rico.

In addition to the contract violations briefly outlined in this statement, Garden State has incurred in widespread violations to the Farm Labor Contractor Registration Act, hereinafter the FLCRA. The FLCRA has been interpreted in March 6, 1965 by the U.S. Secretary of HEW to include within its coverage ". . . any farmers' cooperative performing any of the farm labor contracting activities on behalf of its members, unless said association is a farmer, processor, etc. . . ." 29 CFR, Section 41.17.

According to the interpretation of FLCRA, Garden State should have known that it was a crew leader or farm labor contractor within the meaning of FLCRA. Until 1976 Garden State was able to operate as a farm labor contractor without the certificate of registration required by the act.

It was not until Puerto Rico Migrant Legal Services intervened with Puerto Rico Labor Department to ascertain that Garden State complied with FLCRA provisions that Garden State applied for a certificate of registration as required by the act in March 1975. A non-detailed account of this matter may be found in my letter of August 28, 1975 to Mr. Frank Mercurio (Exhibit IV) and the letter of February 20, 1976 to Mr. Robert Brook (Exhibit V).

It was decided by the Wage and Hour Division, as indicated in a letter of December 24, 1975, to the Hon. Herman Badillo to extend the certificate of registration required by the law to Garden State because of the alleged adverse effect that granting one would have had on the recruitment of Puerto Rican workers for 1975 harvest.

This incident illustrates the attitude of Garden State. Their conduct in the past has been one of clear violations to the contract and applicable legislation because of their reliance on the fact that no enforcement activity would be forthcoming. The amendments to the FLCRA in December 1974 establishing penalties for violations to its provisions on one hand, and on the other hand increased litigation activities by legal services programs against Garden State have been the only elements which have had an impact in changing the pattern of conduct that I have referred to. For too long, Garden State was allowed to operate beyond the reach of the law. Through the statements before this subcommittee, they are attempting to renew a lease on its past conduct. Of all the growers we have dealt with, perhaps Garden State has been invested with less moral authority to complain about litigation against them.

III. UNWILLINGNESS TO SUBMIT TO AN INFORMAL ADMINISTRATIVE PROCEDURE

Since the Migrant Division of the Puerto Rico Legal Services commenced operation and as has been clearly stated in the proposals we have submitted to the Office of Economic Opportunity, it was one of the objectives of Puerto Rico Legal Services Migrant Division to file contract violation cases in the Puerto Rico Courts against those growers or growers associations which have consistently violated the rights guaranteed to Puerto Rican migrant farm workers by the contracts negotiated by the Puerto Rico Secretary of Labor. In compliance with this programmatic objective, we filed our first cases against Garden State late in 1973.

It was our contention then, and still is, that the filing of cases in Puerto Rico courts against growers and/or growers' associations which had exhibited a broad pattern of violations to said contract would have the effect of altering said pattern of violations.

For many years Garden State had been making use of an extensive labor supply of Puerto Rican workers and benefited from the almost complete absence of enforcement from the part of concerned administrative agencies of the rights guaranteed to Puerto Rican migrant farm workers by applicable federal, state, and local laws.

The effectiveness of the efforts of mainland Legal Services programs to have an impact on the pattern of violations exhibited by growers associations like Garden State was counteracted by the nomadic nature of the migrant worker. Most of them did not remain long enough in any determined jurisdiction to enable Legal Services attorneys to follow through with complaints against these growers associations. On the other hand, these associations in many cases provided the worker with housing, board work, and entertainment, exerting an inordinate amount of power over the worker while he resides at the grower's facilities. This control exerted on the worker is enhanced by the fact that growers restrict access to and from the camps and often retaliate against workers who assert their rights by blacklisting them or firing them.

It was the purpose of the Office of Legal Service when approving the grant to establish Puerto Rico Migrant Legal Services to provide Puerto Rican migrant farm workers with effective legal representation at the place where the vast majority of them eventually return to. The establishment of said program would allow Legal Services attorneys to defend the right of Puerto Rican migrant farm workers at both ends of the migrant stream.

It appears that the purpose of the National Office of Legal Services was well founded. As early as March 1974, only several months after commencing operations, Mr. Arthur West made phone calls and sent written information to the National Office of Legal Services complaining of the fact that our program had been filing lawsuits against Garden State without first resorting to an informal administrative procedure. Their contention was that in most cases we had filed it would be relatively easier to arrive at a favorable settlement without having to resort to judical means.

On that occasion I indicated to them that we were willing to submit to an indicated that Mr. Arthur West and Mr. Arthur D. McTighe were in Puerto Rico and would very much like to meet with the Director of the Puerto Rico Migrant Legal Services Program in order to discuss the possibility of an agreement that would enable our program not to file cases in court before first resorting to an administrative procedure. At the request of Mr. Duggan, I scheduled a meeting with Mr. West and Mr. McTighe which was held at the Holiday Inn in Isla Verde, Puerto Rico, where we discussed the possibilities of establishing said administrative procedure.

On that occasion I indicated to them that we were willling to submit to an informal administrative procedure, which could have the effect of reducing the necessity of having to resort to judical means. I also indicated, however, that this administrative procedure would only be limited to cases where it was quite clear that the only issues were factual and there was no controversy as to applicable law.

I specifically mentioned that our interpretation of the contract approved by the Puerto Rico Secretary of Labor was that it had to comply with the Puerto Rico Constitution. Since the Puerto Rico Constitution guarantees all workers the right to receive overtime pay for work performed in excess of eight hours a day and forty eight hours a week, we could not submit cases involving overtime to this informal administrative procedure unless Garden State were willing to accept the fact that the Puerto Rico Constitution was applicable. Garden State did not reach an agreement with us with regard to this issue, and therefore, the possibility of submitting overtime cases to an informal administrative procedure was null.

We also indicated to Mr. West and Mr. McTighe that the contract provided that any violation to said contract was to be considered a material breach of the same and that Clause 10C (1) established the right of the worker to rescind the contract and receive in compensation the full guarantee provided by the contract. Garden State's position in regard to this matter was also contrary to ours. This practically excluded most of the cases that we would file since we would know from the start that even though they would be willing to accept that fact that they had violated a specific contract clause, they would clearly be in disagreement with us with regard to the remedies that would ensue from said violation.

Shortly after the meeting with Mr. McTighe and Mr. West, I received a letter from Mr. Francis Duggan in which he expressed genuine appreciation for our efforts to respond to Mr. West's complaints. (Exhibit VI)

In order to pursue the matter further. I sent a letter to Mr. Arthur McTighe, General Counsel of the Garden State Services Cooperative Association, where I outlined the minimum conditions that would have to be met before we would agree to submit to an informal administrative procedure. (Exhibit VII) There was no written response from Garden State with regard to the terms and conditions outlined in my letter of April 23, 1974.

I would say that one of the main obstacles which made impossible for us to reach an agreement was the unwillingness of Garden State to Submit to our office copies of the pay records of workers that detailed the number of hours worked each day an itemized deductions made to the workers' pay. The contract approved by the Secretary of Labor provided that Garden State had to furnish its employees with records including the number of hours worked each day. They never did. This was a universal violation to the terms and conditions of said contract. If we did not receive copies of the records of our clients, it would be impossible for us to effectively represent their interests in negotiations.

In view of the intransigent attitude of Garden State, we decided to ignore the proposal originally made by Garden State. On September 3, 1974, I again communciated with the National Office of Legal Services in order to inform them of the result of our unfruitful attempts to reach an agreement with Garden State. (Exhibit VIII) On many occassions we received letters from Joseph Graofalo, General Manager of Glassboro Service Association, Inc.—member of Garden State—indicating the unwillingness to submit copies of the records unless we informed them of the specific period of time of the alleged violations. This was virtually impossible. The fact that the workers had never received the records that the contract entitled them to, made it extremely difficult for them to precisely pinpoint the specific period of time. We were left with no other alternative than to file judicial complaints and request these records through discovery proceedings.

The reasons that kept us from establishing an informal administrative procedure to process workers complaints with Garden State did not prevent us from setting up an informal procedure with other growers or growers associations which did not exhibit the inflexibility and intransigence of Garden State. A case in point is the informal complaint resolution procedure that we established with the Shade Tobacco Growers Association. Pursuant to our agreement with Shade Tobacco, before filing complaints in the court we sent them a letter outlining what the cla' n of the worker is. Upon receipt of said letter Shade Tobacco Growers Association sent us copy of the wage records of the worker and if we are able to resolve the matter satisfactorily for the worker we did not then resort to collection. This agreement has worked markably well with Shade Tobacco Growers Association. The letter addressed to Salvador Tió from Anthony Amentana, on October 26, 1976 is conclusive evidence of this fact. (Exhibit IX)

Mr. John C. Datt, Director of the Washington Office of the American Farm Bureau on page 5 of his statement to the subcommittee said that in an effort to reduce the need for litigation to hundreds of complaints or claims about the workers, Garden State two years ago agreed to include in the negotiated contract a grievance procedure. It is also stated by Mr. Datt that repeated efforts to get Puerto Rico Legal Services to utilize this procedure before filing lawsuits had been to no avail. The first part of the statement is correct, the second part of the statement is not. In 1975 for the first time the contract annually negotiated by the Puerto Rico Labor Department with Garden State included a complaint resolution procedure which had to be exhausted by the worker prior to resorting to judicial action. It was and is our belief that the complaint resolution procedure established by the contract was not an adequate one. Our belief is grounded in the following reasons:

1. The Puerto Rico Labor Department has no power to adjudicate controversies between growers and worker as to wages. Law 87 of 1962 only grants the Puerto Rico Secretary the power to investigate complaints and to attempt to have the parties arrive at a satisfactory agreement The jurisdiction to adjudicate violations to the law, the regulations, and the contracts rests exclusively with the Superior Courts of Puerto Rico. The Puerto Rico Labor Department cannot possibly require that an administrative procedure be exhausted before resorting to the judical system since the administrative remedies in question cannot be final. In fact, the informal administrative procedure established in the 1975 agreement with Garden State has been used to process complaints of workers in those cases where the records amply show a clear violation to the contract. The most common violation which has been dealt with through this administrative procedures had been the fact that the worker was not paid for the last week of work, the fact that he was not paid the return transportation to Puerto Rico upon completion of the contract, etc. The complaint resolution procedure has proven to be ineffective in dealing with cases the validity of which cannot be ascertained from the records. The Puerto Rico Labor Department has no power to enforce its decisions. A case in point is the fact that the Puerto Rico Secretary was forced to file cases on behalf of eleven workers for contract violations. These cases were filed against Garden State after the administrative prodedure had been exhausted and Garden State refused to accept the findings of the Puerto Rico Secretary. If as they say, they so much believe in this administrative procedure they should have either honored its decision or appealed from it. They did neither. These were the cases filed by the Puerto Rico Secretary:

(*a*) *Silva Recio* v. *Glassboro*, Civil No. 76–4572 (3 workers).

(*b*) *Silva Recio* v. *Glassboro*, Civil No. 76-9130 (1 worker).

(c) *Silva Recio* v. *Glassboro*, Civil No. 76–1890 (2 workers).
(d) *Silva Recio* v. *Glassboro*, Civil No. 76–1847 (4 workers).

These four cases were filed in Ponce, Caguas, Arecibo, and Bayamon respectively.

2. The complaint resolution procedure established in the 1975 agreement does not provide for a hearing at any stage of the proceeding. In view of the fact that many of the cases required a full adjudication of the facts, requiring from the workers ot exhaust a procedure without a hearing is a violation of due process.

3. The Puerto Rico Secretary is the negotiating agent for the workers. It is questionable that the Secretary of Labor can be both a judge and a party at the same time.

4. The employment services in Pureto Rico are part of the U.S. employment services. Recent federal regulations which appeared in the Federal Register in January 25, 1977 establishes that the administrative procedure must be exhausted by the worker only when a violation to the employment service regulation is alleged. It is not required when there is a violation of contract or any other law.

In spite of the fact that we believe the need to exhaust the complaint procedure to be without legal basis we decided to use it in 1976. We filed a total of 112 claims through this procedure (See Exhibit X). The reasons for using it were primarily those of expediency. If we had not used it we would have been confronted with a barrage of motions to dimiss for failure to exhaust. Even if we have won on the merits this would have had a considerable delaying effect on the final outcome of those cases. We also thought that it would be useful to test the complaint resolution procedure so that we would be in a position to advise the Puerto Rico Labor Department as to ways in which they could improve said procedures to the benefits of the workers. We are presently involved with negotiations with the Labor Department that may probably result in an improved procedure. Our experience in using the complaint resolution procedure was totally unsatisfactory. Said procedure is extremely slow, administered by persons who have not received adequate training as to the rights of workers. It does not contain an appeal process and there is no effective way in enforcing its decisions other than court actions.

There is clearly no effective mechanism at present to adequately resolve workers claims. The complaint resolution procedures established by federal regulations or state legislation have proven to be ineffective. The judicial system, though a more effective means, is clearly too time-consuming and too costly both for the growers and the worker. Most workers complaints could be promptly resolved by a grievance procedure negotiated by labor unions into a collective bargaining agreement. Agricultural workers had been exempted by Congress and most state legislature from the coverage of labor relations acts. This, I venture to affirm, is the real cause that forces the workers have to resolve the judicial action. Until it is corrected, we do not anticipate a reduction in the litigation against growers who violate workers rights.

IV. ALLEGATIONS AS TO THE FILING OF CASES WITHOUT MERIT

According to the reports received from the local offices of Puerto Rico Migrant Legal Services (P.R.M.L.S.) and as may be determined by an analysis of our compilation of cases attached to this statement (Exhibit XI), P.R.M.L.S. has filed 92 cases against Garden State. Of these cases we have won 18, lost 2, had one dismissed for inaction (Rule II), and have been forced to desist or withdraw in 41 cases. Of the cases we have had to desist from 32 involved overtime, two (2) were determined to be without merit and seven (7) were not pursued because the workers moved to the mainland or lost interest in their cases. I shall now explain the meaning of some of the categories in which we have divided the cases.

A. Overtime litigation

One of the most significant litigation efforts undertaken by P.R.M.L.S. was the case that sought to establish the right to receive overtime pay for hours worked in excess of eight hours a day and 48 hours a week. The basic legal theory of the case was grounded on the provisions of Article II, Section 16 of the Constitution of Puerto Rico. Said section establishes the right to receive overtime pay as one of the fundamental rights guaranteed to all citizens of the Commonwealth of Puerto Rico. We alleged that Public Law 87 of 1962, which empowers and requires the P. R. Secretary of Labor to approve contracts en-

tered into by mainland growers and Puerto Rican workers, and also requires him to issue regulations that outline the minimum guarantees to be contained in said contracts, could not possibly authorize him to approve contracts in violation of the Puerto Rico Constitution. In other words, we questioned the fact that contracts, regulated by the Government of Puerto Rico failed to guarantee to the workers a fundamental right of the Puerto Rico Constitution.

After winning on the merits in this case in several District and Superior Court Cases, the Puerto Rico Supreme Court resolved in *Green Giant* v. *Tribunal* Superior, Civil No. 0–75–126, that the overtime provisions of the Puerto Rico Constitution did not extend workers recruited in Puerto Rico Whose services were to be performed outside of Puerto Rico. A fuller picture of the issue involved in this case may be obtained by reading the three opinions in this case. (See Exhibit XII).

The reasons for which we decided to allocate a substantial part of our resources to this effort were:

1. The workers, individually, and through the advisory committees to P.R.M.L.S. voiced almost unanimous concern as to the fact that the biggest problem they faced was the pressure from the growers to work excessive hours daily and seven days a week for consecutive weeks.
2. There was indisputable merit to the position that perhaps those workers in more need of overtime coverage should be afforded its protection. They have been excluded from this and other social legislation by Congress and most state legislatures.
3. The working of excess hours had an adverse effect on the physical and mental health of the workers.

We respectfully submit that the Puerto Rico Supreme Court erred in its judgement. Even if we are wrong and the Puerto Rico Supreme Court was right in ruling against plaintiffs, a careful reading of the opinion will reveal that this was no frivolous claim. The right to overtime, as guaranteed by federal statute represents one of the most important victories of the organized labor movement. The American system of Justice has carved out a special niche for agricultural workers. Our effort to close the gap between agricultural and non-agricultural workers, through this litigation, limited though it may have been, was a failed attempt. Failure and frivolity, are not synonyms.

After the Green Giant decision we were, of course, forced to desist in almost all the cases of workers that were seeking overtime pay. To be certain, close to thirty four cases were disposed of in this manner. The vast majority of them did not go to trial.

B. Cases won

An analysis of the reports received from the local offices reflects that a favorable report have been obtained from plaintiffs in 18 cases against Garden State. Seven of these cases have been settlement and eleven have been resolved by the Court. This sharply contradicts the position expressed by Mr. West and Mr. Datt.

C. Cases desisted because of lack of interest

In some of the cases we were forced to desist due to the fact that the workers expressed to use their unwillingness to pursue their cases. The primary reasons for which this lack of interest was expressed were the following:

1. Workers moved away from the jurisdiction.
2. Workers expressed dismay over the laziness of the judicial proceedings.
3. Fear of retaliation by Garden State.

This became a problem. Garden State and some of their grower members incurred in the practice of exerting pressures through threats or promises of special favors made to workers in exchange of their willingness to sign sworn statements and/or letters addressed to attorneys of P.R.M.L.S. in which they indicated that they have never retained P.R.M.L.S. for any case against Garden State. The Puerto Rico Secretary of Labor made a determination of fact that corroborates this allegation in the administrative complaint of *Domingo Diaz Fuertes* v. *Victor Lanning* (member of Garden State and Glassboro Service Association) Exhibit XIII.

D. Cases pending

There are presently 30 cases pending. We anticipate that many of the complaints used in the administrative procedure of the Puerto Rico Labor Department will soon become judicial cases. In view of the fact that said procedure

has not worked effectively to determine the validity of those claims, there will, therefore, be many more cases pending in the future against Garden State, since most of the complaints filed pursuant to the administrative procedure were against Garden State. We may safely state that the effect of exhausting said administrative procedure has been to delay the final resolution of those claims.

We will gladly submit additional reports during this year to this Sub-Committee as to any change in status of those cases that are still pending.

INDEX TO EXHIBITS

EXHIBIT I

AGRICULTURAL AGREEMENT BETWEEN EMPLOYERS AND PUERTO RICAN AGRICULTURAL WORKERS—1975

ARTICLE I —DEFINITIONS

A. The term "Secretary of Labor" shall mean the Secretary of Labor of Puerto Rico or his duly authorized agents.

B. If this agreement shall have been signed by an Association of Growers, the term "Employer" shall mean such Association. If this agreement shall have been signed by an individual, partnership or corporation operating a farm or nursery on his own behalf, the term "Employer" shall mean such individual, partnership or corporation.

C. The term "Grower" shall mean a member of an Association which has signed this agreement as an "Employer."

D. The term "Approved Grower" shall mean a "Grower" enjoying current approval by the Secretary of Labor who has filed with the Secretary of Labor agreement in writing to be bound by the terms of this agreement jointly and severally with the Employer. Withdrawal of approval of any Grower by the Secretary of Labor shall terminate "Approved Grower" status, it being understood that the Secretary of Labor for reasons sufficient to him may withdraw such approval at any time from any Grower who does not comply with the terms or spirit of this Agreement.

E. The term "prevailing rate" shall mean the prevailing rate as determined by the U.S. Secretary of Labor.

F. The term "adverse effect rate" shall mean the wage rate determined and set by the Secretary of Labor and the United States as the rate below which the importation of foreign workers into any state would have an adverse effect on the rates to be paid domestic workers.

G. The term "Central Office" shall mean the Central Continental Office of the Migration Division of the Department of Labor of the Commonwealth of Puerto Rico, located at 322 West 45th Street, New York City, New York 10036.

H. The term "Act of God" shall mean frost, hailstorm, flood, fire, plant disease or other calamity of such character as to eliminate the need for further employment of the Worker.

[1] Because of its bulk, Exhibit III shall be forwarded at a later date.

ARTICLE 2—DURATION OF AGREEMENT—PARTIES

A. This Work Agreement is entered into at San Juan, Puerto Rico, by and between the undersigned Employer and the Workers whose names are annexed hereto. This Agreement shall continue in full force and effect from the date of its approval by the Secretary of Labor until ——— ——— unless terminated sooner or extended in accordance with the provisions of this Agreement. Notwithstanding any such extension the termination date hereinabove contained shall determine the eligibility of the Worker for full contract benefits hereunder.

B. Employment of the Worker hereunder shall commence at the time of the Worker's arrival at the place of abode or work.

C. If this agreement has been signed by an Association as Employer, the Association may assign the worker only to an "Approved Grower." Upon notification by the Secretary that a Grower has lost his approved status the Association shall not assign any further Workers to such Grower and shall make every effort to withdraw the Workers from such Growers service and re-assign them to "Aproved Growers."

D. If this agreement has been by an Association as Employer no Grower may discharge the Worker or terminate the Agreement but in all cases when such Grower no longer wishes to utilize the Worker he shall return the Worker to the premises of the Association.

E. No term of this Agreement may be modified, amended, waived, or extended nor may any addition be made without the express written agreement of the Worker, the Employer and the Secretary of Labor. The original of this Agreement shall be kept by the Director of the Bureau of Employment Security of Puerto Rico. Copies shall be given to the Employer and to the Worker. The terms of this agreement can be extended only with the written agreement of the Worker and the Employer and the written consent of the Secretary of Labor. No extension of contract can impair or reduce any beneficial term of this agreement as originally written including all bonuses.

F. In case the Employer has completed the harvesting of his last crop he may accelerate the termination date of this agreement by a period not exceeding two weeks after notice thereof has been given to the Central Office, but this shall not affect the right of the worker to all bonuses provided for herein.

G. In the event that the Worker shall continue his emplyoment after a new agreement has been approved by the Secretary of Labor for the year 1976, further employment of the Worker shall be considered to be an extension of the term of this agreement and subject to the conditions of such new agreement.

ARTICLE 3—TERMINATION AND REHIRE

A. This Agreement may be terminated for the following reasons only:

1. Failure or refusal of the Worker to comply with the terms of this Agreement, and the obligations set forth in Article 1.

2. Departure of the Worker from an Approved Grower to whom the Worker has beeen assigned unless such Grower has refused, upon request of the Worker, to return him to the Employer's camp. Upon request of the Worker, the Grower shall provide transportation for the Worker back to the Employer's camp no later than the end of the day following the day during which the Worker makes such request.

3. The Employer, on notice to the Worker and the Secretary of Labor may terminate this Agreement because of an Act of God. In such event the Employer shall be responsible for the cost of all transportation from the Worker's home to the work location and return and in addition shall give the Worker $50 (Fifty dollars) in liquidation of all sums owed to the Worker under this Agreement.

B. This Agreement may be terminated and the Worker discharged in the following manner only:

1. If the Agreement is signed by an Association, only the Association as Employer shall have the power to terminate the Agreement and discharge the Worker. This power may not be delegated or assigned to a Grower. The Grower may not discharge a Worker but shall in all circumstances return the Worker to the Association if he no longer wishes to utilize the services of the Worker.

[2] 2. In all cases, notice of desire to terminate the employment of the Worker shall be given by the Employer to the central office of the Department of Labor and a meeting shall be scheduled between the Employer, the Worker and Field Representative of the Department of Labor as rapidly as possible.

[2] Administrative Procedure will be determined.

3. It is the sense of this Agreement that termination of employment can be effected only by the Employer serving written notice to that effect upon the Worker if available, upon the representative of the Secretary of Labor and upon the Administrator of the Puerto Rican Agricultural Worker's Insurance Fund. Until such notice has been given, the Worker shall remain an Employee and the Employer shall remain responsible for all insurance premiums.

4. The determination of the Employer to discharge the Worker shall be subject to review under the administrative procedure set forth below.

5. The notice of termination shall state the reasons therefor.

6. The Worker shall be paid all moneys due him up to the date of discharge.

7. The notice of discharge shall establish the date of discharge. All rights and guarantees shall be in full force and effect until such notice is given as required above.

C. Should the Worker, after having been discharged, or after this Agreement has been terminated, be rehired, re-employed or further assigned for work by the Employer or the same Grower within ten (10) days after such discharge or termination, such re-employmest or further assignment or use shall constitute a waiver of any prior breach of this Agreement by the Worker and a reinstitution of all the terms and conditions of this Agreement in full force and effect.

[3] D. If the Worker has left the premises of the Employer and cannot be located, the Employer shall send a check covering all moneys owed to the Worker together with a copy of the termination notice to the central office.

ARTICLE 4—GUARANTEE

A. The Employer guarantees to provide the Worker with one hundred-twenty (120) hours of agricultural or related work in each successive three (3) week period or to pay the Worker a sum not less than one hundred-twenty (120 times the hourly or prevailing rate set forth in Article 5, whichever is greater. The guarantee starts at the time of arrival of the Worker at the place of abode or work.

B. Notwithstanding anything to the contrary contained in this Agreement in any week during which the Worker's net earnings after all deductions except advances made within seven (7) days of such payday, shall not equal $25. (Twenty-Five Dollars), the Employer shall advance against the guarantee hereinabove provided for, a sum sufficient to result in a net payment to Worker of $25. (Twenty-Five Dollars).

This obligation of the Employer shall not apply when the Worker receives disability benefits under the Insurance Plan.

This sum may be reduced by $3.50 for each day in the calendar week on which the Worker, though physically able, has refused to perform the work offered.

With respect to the initial work period preceding the Employer's first normal weekly payroll period after commencement of the guarantee, the Employer shall advance a sum sufficient to result in a net payment to the Worker of $3.50 (Three Dollars & Fifty Cents) per day, except Sunday.

C. In case of any legal action arising under this paragraph, the guarantee provided herein shall be considered for all legal purposes as wages earned and not as payment in the nature of a penalty or damages.

D. All moneys due under the guarantee herein shall be paid within seven (7) days after the conclusion of the guarantee period.

E. If, on any day for which work is offered, the Worker refuses or, because of illness or disability, is unable to perform the work which is offered, the Employer shall be credited against the guarantee in Article 4 with eight (8) hours for each such day, less actual time worked by the Worker on that day, provided, however, that if seven (7) days of work are offered in any work week, the Worker shall have the option to be absent from work for any reason for one day in such work week with no deduction being made thereafter from the guarantee.

ARTICLE 5—COMPENSATION AND RECORDS

A. The standard pay period shall consist of seven (7) consecutive days. The Worker shall receive his wages for each pay period not later than seven (7) days following the close of such pay period, and at the same time shall be furnished with a written record of hours worked, earnings and deductions. The worker at any reasonable time and place may request from the Employer to be shown his complete payroll records.

[3] Administrative Procedure will be determined.

B. All work performed on an hourly basis shall be paid for in accordance with the rate set forth in the next paragraph or the prevailing rate for similar work whichever is greater.

C. The wage rate for general agricultural cultivation and harvesting work shall be not less than $2.30 per hour. The wage rate for all unskilled nursery work shall be not less than $2.35 per hour.

The wage rate for all nursery work other than unskilled nursery work shall be in accordance with prevailing rates for such work in the area, but in no instance less than the rate above established for unskilled nursery work. The Employer may use unskilled workers on skilled operations for a period not to exceed 2 weeks for training purposes. During such training period the Worker shall receive the rate for unskilled work. At the end of such training period or in any such instances in which the Worker is assigned on skilled operation, he shall receive the prevailing rate for such work.

D. Piece work shall be paid for at the piece rates attached or the prevailing piece rates, whichever are higher. If earnings on piece rates for a pay period do not equal the hourly rate the Employer shall pay the difference at the next pay date.

E. If prevailing wage surveys of the Secretary of Labor of the U.S. establish a higher rate of pay, either hourly or piece rate, than that provided for herein, the Employer shall pay such higher rate effective 3 (three) days after notice from the Secretary of Labor or the agency which conducted the survey.

F. If the Employer or other Employers of agricultural labor hiring a substantial segment of the Workers in the crop activity in the state in which the Worker is employed, make successful application for foreign Workers, the rates hereinabove specified shall be replaced by the Adverse Effect Rates, if such Adverse Effect Rates are higher than those set forth in Article 5C.

G. The Employer shall miantain the following records:

1. The actual number of hours worked by the Worker each day. This record shall be maintained regardless of whether the Worker has worked on an hourly or piece rate basis. In the event the Worker refuses or is unable to work, the record shall disclose the number of hours involved and the reason therefor.

G. 2. The earnings of the Workers for each day of work and the type of crop work performed. If the Worker has worked on a piece rate basis the record shall also include a statement of such piece rate or rates and shall in addition set forth the number of units of work performed by the Worker.

3. A statement of the deductions and withholdings from the earnings of the Worker.

H. All Growers utilizing services of Workers under this Agreement shall also maintain the records required in Article 5 G (1), (2), and (3).

I. The Employer shall file a copy of the records set forth in Article 5 G (1), (2), and (3), in the Central Office not more than three (3) weeks after the end of each pay period, in addition, the Secretary of Labor shall have the right of inspection at the Employer's and Grower's office of the payroll records specified in Article 5 G (1), (2), and (3).

J. If the Employer and/or the Grower shall fail to maintain the records provided for in Article 5 G (1), (2), and (3), and it shall be established that the Worker has not been properly paid, the Employer and the Grower shall be obligated to compensate the Worker for all sums owed the Worker, and as liquidated damages, and an additional sum equal to the amount of the underpayment, provided that the Employer shall have been found to have failed to pay and maintain records according to the provisions of this Agreement by a court of competent jurisdiction.

K. Work customarily performed on a piece work basis shall be performed on a piece work basis during this Agreement.

L. The Worker directs the Employer to deliver to the Central Office all moneys owed by the Employer to him if the Employer cannot locate the Worker for thirty (30) days. Payment shall be by check payable "to the order of the Worker or the Secretary of Labor" and delivery thereof shall be the equivalent of payment made to the Worker for all purposes.

ARTICLE 6—TERMS AND CONDITIONS OF WORK

A. Subject to and as limited in Article 4 E, The Worker agrees to work eight (8) hours in each day for which work is offered and six (6) days in each work week. But mutual consent the Worker may work on a seventh day or additional hours on any day during the work week.

B. The Employer and/or the Grower shall not threaten or penalize the Worker or discriminate against him in work assignments or any other manner if the Worker elects to work no more than six days in any calendar week or more than eight hours in any day.

C. The Worker shall not be subject to discrimination in employment, housing or any other regard because of race, color, creed, sex, national origin, political affiliation, membership in or activity on behalf of any labor organization or for any attempt to form, join or assist a labor organization.

D. Equipment, tools and special clothing required to perform the work assigned shall be furnished by the Employer.

E. The Employer and each Grower jointly and severally convenant and warrant that they will not use or apply any pesticide except in strict compliance with all applicable Federal, state and local laws and regulations governing the nature and use of same. Any Worker engaged in spraying operations shall be adequately instructed and shall be furnished with all protective clothing and devices required by law or regulation.

F. The Worker shall be compensated for any time in excess of one-half hour spent in necessary travel from his place of abode to the starting work location each day and shall also be compensated for any time in excess of one-half hour spent in travel from the last work location back to his place of abode. Compensation shall be at the hourly rate provided for in the Agreement.

G. All vehicles used by the Employer and/or the Grower to transport the Worker shall comply with all state and Federal regulations and laws.

H. If the Employer and/or Grower shall institute any work incentive, or bonus plan over and above the terms of this Agreement a copy thereof, in Spanish shall be given to the Worker and the terms of such plan shall be enforcible as if they were a part of this Agreement.

ARTICLE 7—WORKMEN'S COMPENSATION

A. The Employer assumes the responsibility to the Worker for the same rights, privileges and conditions afforded to industrial Workers by their employers under the Workmen's Compensation Laws of the State in which the Worker shall be employed. In addition the Employer shall assume responsibility to the Worker for the same rights, privileges and conditions afforded to agricultural or industrial Workers by their Employers when such Workers are required to live in premises furnished by their Employers. The Employer, at no cost to the Worker, shall bring and maintain the Worker within the jurisdiction of the Workmen's Compensation Laws of the State in which the Worker shall be employed. The Employer shall not act as a self insurer unless prior consent in writing has been obtained from the Secretary of Labor, but during the life of this Agreement shall insure and keep the Worker insured by payment for a standard policy of Workmen's Compensation Insurance. Should the Employer or the Grower fail to provide for and maintain in effect a policy of Workmen's Compensation Insurance, the Secretary of Labor, in addition to other remedies, may forthwith remove the Worker from employment and forthwith accelerate the termination date hereof.

B. The Secretary of Labor shall be subrogated to the rights of the Worker for the recovery of any expenditures made on behalf of the Worker by the State Insurance Fund of Puerto Rico under Law 77, approved June 23, 1958 of the Laws of Puerto Rico, against the insurance carrier of the Employer and/or Grower, or against the Employer or Grower if either or both be self-insured, covering the Workmen's Compensation risks set forth in Article 7A.

C. Whenever the Employer or the Grower is required to notify the Workmen's Compensation Board or the insurance carrier of the occurrence of any accident or injury, the Employer or Grower shall send a copy of the Accident Report given to the Workmen's Compensation Board and/or the insurance carrier, to the Central Office and to the appropriate Field Office of the Department of Labor of the Commonwealth of Puerto Rico.

ARTICLE 8—HOUSING AND FOOD

A. 1. It is the duty of the Employer and each Grower to provide the Worker with clean, adequate and hygienic housing at no cost to the Worker, which shall conform to the requirements of all applicable, Federal, state and local standards and health codes.

Housing shall include a place of abode, adequate heating facilities, clean blankets, clean sheets or mattress cover of sheeting quality, individual bed or

cot, mattress, pillow, pillow case, hot and cold water, light and fuel, secure storage facilities for clothing and personal effects with locking provision, and opaque window shades in all buildings where Workers assigned to night duty are housed. The Employer shall either furnish adequate electric laundry facilities or shall cause bed linens to be laundered and returned weekly.

2. The maintenance of cleanliness of the camp and general quarters is the duty of the Employer. The maintenance of cleanliness of the immediate living area occupied by the Worker is the responsibility of the Worker.

B. Except as provided in Article 10, it shall be the joint duty of the Employer and the Grower to maintain any camp in which Workers reside, in a clean and safe condition at no cost to the Worker.

C. The Employer and/or the Grower shall prepare and provide the Worker with three (3) adequate hot meals per day at cost but not to exceed three dollars ($3.00) tax included. The Worker agrees to pay such amount weekly. The hot portion of the luncheon meal may consist of a hot item (other than soup or beverage) furnished in a thermos. The Employer and/or Grower will supply one thermos bottle to the Worker without cost.

C. (Alt.) The Employer and/or the Grower shall provide to the Worker adequate and hygienic cooking and eating facilities at no cost to the Worker. These shall include water, fuel, stove, dishes, facilities for refrigeration, cooking and eating facilities. The Employer or the Grower will provide/necessary transportation, at no cost to the Worker, to obtain food supplies but shall not be required to pay for services of preparing or cooking meals.

D. The Employer and/or the Grower have the right to select which of the alternatives in Article 8C shall be effective.

E. Efforts will be made to select and prepare food in accordance with the custom and taste of the Workers and the Migration Division will counsel and advise the Employer and/or Grower in this regard.

F. Notwithstanding the forgoing, the Employer shall furnish three (3) adequate hot meals per day at no charge during such periods as the Worker is medically disabled for nonoccupational reasons, provided that, if such disability is not the result of an accident and Worker has not been hospitalized, such meals will be provided without charge commencing on the third day of such disability.

ARTICLE 9—TRANSPORTATION

A. The Employer shall arrange for, and procure transportation for the Worker from the point of departure in Puerto Rico to work location. The Worker shall be responsible for the actual cost of the air flight, or the tourist fare rate on a flight departing at a comparable time and day of the week, whichever, is less but in no event to exceed $_____. The Worker shall be notified on the exact costs of such flight.

In addition, the Worker shall be responsible for the cost of inland transportation from the point of arrival on the mainland to the location specified in Article 4 A. The Employer shall be responsible for the cost of all other transportation thereafter which, however, shall not include return transportation to Puerto Rico, except as hereinafter otherwise provided.

B. Transportation arrangements shall include public liability and property damage insurance of the inland carrier, and in addition, a standard flight insurance policy for $12,500.00 to cover the Worker while in flight from the point of departure in Puerto Rico to the airport of arrival. The cost of air flight insurance shall be borne by the Puerto Rican Agricultural Workers Insurance Fund.

C. If the Worker completes his contract the Employer shall pay the Worker the full cost of transportation from San Juan, Puerto Rico to the place of employment (less any unpaid sums due to the Employer) and the Employer shall furnish the Worker at the Worker's option with transportation to the airport of the Employer's choice and a ticket covering return transportation or the cash value of such air transportation plus the cash value of the transportation to such airport by common carrier.

D. If the term of this contract shall be extended, the payment to the Worker of the transportation cost provided for in Article 9 made to the Worker at that time and the failure of the Worker to complete any extended period of the Agreement may not be used to penalize the Worker or to negate or offset the Employer's obligation to pay the transportation provided for in Article 9 C.

E. In the event the Employer advances any or all of that part of the transportation cost for which the Worker is responsible, or makes any other advance to the Worker, the Worker agrees to repay such indebtedness in weekly install-

ments in the following manner: Five dollars ($5.00) from the first Twenty Five dollars ($25.00) earned in such week, and an additional Two dollars ($2.00) from each additional Five dollars ($5.00) in such week.

The Employer shall give the Worker a weekly statement of all sums deducted on account of transportation advance. This clause shall not supersede any requirement of Federal or State minimum wage laws regarding the gross or net amounts required to be paid to agricultural workers.

ARTICLE 10—WORKER OBLIGATIONS

A. The Worker shall perform all assigned tasks in agricultural or related work in a good and workmanlike manner.

B. The Worker shall remain at work for the duration of this Agreement.

C. Should the Worker fail to comply with his obligation set forth in Article 8 A 2, he agrees that the Employer, with the approval of the Secretary of Labor may cause the living area to be cleaned at the expense of the Worker.

D. The Employer may not require the Worker to purchase equipment necessary to perform the work. The Worker agrees to maintain and return all equipment lent to him in the same condition received less reasonable wear and tear. The Worker shall be responsible only for equipment for which he has signed a receipt.

E. The Worker shall be responsible for grossly negligent or willful damage to property of the Employer or the Grower.

F. The Worker shall abide by all reasonable camp rules.

G. The Worker agrees to pay to the Employer all financial obligations assumed by the Worker under this contract and consents to the deductions by the Employer from his wages to the extent not prohibited by law or this contract.

ARTICLE 11—INSURANCE

A. The Worker hereby agrees to pay Sixty-six (66) cents per week to the Puerto Rican Agricultural Workers Insurance Fund for non-occupational group insurance premiums and directs the Employer to deduct such sum from his earnings and to forward the same to the Administrator of such Fund.

B. The Employer agrees to contribute One dollar and thirty-seven cents ($1.37) per week for non-occupational group insurance on behalf of the Worker.

C. The Employer shall forward the payments made by the Worker, and the Employer's contribution, at least once in every four (4) weeks, by check payable to the Puerto Rican Agricultural Workers Insurance Fund. Such check shall be mailed to the Administrator of the Puerto Rico Workers Agricultural Insurance Fund, 322 West 45th Street, New York City, New York 10036, or to such other address or payee as such Administrator shall direct in writing. If the Empoyer and/or the Grower fail to make deductions from the Worker's wages, they shall be liable for the entire amount of such premium payments.

D. The Employer shall be responsible for the payment of insurance premiums for all workers whose names appear on the corrected airplane manifests, less those for whom termination notices have been received by the Central Office.

E. The Worker directs that all benefits payable under the Group Insurance Plan, in the event of his death, or any benefits payable to him which cannot be paid to him because he cannot be located within ninety (90) days, shall be paid to the beneficiary named by the Worker in the Application for Employment form on file with the Department of Labor of Puerto Rico.

F. The Puerto Rican Agricultural Workers Insurance Fund shall be administered under the direction of the Trustees of said Fund, and all disputes concerning its application shall be decided by such Trustees. Such Trustees have the right to inspect and audit the Employer's and the Grower's payroll records to assure the proper payment of premiums.

G. No assignment of benefits or moneys due to the Worker under the Puerto Rican Agricultural Workers Insurance Fund shall be permitted without the approval of the Secretary of Labor.

H. In the event that the Worker is medically disabled from working for any full week, the Employer shall pay the Group Insurance Plan the amount of Two dollars three cents ($2.03) and Worker shall be exempt from payment of his contribution of such week.

I. The Worker shall be promptly transported to appropriate medical facilities in all cases of emergency.

ARTICLE 12—CONTRACT ENFORCEMENT

A. Administrative Complaint Procedure.

1. Whenever the Worker while working on the mainland shall have any complaint regarding the breach, application, interpretation or compliance with the terms of this Agreement which he cannot resolve by discussion with the Employer and/or the Grower, he shall communicate the same to the appropriate Regional Office of the Migration Division, which will maintain a free collect telephone service for this purpose. The Regional Office will make a record of such complaint, will notify the Employer, and will investigate the complaint as quickly as possible. The Regional Office will also notify the services of appropriate Federal and state agencies and officials charged with enforcing Workers' rights of the kind included in the Worker's complaint.

If the Worker has returned to Puerto Rico and wishes to register a complaint he shall do so at any Local office of the Employment Service. The local Employment Service office shall make a record of such complaint and forward a copy to the Regional Office of the Migration Division for the location where the complaint arose within two (2) working days.

In all cases, the Regional Office will attempt to obtain adjustment of the complaint according to its merit. If the Regional Office cannot obtain adjustment satisfactory to the Worker and the Employer within five (5) working days it shall report the status of the matter to the Central Office together with its recommendation.

2. The Central Office shall review the recommendation of the Regional Office and shall attempt to resolve the complaint according to its merit. Should the Central Office conclude that a violation which has not been resolved exists, it shall within 15 days after receipt of the complaint, notify the Employer that if the complaint is not remedied within 5 days the complaint will be referred to the Secretary of Labor. In the event that the Central Office shall conclude that there is no merit to the complaint or that the Employer has adequately remedied the complaint, it shall notify the Worker. If the Worker is not satisfied with the resolution of the Central Office, he shall notify the Regional Office or the Central Office and the complaint shall be sent to the Secretary for review.

If the Secretary in any such instance concludes that a violation or breach of the Contract exists or that the Employer has not adequately remedied the complaint, he shall within 30 days notify the Employer that unless compliance is obtained within 5 days he may institute suit against the Employer on behalf of the Worker or Workers involved by the complaint or take other appropriate action.

3. When the procedures set forth in Section A–1 and A–2 of this Article have been complied with, the Employer and/or the Grower hereby agree to submit to the jurisdiction of the courts of Puerto Rico in all cases involving claims of breach of this Agreement. The Commissioner of Insurance of Puerto Rico is hereby designated as agent for the purpose of receiving process in connection with any such suit, provided, however, that the Commissioner of Insurance will forward any such process served on him to the Employer and/or Grower, and the effective date of such service shall commence when the process is received by the Employer and/or the Grower.

This provision shall not apply to cases of Workmen's Compensation where an adequate policy of Workmen's Compensation Insurance is maintained by the Employer.

B. The Employer will procure and maintain in effect a performance bond, in form and amount satisfactory to the Secretary of Labor, to guarantee performance of this Agreement. Such bond shall be filed with the Secretary of Labor.

C. 1. The Secretary of Labor may represent the Worker for all purposes arising out of or in connection with this Agreement. The right of representation shall include, but not be limited to, the right of the Secretary of Labor to bring suit on behalf of the Worker for any cause of action which may arise pursuant to any provision of this Agreement.

2. The right of representation shall also include the right of the Secretary of Labor to visit the Worker at his place of abode, or place of work.

3. The Employer agrees that the Secretary of Labor may institute suit on behalf of the Trustees of the Puerto Rican Agricultural Workers Insurance Fund to enforce collection of any unpaid premiums due under the Puerto Rican Agricultural Workers Insurance Fund. Such suit may be instituted in accordance with the terms of Article 12 A–3 hereof and the Secretary shall have recourse against the Employer's Performance Bond for any judgment obtained.

D. The Employer and any Grower who have agreed to be bound by and be responsible under the terms of this Agreement shall at all times be jointly and severally responsible for all terms of this Agreement.

E. Nothing contained in this Article shall be deemed to limit the right of the Worker to institute action against the Employer through Counsel of his choice for breach of this Agreement in any competent court, when the administrative procedures set forth in A–1 and A–2 of this Article have been complied with.

F. At all reasonable times, the Employer and/or the Grower shall make telephone service available to any Worker who wishes to register a complaint to the Regional Office of the Migration Division.

G. The failure of the Employer or the Grower to comply with any of the provisions of this Agreement shall constitute a material breach thereof, and the Secretary of Labor may cancel the Agreement. In such event, the Employer, and the Grower shall be liable for the full guarantee provided for herein, beginning with the date of approval of this Agreement and terminating on the expiration date specified herein.

ARTICLE 13—MISCELLANEOUS

A. The Employer and the Grower shall render to the Worker, during the term of this Agreement the following services, at no cost to the Worker:

1. Three (3) adequate hot meals a day and lodging from the date the Worker reports at the Employer's request at the point of departure in Puerto Rico until the day upon which the Worker's guarantee becomes effective.

2. All transportation between the Worker's place of abode and his work location other than that referred to in Article 9A.

B. If the Worker is declared physically unfit for employment by the Employer and if the Worker so elects, the Employer shall provide a non-negotiable ticket to the point of recruitment. This provision shall apply regardless of the length of employment of the Worker by the Employer. The Worker shall also receive the sum of Twenty dollars ($20.00) for subsistence. The Employer's determination of physical fitness shall be subject to review by a physician jointly approved by the Employer and the Secretary of Labor.

C. Upon the verified death or the existence of a verified critical illness of the Worker's spouse, child or parent, the Employer shall provide a non-negotiable ticket to the point of recruitment at no charge to the Worker or, in the event of delayed verification, the cash equivalent thereof, and the Worker shall also receive the sum of Twenty dollars ($20.00) for subsistence. Verification in such instances shall be by the Secretary of Labor.

D. Organizations rendering lawful service to the Worker shall have the right of visitation to the Worker at all reasonable times. Whenever the period for visitation right is established by law or court decision, such period shall be deemed reasonable.

E. The Puerto Rican Agricultural Workers Insurance Fund shall be responsible for funeral expenses to an amount not to exceed $500.00 if the Worker should die during the duration of this Agreement except during air transportation. At the option of the family and at their expense, they may arrange for the shipment of the body back to Puerto Rico and/or buried at the place of their choice in which event the Fund shall pay for the cost thereof not to exceed $500.00 directly to the carriers and/or undertaker and the balance, if any, shall be paid to the beneficiaries.

F. Any information coming to the attention of the Employer or Grower with respect to any arrest, detention or criminal prosecution of the Worker shall be promptly communicated by the Employer or Grower to the nearest office of the Migration Division.

G. At least ten (10) days prior to closing of any such transaction, the Grower and Employer will notify the Central Office by Certified Mail, Return Receipt Requested, of any contemplated dissolution, sale, or disposition of substantially all of Employer's and/or Grower's assets, corporate stock, or similar transaction intended to become effective during the term of this Agreement.

EXHIBIT II

REPORT ON REVIEW OF PAYROLL RECORDS
IN RE OSCAR CINTRON PEREZ, ET AL
v.
GLASSBORO SERVICE ASSOCIATION., INC., ET AL

INTRODUCTION

This report was prepared by Accountants for the Public Interest. Mr. Bernard C. Hecht was in charge of its preparation. His professional qualifications are set forth on page 5.

Accountants for the Public Interest is a non-profit New Jersey Corporation, tax-exempt under Section 501(c)(3) of the Internal Revenue Code. The membership of Accountants for the Public Interest consists primarily of certified public accountants, licensed by the State of New Jersey, together with members of other disciplines.

SCOPE OF REVIEW

In accordance with a request from Michael S. Berger, Esq., of the Farmworkers Rights Project, we have reviewed payroll records which have been maintained by the Glassboro Service Association, Inc., for Angel Luis Ocasio Torres for the years 1972 and 1973 and Oscar Cintron Perez and Gabriel Torres Rondon for the year 1975.

The purpose of our review was to determine whether or not the proper amount of wages was paid pursuant to the guarantee provisions of the respective employment contracts. We also sought to determine whether or not deductions for food costs and transportation costs were made in accordance with the applicable provisions of the contracts.

Finally, we reviewed the payroll records system for the purpose of determining compliance with the records provisions of the contract and with general business practices.

RECORDS AND DOCUMENTATION REVIEWED

We have relied upon the following documents and information for our review, which documents or excerpts therefrom are a part of the accompanying report:

1. Agricultural Agreements Between Employers and Puerto Rican Agricultural Workers for the Years 1972, 1973 and 1975.
2. Employee's earnings records for Angel Luis Ocasio Torres for the years 1972 and 1973, and for Oscar Cintron Perez and Gabriel Torres Rondon for the year 1975.
3. Weekly Payroll sheets reflecting daily and weekly earnings and deductions for Angel Luis Ocasio Torres for the years 1972 and 1973 and for Oscar Cintron Perez and Gabriel Torres Rondon for the year 1975.
4. Referral cards for each Worker for each period of employment which affect time spent at the Glassboro Service Association camp and periods of assignment to various farms.
5. Correspondence between Camden Regional Legal Services and Glassboro Service Association, Inc., dated August 6, 1975 and August 13, 1975.
6. We have been advised that the applicable hourly rates of pay for each year were:

1972	$1.75
1973	1.85
1975	2.30

7. We have been advised that the applicable payroll guarantee periods were:

1972—80 hours for each 2-week period.
1973—120 hours for each 3-week period.
1975—120 hours for each 3-week period.

SUMMARY OF CONCLUSIONS

We have determined that the Workers have been underpaid on various occasions, that there have been numerous violations of the contractual agreements on the part of the Employer and that the accounting procedures and controls utilized by the Employer in the maintenance of the payroll records fall short of compliance with the contract provisions as well as what are regarded as generally accepted business practices.

The accompanying schedules reflect the detailed findings in support of our conclusions.

BERNARD C. HECHT, C.P.A.—PROFESSIONAL QUALIFICATIONS

Accounting and auditing experience

Certified Public Accountant (New Jersey 1947).
Practitioner of public accounting from 1946 to 1976.
Member of the accounting faculties of:
Rutgers University Graduate School of Business Administration.
Rutgers University School of Business Administration (Undergraduate division).
Seton Hall University W. Paul Stillman School of Business.
Union College.
Executive Director of Accountants for the Public Interest.

Professional associations and other relevant experience

American Institute of Certified Public Accountants.
New Jersey Society of Certified Public Accountants.
New York State Society of Certified Public Accountants.
Beta Gamma Sigma (National honors society of colleges of business administration).
Panel of Arbitrators of American Arbitration Association.
Volunteer Probation Counselor—Union County.
Director—Low Cost Psychotherapy Plan.

Education

B. Sc. in Accounting, Rutgers University—1943.
M.B.A. in Business Administration, Rutgers University—1954.

ANGEL LUIS OCASIO TORRES, APPLICATION OF GUARANTEE PROVISION OF CONTRACT, 1972 AND 1973

The language of the guarantee provisions of the 1972 (1) and the 1973 (2) contracts is ambiguous, permitting more than one interpretation. The matter which requires interpretation is the starting date of the respective guarantee periods. Accordingly, we have presented two alternative computations.

(1) The Employer guarantees to provide the Worker with eighty (80) hours of agricultural or related work in each successive two (2) week guarantee period or to pay the Worker a sum not less than eighty (80) times the hourly or prevailing rate set forth in Article 4, whichever is greater. The guarantee shall commence at 12:01 A.M. on the day following the date upon which the Worker arrives at the place of abode or work. (Certain Agreements are subject to an initial period exception as authorized by the Secretary of Labor.)

For purposes of computation of this guarantee, work periods of less than one full week preceding and following the Employer's normal weekly payroll period shall be pro-rated at the rate of 6 hours per day, Sundays excluded.

(2) The Employer guarantees to provide the Worker with one hundred twenty (120) hours of agricultural or related work in each successive three (3) weeks guarantee period or to pay the Worker a sum not less than one hundred twenty (120) times the hourly or prevailing rate set forth in Article 4, whichever is greater. The guarantee shall commence at 12:01 A.M. on the day following the date upon which the Worker arrives at the place of abode or work.

For the purposes of computation of this guarantee, work periods of less than one full week preceding and following the Employer's normal weekly payroll period shall be prorated at the rate of 6 hours per day, Sundays excluded.

First alternative

The guarantee period begins the day after the entry date.

Second alternative

The guarantee period begins on the Friday after the entry date.

Based upon the weekly payroll records used by the Glassboro Service Association, Inc., and the member—Growers for the employees whose records were reviewed, API assumed that the employer's normal weekly payroll period began on Friday and ended on Thursday.

Under this interpretation, the Worker is guaranteed 6 hours per day for each day prior to the first Friday after the entry date.

ANGEL LUIS OCASIO TORRES

Combined summary of underpayments, 1972 and 1973

1st alternative:	
1972	$12.26
1973	73.09
Total	85.35
2d alternative:	
1972	12.26
1973	64.77
Total	77.03

NOTE.—See pages 6 and 7 for description of assumptions in alternative computations.

Summary of underpayments, 1972

Gross amount earned—	
Hourly wages and piece work [1]	$245.00
Guarantee—period to August 24, 1972	10.50
Total earnings	255.50
Gross amount paid	243.24
Balance remaining [1]	12.26
Consisting of—	
Guarantee—period to August 24, 1972	10.50
Errors in total hours week ended August 24, 1972—½ hr.	.87
Error in calculation of total hourly wages:	
13 hr at $1.75	22.75
Gross amount paid	21.86
Subtotal	.89
Total	12.26

[1] Additional amounts may be due based upon prevailing piecework rates for week ended Aug. 17, 1972. These rates are not indicated on the payroll records.

PAYROLL SUMMARY, 1972

[Entry date, Aug. 10, 1972; termination, Sept. 2, 1972]

	Wages earned	Days chargeable S	M	R	Net guaranteed amount	Amount underpaid
Guarantee period:						
From Aug. 11 to 24, 1972:						
Period ending—						
Aug. 17, 1972	$37.62					
Aug. 24, 1972	91.88					
Total for period	129.50				$140.00	$10.50
From Aug. 25, to Sept. 7, 1972:						
Period ending—						
Aug. 31, 1972	101.50					
Sept. 7, 1972	14.00		5			
Total for period	115.50		5		70.00	

Determination of guarantee under employment contract, period ending Aug. 24, 1972

August:	*Daily status*
11	Camp.
12	2 hr.
13	8½ hr. P.W.
14	2½ hr.
15	No work.
16	Do.
17	8½ hr.
18	9 hr.
19	7½ hr.
20	1½ hr.
21	9½ hr.
22	9 hr.
23	8½ hr.
24	7½ hr.

NOTE.—Chargeable days, none; basic guarantee (80 hours at $1.75), $140; reduction of guarantee, none; and net guarantee, $140.

Summary of underpayments (first alternative), 1973

Gross Wages—	
Hourly wages and piecework [1] [2]	$536.88
Guarantee—period to June 11, 1973	43.11
Gross earnings	579.99
Gross amount paid [2]	536.90
Underpayment of gross wages	43.09
Excess transportation deductions	30.00
Balance due worker	73.09

[1] Additional amounts may be due based upon applicable piecework rates for periods ended June 7 and June 9, 1973. These rates are not indicated on the payroll records.
[2] Differences due to rounding.

PAYROLL SUMMARY, 1973 (FIRST ALTERNATIVE

[Entry date, May 21, 1973; termination July 5, 1973][1]

	Wages earned	Days chargeable S	Days chargeable M	Days chargeable R	Net guaranteed amount	Amount underpaid
Guarantee period:						
From May 22 to June 11, 1973:						
Period ending—						
May 28, 1973	$25.90					
June 4, 1973	41.63					
June 11, 1973	[2] 96.56					
Total for period	164.09				$207.20	$43.11
From June 12, to July 2, 1973:						
June 18, 1973	63.83		1			
June 25, 1973	69.38		1			
July 2, 1973	98.98					
Total for the period	232.19		2		192.40	
July 3, to 19, 1973:						
July 9, 1973	83.25		1			
July 16, 1973	40.70					
July 19, 1973	16.65					
Total for the period	140.60			[3]	[3]	[3]

[1] Payroll records indicate termination date as July 5, 1976. However, employee is recorded as working as late as July 19, 1976.
[2] See comments in accompanying report concerning earnings based upon hourly rates and piecework rates.
[3] Amount in doubt.

Determination of guarantee under employment contract, period ending June 11, 1973 (first alternative)

	Daily status
May:	
22	4 hr.
23	Do.
24	No work.
25	Do.
26	6 hr.
27	No work.
28	Do.
29	9½ hr.
30	8½ hr.
31	4½ hr.
June:	
1	No work.
2	Do.
3	Do.
4	Do.
5	4 hr.
6	3 hr.
7	Refused.
8	3½ hr.
9	9 hr.
10	No work.
11	Do.

NOTE.—Chargeable days 1; reduction of guarantee, $14.80; and net guarantee, $207.20.

Basic guarantee—	
120 hours at $1.85	$222.00
Less 1 day at $14.80	14.80
Net guarantee	207.20

Schedule of transportation deductions, 1973

Total of amounts listed on individual earnings, record as weekly deductions	$97.59
Amount of transportation advanced	67.59
Overdeduction	30.00

Summary of underpayments (second alternative), 1973

Gross Wages—	
Hourly wages and piece work [1 2]	$536.88
Guarantee:	
Period to May 24, 1973	18.50
Period to June 14, 1973	16.29
Gross earnings	571.67
Gross amount paid [2]	536.90
Underpayment of gross wages	34.77
Excess transportation deduction	30.00
Balance due worker	64.77

[1] Additional amounts may be due based upon applicable piecework rates for employer payroll periods ended June 7 and June 9, 1973. These rates are not indicated on the payroll records.

[2] Differences due to rounding.

PAYROLL SUMMARY, 1973 (2D ALTERNATIVE)

[Entry date, May 21, 1973; termination, July 5, 1973][1]

	Wages earned amount	Days chargeable S	M	R	Net guaranteed amount	Amount underpaid
Guarantee period:						
From May 22 to 24, 1973: Period ending May 24, 1973	$14.80				$33.30	$18.50
From May 25 to June 14, 1973:						
Period ending—						
May 31, 1973	52.72					
June 7, 1973	51.43		1			
June 14, 1973	86.76					
Total for period	190.91		1		207.20	16.29
From June 15 to July 5, 1973:						
Period ending—						
June 21, 1973	51.08		2			
June 28, 1973	89.73					
July 5, 1973	98.98					
Total for period	240.51		2		192.40	
From July 6 to 19, 1973:						
Period ending—						
July 12, 1973	74.00		1			
July 19, 1973	16.65		6			
Total for period	90.65		7			

[1] Payroll records indicate termination date as July 5, 1976. However, employee is recorded as working as late as July 19 1976.

Determination of guarantee under employment contract, period ending May 24, 1973 (second alternative)

	Daily status
May:	
22	4 hr.
23	Do.
24	No work.

NOTE.—Chargeable days, none; reduction of guarantee, none; net guarantee (based upon 6 hours per day prior to 1st day of employer's normal workweek, $33.30.

Determination of guarantee under employment contract, period ending June 14, 1975 (second alternative)

May:	Daily status
25	No work.
26	6 hr.
27	No work.
28	Do.
29	9½ hr.
30	8½ hr.
31	4½ hr.
1	No work.
2	Do.
3	Do.
4	Do.
5	4 hr.
6	3 hr.
7	Refused.
8	3½ hr.
9	9 hr.
10	No work.
11	Do.
12	9 hr.
13	8½ hr.
14	5 hr.

NOTE.—Chargeable days, 1; reduction of guarantee, $14.80; net guarantee (basic guarantee—120 hours at $1.85—$222 less reduction of guarantee, $14.80) $207.20.

OSCAR CINTRON PEREZ

Summary of Underpayments, 1975

Gross amount earned—	
Hourly wages and piece work [1]	$2,472.97
Guaranteed:	
Period to June 12, 1975	40.98
Period to July 3, 1975	18.97
Period to October 16, 1975	19.55
Total earnings	2,552.47
Amount paid	2,513.95
Difference	38.52
Excess food deductions	15.00
Balance due [1]	53.52

[1] Additional amounts may be due based upon prevailing piecework rates for periods ending May 28 and June 4, 1975. These rates are not indicated on the payroll records.

PAYROLL SUMMARY

[Entry date, May 23, 1975; termination, Nov. 10 1975]

	Wages earned	Days chargeable S	M	R	Net guaranteed amount	Amount underpaid
Guarantee period:						
From May 23 to June 12, 1975:						
Period ending—						
May 29, 1975	$117.17					
June 5, 1975	81.05		2			
June 12, 1975						
Total for period	198.22		2		$239.20	$40.98
From June 13 to July 3, 1975:						
Period ending—						
June 19, 1975	41.40					
June 26, 1975	101.20					
July 3, 1975	114.43					
Total for period	257.03				276.00	18.97
From July 4 to 24, 1975:						
Period ending—						
July 10, 1975	155.25					
July 17, 1975	105.80					
July 24, 1975	150.65					
Total for period	411.70				276.00	
From July 25 to Aug. 14, 1975:						
Period ending—						
July 31, 1975	116.73					
Aug. 7, 1975	123.63					
Aug. 14, 1975	111.55					
Total for period	351.91				276.00	
From Aug. 15 to Sept. 4, 1975:						
Period ending—						
Aug. 21, 1975	114.43					
Aug. 28, 1975	137.43					
Sept. 4, 1975	127.65					
Total for period	379.51				276.00	
From Sept. 5 to 25, 1975:						
Period ending—						
Sept. 11, 1975	138.00					
Sept. 18, 1976	107.53					
Sept. 25, 1975	83.38					
Total for period	328.91				276.00	
From Sept. 26 to Oct. 16, 1975:						
Period ending—						
Oct. 2, 1975	92.00					
Oct. 9, 1975	18.40		2			
Oct. 16, 1975	72.45		3			
Total for period	182.85		5		202.40	19.55
From Oct. 17 to Nov. 6, 1975:						
Period ending—						
Oct. 23, 1975	105.80		1			
Oct. 30, 1975	136.85					
Nov. 6, 1975	120.18					
Total for period	362.83		1		257.60	
From Nov. 7 to 9, 1975:						
Period ending Nov. 9, 1975					(1)	(1)

[1] Amount not determined.

OSCAR CINTRON PEREZ

Determination of guarantee under employment contract, period ending June 12, 1975

	Daily status
May:	
23	No work.
24	10 hrs.
25	4 hrs.
26	6 hrs.
27	3 hrs.
28	3½ hrs.–P.W.[1]
29	3 hrs.
30	5 hrs.
31 (chargeable days, 1; reduction of guarantee, $18.40)	Refused.
June:	
1	1½ hrs.
2 (chargeable days, 1; reduction of guarantee, $18.40)	Refused.
3	P.W.
4	P.W.
5	Farm.
6	Do.
7	([3]).
8	([3]).
9	([3]).
10	([3]) ([4]).
11	([3]).
12	Camp.

[1] Wage records unclear as to days of week piecework was performed.
[2] Transferred from farm to camp.
[3] Photocopy of original referral card altered to indicate sick status.
[4] Correspondence between plaintiff's counsel and employer indicates admission of incorrect data on payroll records. Employer subsequently paid amount reflected as underpayment on payroll summary.

NOTE.—Chargeable days, 2; reduction of guarantee, $36.80; and net guarantee (basic guarantee, 120 hrs. at $2.30—$276, less 2 days at $18.40—$36.80), $239.20.

Determination of guarantee under employment contract, period ending July 3, 1975

	Daily status
June:	
13	([1]) ([2]).
14	Camp.
15	Do.
16	Do.
17	Do.[3]
18	9 hr.
19	Do.
20	Do.
21	8 hr.
22	No work.
23	9 hr.
24	Do.
25	Do.
26	Weather.
27	9 hr.
28	2½ hr.
29	No work.
30	9 hr.
July:	
1	7¾ hr.
2	10½ hr.
3	11 hr.

[1] Correspondence between plaintiff's counsel and employer indicate admissions of incorrect data on payroll records.
[2] Defendant's answer admits underpayment of $18.99. Accompanying payroll summary indicates that this applies to period ending July 3, 1975.
[3] Transferred from camp to farm.

NOTE.—Chargeable days, none; reduction of guarantee, none; and net guarantee (basic guarantee, 120 hrs., at $2.30), $276.

Determination of guarantee under employment contract, period ending Oct. 16, 1975

September:	
26	No work.
27	8½ hr.
28	8¼ hr.
29	No work.
30	6¾ hr.
October:	
1	8 hr.
2	8½ hr.
3	8 hr.
4	No work.
5	Do.
6	Do.
7 (chargeable days, 1)	Missing.
8 (chargeable days, 1)	Do.
9	Camp.
10	Do.
11 (chargeable days, 1)	Missing.
12 (chargeable days, 1)	Do.
13	(1).
14	10 hr.
15	11 hr.
16	10½ hr.

[1] Weekly payroll sheet indicates "missing." Referral card indicates transfer to farm.

NOTE.—Chargeable days, 4; reduction in guarantee, $73.60; net guarantee (basic guarantee, 120 hrs. at $2.50, less 5 days at $18.40—$92), $1.84.

Schedule of Over deductions for Food Period Ending June 21, 1975 [1]

Deduction taken for food charges, week ending June 21, 1975	$30.00
Days chargeable based upon worker's presence at farm: 5 days (June 17 to 21, inclusive) at $3.00	15.00
Overdeduction	15.00

[1] Ending date of employer's workweek.

GABRIEL TORRES RONDON

Summary of Overpayments, 1975

Gross amount earned:		
Hourly wages and piece work		$1,024.23
Guarantee:		
Period to May 9, 1975	53.47	
Period to July 11, 1975	12.05	
Total earnings		1,089.75
Gross amount paid		1,095.52
Amount overpaid		5.77
Consisting of—		
Guarantee:		
Period to May 9, 1975	53.47	
Period of July 11, 1975	12.05	
Compliance payments	32.20	
	39.10	
Subtotal		71.30
Rounding differences, net		.01
Total		5.77

PAYROLL SUMMARY

[Entry date, Apr. 19, 1975; termination, July 12, 1975]

	Wages earned	Days chargeable S	M	R	Net guaranteed amount	Amount underpaid
Guarantee period:						
From April 19 to May 9, 1975:						
Period ending—						
Apr. 25, 1975						
May 2, 1975	$17.83		4			
May 9, 1975	131.10					
Total for period	148.93		4		$202.40	$53.47
From May 10 to 30, 1975:						
Period ending—						
May 16, 1975	136.85					
May 23, 1975	92.00					
May 30, 1975	94.30					
Total for period	323.15				276.00	
From May 31 to June 20, 1975:						
Period ending—						
June 6, 1975	121.90					
June 13, 1975	57.60					
June 20, 1975	108.70					
Total for period	228.20				276.00	
From June 21 to July 11, 1975:						
Period ending—						
June 27, 1975	69.45					
July 4, 1975	93.95					
July 11, 1975	111.55					
Total for period	263.95				276.00	12.05

Gabriel Torres Rondon Determination of guarantee under Employment Contract, period ending May 9, 1975

	Daily status
April:	
19	Camp.
20	Do.
21	Do.
22	Do.
23	Do.
24	Do.
25	Do.
26	7¾ hrs.
27 (chargeable days, 1; reduction of guarantee $18.40)	Refused.
28 (chargeable days, 1; reduction of guarantee $18.40)	Do.
29 (chargeable days, 1; reduction of guarantee $18.40)	Do.
30 (chargeable days, 1; reduction of guarantee $18.40)	Do.
May:	
1	No work.
2	Do.
3	11 hrs.
4	3 hrs.
5	9 hrs.
6	8½ hrs.
7	6½ hrs.
8	9 hrs.
9	10 hrs.

NOTE.—Chargeable days, 4; reduction of guarantee, $73.60, and net guarantee (basic guarantee, 120 hrs. at $2.30—$276 less 4 days, at $18.40—$73.60) $202.40.

Determination of guarantee under employment contract, period ending July 11, 1975

	Daily status
June:	
21	4½ hr.
22	2 hr.
23	4¾ hr.
24	5¼ hr.
25	6 hr.
26	No work.
27	4 hr.
28	No work.
29	Do.
30	9½ hr.
July:	
1	Do.
2	Do.
3	8 hr.
4	No work.
5	5 hr.
6	No work.
7	9½ hr.
8	Do.
9	5½ hr.
10	9½ hr.
11	Do.

NOTE.—Chargeable days, none; reduction of guarantee, none; net guarantee (basic guarantee, 120 hrs. at $2.30), $276.

Notes on transportation charges deducted from worker, 1975

Payroll period ending Apr. 28:	
Gross wages	$17.83
Allowable deduction	5.00
Deduction taken	------
Payroll period ending May 8:	
Gross wages	108.10
Allowable deduction	39.00
Deduction taken	59.20

NOTE.—The above deductions were in excess of those permitted under article 7 of the employment contract.

GENERAL COMMENTS

A. Maintenance of wage records

In many cases there are violations of Article 5, Sections D and G which provide that:

Item 1. Where a worker refuses to work, the record shall disclose the number of hours involved and the reason for the refusal.

Findings. In every one of the 12 instances where a Worker is marked as refusing work, no indication is given of the hours involved or the reason for the refusal.

Item 2. The type of crop work performed shall be reflected and piece rates set forth.

Findings. Out of 19 days of piece work, the applicable rates were not shown 14 times and the type of crop work was not shown 19 times. (The exact number of days is estimated since, in several instances, weekly totals of pieces picked were shown with no breakdown by days. In no instance of hourly work was the type of crop work indicated.

Item 3. If earnings on piece rates for a pay period do not equal the hourly rate, the Employer shall pay the difference.

Findings. Hours worked while doing piece work were seldom shown, making it impossible to calculate earnings of Workers when piece work would result in earnings greater than at hour rates.

B. Transportation

Transportation indebtedness was to be deducted according to a schedule as required by the employment contracts. Gabriel Torres Rondon owed $59.20 for airflight from Puerto Rico to the mainland. The Employers did not adhere

to the schedule for deductions. The entire amount was deducted from one pay check.

C. The Payroll System

The employment contracts which are the subject of this review are complex. The number of Workers served by the payroll system is large. Considering these two facts, it must be concluded that a manual accounting system for payroll is less than desirable. Mechanization of the system to the extent of using a simple posting machine, as is apparently the case here, does not meet the standards of accuracy, economy or efficiency which are required by any large scale enterprise.

Errors in calculations, incorrect payroll tax deductions and failure to comply with requirements of the employment contracts are all present in this matter.

It is our opinion that the payroll system utilized by the Employer is inadequate. It would be our recommendation that a computer based system of payroll accounting, with good internal controls, be installed by the Employer.

APPENDICES

Procedures in Application of Guarantee Provisions and Calculation of Amounts Due to Workers 1972, 1973 and 1975

1. Determine guarantee periods.
2. Calculate net guaranteed wages due Workers for each guarantee period. (Net guarantee is number of guaranteed hours at contract rate less deduction at contract rate for 8 hours for each day chargeable against Worker. A chargeable day is a day Worker is sick, missing, or refuses to work. If Worker is offered seven consecutive days of work he may not be charged with one day of absence for any cause.)
3. Calculate wages earned for hours worked or pieces picked.
4. Calculate excess of amount of net guaranteed wages due (item 2) over wages earned (item 3), if any.

Guaranteed hours:

Times hourly contract rate.
Equals basic guarantee.
Less chargeable days at 8 hours at contract rate.
Equals net guarantee.

APPLICATION OF FORMULA

	1972	1973	1975
Guaranteed hours	80	120	120
Times hourly contract rates	$1.75	$1.85	$2.30
Equals basic guarantee	140.00	222.00	276.00
Less chargeable days at	14.00	14.80	18.40
Equals	Amount of net guarantee		
Less	Wages earned		
Equals	Amounts underpaid		

FACTORS USED IN DETERMINATION OF BASIC AND NET GUARANTEES

	1972	1973	1975
Guaranteed hours [1]	80	120	120
Hourly contract rate	$1.75	$1.85	$2.30
Basic guarantee:			
80 hr, at $1.75	140.00		
120 hr, at $1.85		222.00	
120 hr, at $2.30			276.00
Deduction for chargeable day:			
8 hr, at $1.75	14.00		
8 hr, at $1.85		14.80	
8 hr, at $2.30			18.40

[1] Based upon 2-week period in 1972 and 3-week period in 1973 and 1975.

EXHIBIT III has been retaind in Committee files.

[EXHIBIT III—Table of Violations incurred by Garden State in payrecords inspected for the years 1971, 1972, 1973, 1974.]

EXHIBIT IV

SERVICIOS LEGALES DE PUERTO RICO,
Rio Piedras, P.R., August 28, 1975.

MR. FRANK B. MERCURIO,
Employment Standards Administration, U.S. Department of Labor—Region II, New York, N.Y.

DEAR MR. MERCURIO: This is in answer to your letter of August 19, 1975, answering our inquiry of August 6, 1975. I appreciate your reply to our inquiry and would like to reiterate our offer made to you on our telephone conversation of August 21 concerning our willingness to fully cooperate with the Wage and Hour Division to insure that the Farm Labor Contractor Registration Act is properly implemented in our area.

It is our opinion that the Farm Labor Contractor Act clearly extends to cooperatives performing the functions of crew leaders. It is also clear to us that this coverage is not a result to the recent amendment to the Act, but was clearly contemplated in the original version of the Act approved in 1963. I would like to focus your attention on 29 CFR, Sec. 41. The interpretations of the Farm Labor Contractor Registration Act of 1963 found in the Federal Register concerning the application and coverage of the Act appeared in the Federal Register on *March 6, 1965.* On the pertinent part, 29 CFR, Sec. 41.17, the regulations are clear as to coverage of cooperatives: "The Act will not exclude any farmers' cooperative performing any of the farm labor contracting activities in behalf of its members, unless said association is a farmer, processor, etc., and is employed in contracting activities solely on its own behalf as such".

According to this interpretation of the statute, it is not only Rubén Natal, Diego Ortíz Ortíz and Hiram Monteverde who must apply for a certificate of registration. Garden State itself, as an entity, must have a certificate of registration. Its president, Mr. Arthur West, is a farm labor contractor insofar as he executes the recruitment and contracting policy of the Garden State Services Cooperative Association and its members. He also has the ultimate authority over the activities of the 3 recruiting agents in Puerto Rico and has delegated authority from Glassboro Service Association and Farmers and Gardeners, growers associations in New Jersey, to enter into agreements with the Puerto Rico Secretary of Labor.

If our contention is correct, Garden State Services Cooperative Association was in violation of the Farm Labor Contractor Registration Act for a period of 12 years. The frequency and extent of the violations that Garden State has incurred in are of such considerable nature that an investigation of the practices of Garden State, its president, its recruiting agents in Puerto Rico and the growers associations using their services is unavoidable. I will detail a number of the most common violations incurred into by said cooperative association during the past 12 years:

1. Section 2043(a)—Not carrying in his possession the certificate of registration while engaging in his functions as a recruiter.
2. Section 2043(b)—Not having a certificate valid and in full force and effect.
3. Section 2043(c)—Engaging the services of any farm labor contractor without determining that said farm labor contractor possesses a certificate from the Secretary of Labor.
4. Section 2045(2)—Failing to disclose workers at the time of recruitment information with regard to the crops and operations on which he may be employed.
5. Section 2045(b)(8)—Failure to inform and disclose information required by law in a language in which the worker is fluent and written in a manner understandable by such workers.
6. Section 2045(c)—Failure to post in a conspicuous place a written statement of the terms and conditions of the employment.
7. Section 2045(d)—Failure to post in a conspicuous place the terms and conditions of occupancy with regard to the housing facilities.
8. Section 2044(d)(4)—Failure to comply with agreements entered into with farm workers. The contract violations in this area have been numerous and repetitious. I will enumerate some of the most common contract violations:

(a) Article 3—The contract stipulates that the employer guarantees to provide the worker with 120 hours of agricultural or related work in each successive 3 week period or to pay the worker a sum not less than 120 times the hourly or prevailing rate set forth in Article 4 of the contract, whichever is greater. We have found that in cases where the worker was provided with less than the 120 hours of work, Garden State repeatedly failed to pay the worker the sum required by Article 3(a) of the contract.

(b) Article 3(b)—This article requires that the employer shall advance against the guarantee a sum sufficient to result in a net payment to the worker of at least $25.00. This disposition is almost universally violated by Garden State.

(c) Article 4(a)—Said article requires that the worker be furnished with a written record of hours worked and, earnings and deductions which shall conform with the requirements found in Article 4(g)(1), (2) and (3). Those three sections of Article 4 clearly specify that the worker must receive at the end of each week the pay period record which will include the number of hours worked each day by the worker, the number of hours worked on a piece rate basis and the number of pieces picked each day. Never have workers working for Garden State been provided with this information.

(d) Article 4(d)—This article provides that the worker may work on a piece rate basis. In the event he works at piece rate basis he will receive compensation that in no event will be less than what he would have earned if he had worked the number of hours he worked on piece rate on an hourly basis. We have found that when workers work on piece work basis for Garden State and earn less than what they would have earned had they worked on an hourly basis, they never receive the difference, as required by the contract.

(e) Article 6(d)—This article provides that Garden State is obliged to furnish 3 adequate hot meals per day to the worker if he is not provided with facilities to cook his own meals. This is another article commonly violated by Garden State. On many occasions workers are provided with only one hot meal a day.

9. 29 CFR Sec. 40.28—Failure to comply with the provisions of the Fair Labor Standards Act of 1938 and the regulations governing the deductions for transportation of migrant farm workers. We have found that Garden State very frequently deducts from the workers' pay the moneys owed for transportation by him during the first 3 or 4 weeks of his employment. The result of this practice is that in many cases the pay received by the worker is less than the federal minimum wage.

I have only mentioned those violations that are frequent enough so as to establish a clear pattern of violations. These violations in fact are regularly incurred into by Garden State. In view of the information provided by your office with regard to the fact that Garden State had applied for a certificate of registration on July 28, 1975, I am hereby formally requesting your office pursuant to the provisions of 29 CFR, section 40.12, that the Employment Standards Administration conduct an investigation of the aforementioned practices of Garden State Services Cooperative Association prior to deciding whether to extend them a certificate that will authorize them to continue activities that are clearly in violation of the Farm Labor Contractor Registration Act.

Most of the violations referred to in this letter are easily checked by analyzing and auditing records kept by Garden State Services Cooperative Association during 1971, 1972, 1973, 1974 and 1975. I specifically refer to the violations concerning excessive deductions, failure to comply with guarantee provisions, failure to pay the difference between the hourly rate and the piece work rate, failure to provide records including the number of hours worked each day by the worker, failure to provide the worker with information in a language he may understand concerning the conditions of employment and failure to keep records as required by law and the contract.

On March 19, 1975, the U.S. District Court for the District of Columbia declared impartial summary judgment in the case of Alexander B. Brennan, Civil Action No. 761-74, that the Department of Labor's failure to enforce the requirements of the Farm Labor Contractor Registration Act through the pursuit of administrative, civil, or criminal penalties, constitutes an abuse of discretion under law. The tendency prevailing during the past years has been reversed by said opinion. It is clear that a voluntary compliance program as set forth in 29 CFR, Sec. 40.15 is no longer held to be in compliance with the law. Therefore, we urge the Regional Administrator of the Employment Standards Agency to take immediate steps to enforce the requirements of the Farm Labor Contractor Registration Act through the pursuit of administrative, civil or criminal penalties. We are

formally requesting that a hearing be held where evidence may be presented by all parties with interest so that the Regional Administrator will be guided in his determination as to the qualifications of the Garden State Services Cooperative Association to be issued a certificate of registration pursuant to the provisions of the Farm Labor Contractor Registration Act. Until such action is taken and the investigation requested in this letter is concluded, we contend that it would be a clear violation of the Farm Labor Contractor Registration Act to issue a certificate to Garden State.

Our office reiterates its offer of fully cooperating and providing information which may be used by the United States Department of Labor with regard to this matter.

Yours truly,

SALVADOR TIO,
Director, Puerto Rico Migrant Legal Services.

EXHIBIT V

SERVICIOS LEGALES DE PUERTO RICO,
Rio Piedras, P.R., February 20, 1976.

MR. ROBERT BROCK,
Chief, Farm Labor Enforcement,
Employment Standards Administration, Washington, D.C.

DEAR MR. BROCK: On December 29, 1975 I received a letter from Herman Badillo. Attached to this letter he sent copies of the correspondence sent by Mr. Frank Mercurio to Mr. Badillo's office wherein he stated his justifications for extending a certificate of registration as required by the Farm Labor Contractor Registration Act to the Garden State Services Cooperative Association. I am writing this letter in order to offer evidence concerning the violations of Garden State to the Farm Labor Contractor Registration Act and the agreements entered into with Puerto Rican migrant farm workers. Before I analyze and outline the documental I am submitting, I would first like to refer myself to the letter of December 24, 1975 addressed by Mr. Mercurio to Congressman Badillo.

The main argument set forth in the letter referred to is the fact that refusing certification to Garden State would have had the effect of barring further referral activity by Garden State until the date of issue. According to Mr. Ponturiero this would have affected immediately the Puerto Rican employees on the scene, some additional employees the Association was about to bring up and the growers in the area. The result would have been that workers presently in the area would have not been able to assure return transportation upon completion of the contract and employment opportunities for Puerto Rican workers about to be hired would have been lost.

It should be pointed out that in our letter of August 28, 1975 to Mr. Mercurio we requested that an investigation be made prior to issuing a certificate of registration to Garden State and that a hearing be held where evidence may be presented concerning the allegations made in the letter of August 28. In a subsequent meeting that I had with Mr. Anthony Ponturiero at the Regional Office of the Employment Standards Administration in New York I indicated to him that the Employment Standards Administration had two possible means of enforcing the Farm Labor Contractor Registration Act. One of them was to deny the certificate; the other was to impose penalties on Garden State for the violations to the Farm Labor Contractor Registration Act. I clearly indicated to Mr. Ponturiero that it was not the purpose of our complaint to bar Garden State Services Cooperative Association from using the interstate recruitment system of the Wagner-Peyser Act. Rather it was our main purpose to have the Employment Standards Administration impose penalties on Garden State for frequent violations to both the Act and agreements entered into with Puerto Rican migrant farm workers.

Clearly Garden State had been covered by the provisions of the Farm Labor Contractor Registration Act since 1963. The fact that Garden State had failed to request a certificate of registration would not bar them from recruiting Puerto Rican migrant farm workers for a period of 12 years. As it turns out, after the decision was made by the Wage and Hour Division to issue a certificate of Registration either on late September or early October, 1975, very few workers

were recruited by Garden State during October as this was the final month of the season. The effect of a denial or a postponement of the issuance of the certificate would have had a negligible effect on the employment opportunities of Puerto Rican farm workers. Surely, if the Wage and Hour Division had allowed close to 100,000 workers to be recruited by Garden State without a certificate, the recruitment of 60 additional workers for the 1975 season could not have had such an outstanding effect on their law enforcement sensibilities. It appears that the Wage and Hour Division had a double standard when it comes to enforcing the Act. The recruitment of more than a 100,000 workers without a certificate was not good cause for either failing to issue one or imposing penalties. The fear, on the other hand, that Garden State would recruit 30 workers without a certificate was considered to be reason enough to issue one hastily.

Mr. Mercurio's letter would have us believe that the protection of the rights of Puerto Rican migrant farm workers to secure transportation expenses upon returning to Puerto Rico was one of the main reasons why they failed to properly enforce the Farm Labor Contractor Registration Act. This conclusion is based upon the premise that if they have not issued a certificate, workers would have lost their rights guaranteed by a contract to receive return transportation to Puerto Rico upon completion of said contract. This conclusion flies in the face of logic. Clearly a refusal to issue a certificate or the imposition of penalties would not have had the effect of impairing the contractual obligations between Garden State and Puerto Rican migrant farm workers.

There was no immediate urgency to issue a certificate of registration without doing a thorough audit of the records of Garden State in order to determine compliance with the agreement, Farm Labor Contractor Registration Act and the Fair Labor Standards Act or allowing for a hearing where we would have had a chance of presenting evidence in support of our position, some of which is made an enclosure to this letter. In fact, the opportunity to present evidence was afforded Garden State and Migration Division of the Commonwealth of Puerto Rico; parties with a clear-cut stake in maintaining the status quo concerning the uninterrupted flow of Puerto Rican migrant farm workers. Findings were made concerning the fact that Garden State was in compliance with both contracts and the law by relying on information supplied by the Commonwealth of Puerto Rico without really investigating the adequacy of the complaint resolution procedure of said agency. Even after issuing a certificate of registration the Wage and Hour Division could have held a hearing which would not have "jeopardized the welfare of several thousand Puerto Rican employees now working in New Jersey." Failure to have done so implies an excessively permissive attitude towards known violators of the Crew Leader Act and was certainly not the type of enforcement activity Congress had in mind in enacting the amendments of 1974 to the Farm Labor Contractor Registration Act.

It was clear from Mr. Mercurio's letter of December 24, 1975 that Garden State had long operated without certificate of registration required by law. Such an operation would have in itself constituted a ground for imposing penalties on Garden State.

With this letter we are submitting evidence that conclusively shows that Garden State incurred in the same types of violations that the investigation made by the Wage and Hour Division was unable to discover. We have made an analysis of the records that we have been able to obtain from Garden State only through discovery procedure; as they refused to provide us with copy of such records prior to instituting legal action. We have made an analysis of all the records in our possession from 1971 to 1974 and have looked in them for the kinds of violations that can be discovered merely by looking at the record. There are many other violations that can only be documented with testimony by workers as these relate to matters that never come up in the records. The records do, however, provide an adequate sampling of some of the violations referred to in our letter of August 28, 1975. Although several sheets detailing the violations page by page are made a part of this letter, I will proceed to enumerate and describe the types of violations referred to in said sheets:

(1) Excessive deductions for transportation in violation of the Fair Labor Standards Act.

The minimum wage for agriculture was $1.30 per hour for 1971, 1972, 1973. In 1974 it was increased to $1.60. The first column on the contract violations sheets shows the pages pertaining to each year where Garden State made excessive deductions for transportation in violation to 29 CFR 531.32. The way we have proceeded to determine where excessive deductions for transportation

were made is to substract the amount held in trust for transportation from the gross earnings and to divide the difference between the number of hours worked during that week or pay period. The pages enumerated in that column represent the weeks where the workers minimum wage was undercut by excessive deductions in transportation. (See attached copy of Training and Employment Service Program Letter No. 2846 where the method for determining the existence of said violations is explained).

(2) Piece Work Pay Violations.

Article 5-d of the agreement approved by the Puerto Rico Secretary of Labor (see attached copy) provides that if earnings on piece rates for a pay period do not equal the hourly rate, the employer shall pay the difference at the next pay date. We have not found many instances where the worker, hired on piece rate, earned less than the hourly rate. On instances, however, where we would find that working on piece rate made him earn less than the hourly rate, we also found that he was never paid the difference during the next pay period. In some instances it was impossible from the records to establish whether said article was complied with because records were unduly kept and would not show the number of hours the workers had worked on piece rate.

(3) Contractual guarantee violations.

Article 4-a of the contract establishes the right of the worker to be offered a minimum of 120 hours of agricultural or related work in each successive three week period. We found that in most instances the worker is offered a minimum of 120 hours every three weeks. We also found that in those cases where he was not offered the 120 hours guaranteed, he was never paid the diffeernce between 120 and the number of hours he was actually offered for this three week period.

(4) Excessive Transportation Deductions.

It is unnecessary to consider the contractual transportation deduction clause the provisions of the Fair Labor Standards Act supersedes it.

) Payroll Records Unduly kept.

The most common violations to this section are the following:

(*a*) Failing to record the number of hours worked each day. (Article 5-g-1).

(*b*) Failure to disclose the reasons for not recording the number of hours worked in any particular day. (Article 4-g-1).

(*c*) Failure to set forth the number of units of work performed by the worker. (Article 4-g-2).

(*d*) Failure to disclose the piece rate. (Article 5-g-2).

(*e*) Failure to disclose the hourly rate (Article 5-e).

(*f*) Failure to disclose the actual number of pieces picked. (Article 4-g-2).

(6) Failure to provide the worker with records as required by Article 5-a.

The agreements for 1971, 1972, 1973 and 1974 included a provision that required the grower to provide the worker with a weekly statement of the number of hours worked each day. The 1975 agreement was amended so as to eliminate the requirement that the number of hours worked each day be itemized. During all the years prior to 1975 Garden State universally violated the rights of migrant farm workers as guaranteed by said clause. Instead of providing the worker with the number of hours worked each day he was only provided with a weekly stub that only included the number of hours worked each week. Enclosed you will find sample copies of the stubs provided workers in 1973.

We have required from Garden State to provide these workers with the records detailing the information which they had a right to receive but were never offered. Our requests for these records have been denied by Garden State.

(7) Interference with the attorney-client relationship and retaliatory action against workers who commenced legal action against Garden State.

During the 1974 season we began to receive typewritten letters from workers who had filed legal action against Garden State and who were presently engaged in agricultural work with the members of said association, indicating that they had never authorized our office to institute legal action on their behalf. An investigation was made by our staff concerning this situation and we found that Garden State had been either making promises to and/or intimidating workers in order to have them sign these letters which had been prepared by the Glassboro Service Association, a member of Garden State. A formal complaint was signed by one of these workers, Domingo Díaz Fuertes, against Milton Laning, doing

business as Laning Brothers, and Glassboro Service Association with the Puerto Rico Secretary of Labor. A hearing was finally held only after the Puerto Rico Secretary of Labor was about to be held in contempt by the Humacao Superior Court for failing to hold a hearing to investigate the alleged practices of Garden State.

On January 30, 1976 the Puerto Rico Secretary of Labor issued findings of fact in which he determined that the alleged improper conduct had, indeed, taken place. We attach a copy of the resolution of the Puerto Rico Secretary of Labor concerning this matter.

In addition to the documentary evidence we have submitted we have received numerous complaints from migrant farm workers alleging the following contract violations:

(a) Illegal termination of employment:

In response to complaints by migrant farm workers who represent to us that they have been fired by Garden State in violation of Article 3 of the agreement, we filed 28 cases alleged illegal termination from employment in the Puerto Rico Courts.

(b) Overtime:

We have also received complaints from workers who stated that they have been forced in excess of eight hours a day or forty-eight hours a week in violation of Articles 6-a and 6-b of the agreement.

(c) Failure to provide return transportation to Puerto Rico upon completion of the contract. Article 9-c.

(d) Failure to provide return transportation and $20.00 subsistence if the worker is declared physically unfit for employment. Article 13-h.

We believe that the documentary evidence we are submitting amply shows that there is a pattern of violations by Garden State and its members to rights guaranteed Puerto Rican migrant farm workers by federal law and the agreement. In view of this we request that the Wage and Hour Division of the Employment Standards Administration take the following steps:

1. Impose a penalty on Garden State and its members for each and every violation to the permissible deductions of the Fair Labor Standards Act as found in the records submitted herewith.

2. Appointing an impartial CPA who would conduct a thorough audit of the records of Garden State in order to determine whether there had been additional violations to the ones presented herewith.

3. Submit final copy of the audit to the undersigned and to the House Subcommittee on Agricultural Labor and to the Senate Subcommittee on Migratory Labor.

4. Hold hearings in Puerto Rico in order to compile testimony and evidence by Puerto Rican migrant farm workers and other parties with interest concerning violations of the Farm Labor Contractor Registration Act, Fair Labor Standards Act and the agreement.

5. Conduct spot checks during the 1976 season to insure compliance of Garden State with the Fair Labor Standards Act, the Farm Labor Contractor Registration Act and the agreement.

6. Refuse to issue a certificate of registration for the 1977 season or suspend the certificate to be issued for the 1976 season if Garden State shows noncompliance with the law and the agreement.

7. Condition the issuance of a certificate for the 1976 season upon Garden State's commitment that they will supply copies of the records of migrant farm workers from Puerto Rico when the request is either made by the worker directly or through his authorized legal representative. These records should be supplied at no cost to the worker.

It is not our interest that Puerto Rican migrant farm workers be deprived of employment opportunities in the United States. It is, however, the interest of hundreds of Puerto Rican migrant farm workers who have retained our services that their rights as guaranteed by statutes and contract be abided by. It is with this interest in mind that we request the Wage and Hour Division to adequately enforce the laws whose enforcement it has been charged with.

Sincerely,

SALVADOR TIO,
Director, Puerto Rico Migrant Legal Services.

EXHIBIT VI

OFFICE OF ECONOMIC OPPORTUNITY,
Washington, D.C., March 27, 1974.

SALVADOR TIO,
Executive Director, Puerto Rico Migrant Legal Services,
Calle Hatillo No. 6,
Hato Rey, P.R.

DEAR SAL: Arthur West called me from Puerto Rico and again when he got back to New Jersey concerning your meeting. He was quite pleased with the meeting and said that Mr. McTighe reported "considerable progress."

The purpose of this letter is to thank you for your spirit of cooperation with this office. I genuinely appreciate your efforts to respond to Mr. West's complaints and I'm certain that this attitude, as well as your professionalism, impressed West and McTighe.

Thanks again.

Sincerely,

FRANCIS J. DUGAN,
Director of Operations,
Office of Legal Services.

EXHIBIT VII

APRIL 23, 1974.

Mr. ARTHUR D. MCTIGHE,
General Counsel, Garden State Service Corporative Association, Inc., The Farmhouse, Trenton, N.J.

DEAR MR. MCTIGHE: On April 9 I met with Mr. Alan Perl and Mr. Ralph Muñiz in order to discuss with them several matters, among which was administrative procedures to be followed by our program in the handling of wage claims. I mentioned to them the fact that I had had a conversation with you and Mr. West with regard to the possibility of establishing a procedure according to which Puerto Rico Migrant Legal Services could process complaints administratively. I feel that the establishment of such a procedure is possible, but I believe that we will have to sit down and discuss all the particular details before we can reach a final agreement.

As you are probably aware of, our first priority is servicing the needs of our client community in the best possible manner. Insofar as the establishment of such a procedure would not adversely affect the increases and rights of our client community, we are perfectly willing to follow any procedure that does not interfere adversely with the needs of our client community.

I will be in the States on May 5 and will stay there for as long as 9 or 10 days. That means that I will be able to meet with you in New Jersey on the 13th, so that we can discuss all the details with regard to the procedure to be established. I am presently preparing a rough draft on an agreement or understanding that will govern our future dealings with regard to complaints by migrant farmworkers. I believe that it would be productive if both the Migration Division and Camden Regional Legal Services were present at that meeting.

I have discussed your proposal with my staff, as well as the Migration Division, and I believe that an initial part of such an agreement would include:

(1) Receiving copy of the pay records for every claim that we file with regard to Garden State Service Cooperative Association. The records that the Association sends to the Migration Division would not be adequate. We are interested in the records that you keep that are individualized for each worker. It would be understood that a complaint sent with the retainer would warrant your sending copy of said record.

(2) Right of Access—In order to be able to process as many claims as possible, the personnel of Puerto Rico Legal Services, Migrant Division, would be allowed the right to enter any camp pertaining to a farmer who is a member of the Association during reasonable hours.

(3) All claims should be processed by the Association within a 15 days period, upon the termination of which Puerto Rico Legal Services, Migrant Division, will feel completely free to institute any legal action it deem necessary in representation of the rights of its client community.

(4) The provisions of this agreement will only cover cases involving accounting problems, eg.:

(*a*) improper deductions
(*b*) the guarantee
(*c*) non-payment of work hours, etc. This will in no way limit the rights of our client community to institute any type of legal action for damages arising from the same nucleus of operative facts.

(5) Those claims involving constitutional rights will not be subject to this administrative procedure.

(6) Puerto Rico Legal Services, Migrant Division, would feel free to terminate the agreement if the Association would not comply with any of the five preceding conditions.

I should add that I am in full agreement with Mr. Frank J. Duggan, of the Office of Legal Services, in regard to the suggestion that the Office of Legal Services be a party to the agreement. The only parties to the agreement should be those who are actually parties. That would only leave the Association, the migrant farmworkers represented by Puerto Rico Legal Services, Migrant Division, and, in some occasions, the Migration Division of the Puerto Rico Department of Labor.

Recently, Mr. Garofalo sent a letter to one of the program attorneys informing him that the Association did not feel obliged to send the pay records of workers since it had been agreed upon by you and myself that the Association would not have to furnish those records. I would like to clarify that no such agreement was arrived at. You merely informed me that the Association did not have to send those records since the Migration Division had them all and could send them to us. I checked with Mr. Ralph Muñiz and the records that they have are not the records we are primarily interested in. The records[1] that we are interested in are those a copy of which I am sending you with this letter. These records would be invaluable to us and would also serve the purpose of allowing us to determine whether the allegations made by farmworkers are accurate.

I hope to see you in May.

Sincerely,

SALVADOR TIO
Director, Migrant Division.

EXHIBIT VIII

SEPTEMBER 3, 1974.

Mr. FRANK DUGGAN,
Director of Operations, Office of Economic Opportunity,
Executive Office of the President,
Washington, D.C.

DEAR FRANK: Thank you for your letter concerning the allegations of Garden State Service Cooperative Association.

As it is stated in the article that was sent to you by Mr. West, we have been very active filing lawsuits against growers and growers associations in the Eastern United States. Most of these lawsuits involve the following contract violations:

1. Firing
2. Retaliatory firing
3. Transportation
4. Overtime
5. Wage claims

We have tried to establish a procedure whereby workers' complaints may be negotiated prior to the filing of suits. We have been unable to reach such an agreement with Garden State. I met with Mr. McTighe, General Counsel to Garden State, recently, as well as with Mr. Oronte Oliveras Sifre, Esq., attorney for Garden State in Puerto Rico. We discussed again the possibility of establishing a procedure for the negotiation of workers' claims. We have not reached an agreement as to what kind of procedure we should allow for the following reasons:

1. Almost all the cases that we have filed for an allegation concerning the overtime pay to migrant workers, Garden State has stated that they are not going to pay overtime due their workers. It is our position that they are legally respon-

[1] Records available in Committee files.

sible for overtime pay for work performed in excess of 8 hours a day, 48 hours a week and for work performed during the seventh day of rest. This matter will eventually be decided by the Puerto Rico Supreme Court. Until that happens those cases containing overtime allegations can not probably be settled.

2. We could not reach an agreement with regard to Article 10 C of the contract which provides that a violation to any of the clauses of said contract would constitute a material violation of the same. This clause also provides that the farmer or grower is liable to the worker for the entire guarantee in the case of such violation. We contend that in cases where there has been a clear violation of the contract Garden State must pay the worker the full guarantee. This issue will also have to be decided by the Puerto Rico Supreme Court and would preclude the possibility of establishing a procedure for the settlement of workers' claims concerning said issue.

It has been our experience that the majority of the workers interviewed by our staff have clear contract violations. It is our professional responsibility to attend these claims in the manner that most effectively protects and defends the rights of migrant farmworkers. Our work program clearly indicates that part of our legal strategy to insure compliance with agricultural contracts is to file as many cases as we can in Puerto Rico courts. We believe that this is one of the most effective ways in which we can actually have an impact in the conduct of growers and growers associations. I believe we already have; as witnessed by the several letters addressed to you by the officials of the Garden State Service Cooperative Association.

I appreciate very much your intervention with regard to this matter and I welcome any evaluation by your office that will help to clarify this matter completely.

If I can be of any further assistance, please let me know.

Sincerely,

SALVADOR TIO,
Director, Migrant Division.

EXHIBIT IX

THE SHADE TOBACCO GROWERS AGRICULTURAL ASSOCIATION, INC.,
Windsor, Conn., October 26, 1976.

Attorney SALVADOR TIO,
Oficina Del Director Ejecutivo, Calle Hatillo No. 6, Hato Rey, Casilla Postal BT, Rio Piedras, P.R.

DEAR SAL: I have had several letters recently, copies attached, from your office in Caguas. I am glad to see that the gentlemen's agreement we made in July is being lived up to. It would be helpful if each letter from any of your Legal Services' attorney contained or was accompanied by written authorization from the worker with his Social Security number, name and year of employment.

I would also appreciate it if you could inform all of your staff that it is not necessary to take an adversary position until such time as we get to court, if that ever happens.

I understand that a suit has been initiated against the Frederick County fruit growers over the 5¢ deduction for insurance. I always knew that jurisdiction would probably rest in the courts of Puerto Rico despite what the contract said.

Sincerely yours,

ANTHONY F. AMENTA,
Executive Director.

SERVICIOS LEGALES DE PUERTO RICO, INC.,
Caguas, P.R., October 21, 1976.

Re: Julio Román González, SS No. 584-72-9327.

SHADE TOBACCO GROWERS AGRICULTURAL ASSOCIATION,
River Street, Windsor, Conn.

DEAR SIRS: Article 7C(1) of the contract signed between the above worker and Shade Tobacco in 1974 established that once a worker had ended half of the term of his contract he was entitled to an advance payment of $10.00 weekly due to transportation.

We have been checking Mr. Roman's weekly payment's sheets and we have seen that you didn't comply with Article 7C(1) in this case.

Please check your records and inform us, otherwise we would have to use the judicial channels if you don't convince us supplying the pertinent documents or if we don't receive answer of this letter.

Cordially yours,

RAFAEL H. MARCHAND,
Esquire.

SERVICIOS LEGALES DE PUERTO RICO, INC.,
Caguas, P.R., October 18, 1976.

Re Silverio Rivera Vargas.

SHADE TOBACCO GROWERS AGRICULTURAL ASSOCIATION,
River Street, Windsor, Conn.

DEAR SIRS: Attorney Salvador Tió, Coordinator of P.R. Legal Service Migrant's Program has told us that when there's a possible judicial case with Shade Tobacco, first request the reclamation extrajudicially.

This letter has this purpose. Mr. Rivera Vargas was a farm worker for your company in 1973. He got disable to work. He had a series of contractual rights, one of it was that in case that a worker get disable to work they are entitle to payment of cost of transportation back to Puerto Rico. He didn't receive that. Also he didn't receive the fifteen dollars he was entitled to.

Please be inform of this, and send to us what Mr. Rivera Vargas was entitled to, otherwise we would have to use other channels.

Cordially yours,

RAFAEL H. MARCHAND,
Esquiere.

Exhibit X has been retained in the Committee files

[Exhibit X—Trade of administrative complaints filed by P.R.M.L.S. in the Puerto Rico Labor Department.]

EXHIBIT XI

The year quoted refers to the year of the contract.

1. a. Eleuterio Correa Rivera, 74–1962, District Court of San Juan, 1973.

b. *Violations.*

1. Violation of article which declares that worker should be sent home when he is physically unfit—Article 11B.
2. Transportation and diet of $15—Article 11B.
3. Unauthorized deductions for food, thermos, group insurance.

c. *Damages.*

1. $500—Compensatory damages.
2. $500—Moral damages.
3. 108—Article 11B—Transportation.
4. $15—Diet, Article 11B.
5. $105—Unauthorized deductions.
6. $.65—Unauthorized group insurance.

d. Plaintiff was awarded $416.08 by the Court on May 10, 1976.

2. a. Heriberto López Rivera, 75–1479. District Court of San Juan, 1973. Desisted.

b. *Violations.*

1. Forced to work 7 days a week. Article 3E.
2. Forced to work more than 8 hours a day.
3. Guarantee—Article 10C.
4. Transportation—Article 7C.
5. Worker was insulted by farmer and forced to work without lunch and under the rain on several occassions.

c. *Damages.*

1. $88—Article 7C.
2. $3,000—Compensatory damages.
3. $2,000—Moral damages.
4. $2,862.72—Article 10C.

3. a. Heriberto López Rivera, 75–2979, District Court of San Juan, 1973. desisted.

b. *Violations.*
1. Forced to work 7 days a week—Article 3E.
2. Forced to work more than 8 hours a day—Article 5A.
3. Guarantee—Article 10C.
4. Transportation—Article 7C.
c. *Damages.*
1. $819—Article 3E and 5A.
2. $80—Article 7C.
3. $3,000—Compensatory damages.
4. $2,000—Moral damages.
4. a. Jaime Rodríguez, 75–1108, District Court of San Juan, 1974, Desisted.
b. *Violations.*
1. Overtime.
5. a. José Cotto Guzmán, 75–3395, District Court of San Juan, 1974, Desisted.
b. *Violations.*
1. Overtime.
6. a. José Cotto Guzmán, 75–2261, District Court of San Juan, 1973, desisted.
b. *Violations.*
1. Overtime.
7. a. Reinaldo Encarnación Pastrana, 75–1476, District Court of San Juan, 1974, desisted.
b. *Violations.*
1. Overtime.
8. a. Angel D. Encarnación Pastrana, 75–1477, District Court of San Juan, 1974, desisted.
b. *Violations.*
1. Overtime.
9. a. José Osorio Manso, 74–4961, District Court of San Juan, 1973, desisted.
b. *Violations.*
1. Overtime.
c. Court has already determined that one of the defendants, Comstock Foods, did not pay worker according to the overtime provisions of the cannery contract.
10. a. Enrique Osorio Pabón, 74–1193, District Court of San Juan, 1973.
b. *Violations.*
1. Guarantee—Article 3A.
c. *Damages.*
1. $500—Compensatory damages.
2. $500—Moral damages.
3. $89—Salary.
d. Garden State admits they did not pay the worker according to the guarantee established in the contract and a settlement was reached between the parties.
11. a. Víctor M. Rivera, 75–1479, District Court of San Juan, 1974, desisted.
b. *Violations.*
1. Overtime.
12. a. Samuel Rodríguez Cruz, 75–1756, District Court of Río Piedras, 1973, Case closed, decision favorable.
b. *Violations.*
1. Worker was paid less for piecework than for hourly rate, Article 4D.
c. *Damages.*
1. $26.01—For salary owed.
2. $26.01—Penalty.
d. The Honorable Court did in fact determine that worker was not paid according to the contract provisions. Sentence was entered accordingly.
13. a. Ernesto Rodríguez, 75–1475, District Court of San Juan, 1974, desisted.
b. *Violations.*
1. Overtime.
14. a. Jaime Rodríguez, 74–2872, District Court of Río Piedras, desisted.
b. *Violations.*
1. Overtime.
c. Defendants' lawyer did not attend hearing on Motion set for January 10, 1975.
15. a. Ramón Miranda Ruiz, 74–5500, District Court of San Juan, 1972, desisted.
b. *Violations.*
1. Forced to work 7 days a week and in excess of 8 hours a day—Article 5A.

c. *Damages.*
1. Overtime worked 67.25 hours, $241.20 approximately.
16. a. Jaime Rodriguez,, 74-6236, District Court of San Juan, 1973, desisted.
b. *Violations.*
1. Overtime.
c. Case was set for a hearing on July 22, 1975.
17. a. Samuel Rodriguez Cruz, 74-5502, District Court of San Juan, 1973, desisted.
b. *Violations.*
1. Overtime.
c. Case paralysed by order of Court pending decision of Supreme Court regarding overtime.
18. a. Jamine Rodriguez Rivera, 74-5685, District Court of San Juan, 1972, desisted.
b. *Violations.*
1. Overtime.
c. Case paralysed by order of Court pending decision of Supreme Court regarding overtime.
19. a. Eugenio Santiago Martinez — Jaime Olivero Torres, 74-5561, District Court of San Juan, 1973, desisted.
b. *Violations.*
1. Forced to work 7 days a week and in excess of 8 hours a day—Article 5A.
c. *Damages.*
1. To be determined by the Court.
20. a. Alejandro Berrios Mojica, 74-4963. District Court of San Juan, 1973.
b. *Violations.*
1. Unlawful firing violating Article 1A F.
2. Farmer paid plaintiff less than $25 in 1 week. Violation of Article 3B.
3. Unlawful deductions for transportation costs in violation of Article 7E.
c. *Damages.*
1. $500—Compensatory damages.
2. $500—Moral damages.
3. $532.80—Due pay for time worked.
d. The case has been settled by the parties for $150.00.
21. a. Inocencio Mercado Ramos, 73-7927, Superior Court of San Juan, 1973, pending.
b. *Violations.*
1. Unlawful firing violating articles 2A and B1.
2. Farmer did not pay plaintiff the guarantee due by Article 3A.
c. *Damages.*
1. $5,000—Compensatory damages.
2. $5,000—Moral damages.
3. $760—Due pay.
4. $57—Due pay in accordance with the guarantee.
d. Due to defendants' negligence in answering an interrogatory submitted by plaintiff, the Supreme Court of Puerto Rico imposed on defendant a penalty for the sum of $500 for lawyers fee. The case will be seen in April 21, 1977.
22. a. Carlos Manuel Pinet Ramos, Marcelino Pinet Ramos, Miguel Ortiz Monjica, Confesor Fuentes Rivera, Miguel Carrasquillo Calderón, Enrique Osorio Cirino, Lino Pizarro Cirino, Luis Arce Carrión, and José Antonio Oyola, 73-8814, Superior Court of San Juan, 1973, desisted.
b. *Violations.*
1. Unlawful firing violating Article 1F.
c. *Damages.*
1. $20,000—Compensatory damages.
2. $20,000—Moral damages.
3. $2,960—Due pay.
4. $264—Transportation.
5. $150—Diet.
d. Due to defendants' pressures on plaintiffs, the workers were induced to sign letters prepared by defendants in which plaintiffs expressed that they had not authorized Puerto Rico Legal Services to sue the defendants and asked that the suit be desisted. When plaintiffs returned to Puerto Rico, they filed sworn statements in which they declared that they were induced to sign those letters because they feared that they would be fired by the defendants while they were working in New Jersey and that they would be stranded in New Jersey without any money

and that the letters signed by them were false and that they had authorized Puerto Rico Legal Services to file the suit in their name.

23. a. Máximo De Jesús Ortiz, 74-5559, District Court of San Juan, 1972, desisted.

b. *Violations.*

1. Overtime.

24. a. Arcadio Matos Correa, 74-5683, District Court of San Juan, 1973, desisted.

b. *Violations.*

1. Overtime.

25. a. Rafael Ortiz González, 74-3640, District Court of San Juan, 1973, desisted.

b. *Violations.*

1. Guarantee—Article 3A.
2. Salary—Article 4B.
3. Transportation—Article 11E.

c. *Damages.*

1. $500—Compensatory damages.
2. $500—Moral damages.
3. $24—Article 3A.
4. $185—Unpaid salaries.
5. $275—Transportation, Article 11E.

26. a. Benigno Torres, 74-5684, District Court of San Juan, 1973, desisted.

b. *Violations.*

1. Overtime.

27. a. Saturnino Ramos Osorio, 74-430, District Court of San Juan, 1973, desisted.

b. *Violations.*

1. Guarantee—Article 3A.
2. Wages—Article 4B.
3. Transportation—Article 11E.

c. *Damages.*

1. $500—Compensatory damages.
2. $500—Moral damages.
3. $24—Article 3A.
4. $36—Article 11E.
5. $57—Article 4B.

28. a. Pedro Román Báez, 74-5686, District Court of San Juan, 1973, desisted.

b. *Violations.*

1. Guarantee—Article 3A.
2. Transportation—Article 7E.
3. Overtime.

c. *Damages.*

1. $500—Compensatory damages.
2. $500—Moral damages
3. $74—Article 3A.

29. a. Andrés Tanco Natal, 74-5501, District Court of San Juan, 1973, desisted.

b. *Violations.*

1. Overtime.

30. a. Rafael Domench Molina, 74-5503, District Court of San Juan, 1973, desisted.

b. *Violations.*

1. Overtime.

31. a. Máximo De Jesús Ortiz, 74-5676, District Court of San Juan, 1973, desisted.

b. *Violations.*

1. Overtime.

32. a. Héctor Cruz Ramos, 74-46, District Court of Río Piedras, 1973, desisted.

b. *Violations.*

1. Farmer accelerated termination of contract—Article 1F.
2. Guarantee—Article 3A.

c. *Damages.*

1. $500—Compensation damges.
2. $500—Moral damages.
3. $222—Wages.

d. Worker had to desist his cause of action because he moved to the United States and did not have the money to travel to Puerto Rico for the trial.

33. a. Paulino Báez Ramos, 74-5560, District Court of San Juan, 1973, desisted.
b. *Violations.*
1. Overtime.
34. a. José A. Huertas Dávila, Juan Rivera Cruz, and Martín Laceń Suárez, 73-8050, District Court of San Juan, 1973, desisted.
b. *Violations.*
1. Farmer accelerated termination of contract—Article 1F.
2. Guarantee—Article 3A.
3. Transportation—Article 8C.
4. Transportation.
c. *Damages.*
1. $6,000—Compensatory damages.
2. $6,000—Moral damages.
3. $1,332—Wages.
4. $471.54—Transportation.
5 $45—Transportation stipend.
35. a. Arcadio Vázques, 74-5558, District Court of San Juan, 1973, desisted.
b. *Violations.*
1. Overtime.
36. a. Pedro Hernández Alvarez, et als., 73-5766, Superior Court of Bayamón, 1973, desisted.
b. *Violations.*
1. Violation of Public Law No. 230, May 12, 1942, 29 L.P.R.A. Sec. 431, et seq. and Public Law 87, June 22, 1962, 29 L.P.R.A., Sec. 531.
c. *Damages.*
1. $13,600.
d. Upon further study it was determined that the plaintiff had no cause of action.
37. a. Pablo Merced Andino, 74-1779, Superior Court of Bayamón, 1974, desisted.
b. *Violations.*
1. Right to overtime compensation under Puerto Rican law.
c. *Damages.*
1. To be determined.
38. a. Guadalupe Ayala Rodríguez, 74-1803, Superior Court of Bayamón, 1974, Amended 1975, desisted.
b. *Violations.*
1. Right to overtime compensation under Puerto Rican law.
c. *Damages.*
1. To be determined.
d. Upon discovery it was determined that during the year covered by the claim, Gaetano Coco wasn't member of Garden State Association.
39. a. José Andino Santiago, 73-5311, Superior Court of Bayamón. 1973, desisted.
b. *Violations.*
1. Desisted in regard to Garden State and Puerto Rican American Insurance, and continued in relation to Gaetano Coco.
c. *Damages.*
1. $11,110.
40. a. Gertrudis García et als., 74-385, Superior Court of Bayamón, 1974, desisted.
b. *Violations.*
1. Desisted in regard to Garden State and Puerto Rican American Insurance, and continued in relation to Gaetano Coco.
c. *Damages.*
1. $12,812.
41. a. José Robles Agosto, 74-1780, Superior Court of Bayamón, 1974, amended on 1975, desisted.
b. *Violations.*
1. Right to overtime under Puerto Rican law.
c. *Damages.*
1. To be determined.
d. March 7, 1975. Attorney for defendants didn't show-up, or called or asked for a postponement of the hearing.
42. Severo Santos Olivio, 74-1776, Superior Court of Bayamón, 1974, amended 1975, desisted.

b. *Violations.*

Right to overtime under Puerto Rican law and contract violations* in relation to the working time guaranteed by said contract.

c. *Damages.*

1. $1,960.

d. October 4, 1975 hearing on the merits to be held on this date was transferred for another date upon request from defendants. October 14, 1975 pretrial scheduled for this date was transferred upon request from plaintiff. November 7, 1975 pretrial to be held on this date.

e. July 16, 1975 case was dismissed for lack of appearance at the hearing of plaintiff and his counsel. July 31, 1975 case was reopened after plaintiff filed a motion explaining the Court his reasons for not appearing at the hearing. November 12, 1975 hearing on the merits scheduled for this date. November 3, 1975 attorney Oliveras filed a motion asking for a postponement of a pretrial hearing due to be held on November 7. He expressed his position to attend to a pretrial on November 14. The trial is assigned for November 12.

43. a. Juan A. Correa vs. Garden State Service, 76-1415, U.S. District Court of San Juan, 1975. Pending.

b. *Violations.*

1. Plaintiff alleged widespread violations to the Farm Labor Contractor Registration Act.

c. *Damages.*

1. $500—per plaintiff per violation to the act.

d. This case was recently filed and still in preliminary stages.

PONCE OFFICE

44. a. William Báez Cartagena et als. vs. Garden State Service Cooperative Association, Inc., Rubén Natal, Glassboro Service Association, Inc., Civil No. 76-1720 (1976).

b. Case filed on November 26, 1976.

c. *Violations alleged.*

1. Violations to the Farm Labor Contractor Registration Act.

d. Status—Pending.

45. a. Pedro Monsegur Hernández vs. Garden State Cooperative Assoc., Glassboro Service Association, Inc., Rocco de Marco, Puerto Rican American Ins. Co., Inc., Civil No. 76-5267 (1976).

b. Case filed at the Ponce Superior Court of Justice, Puerto Rico, on August 4, 1976.

c. *Violations alleged.*

1. Unjustified termination of employment.

2. Inadequate housing.

d. Status—Pending.

46. a. José F. Ortiz Pacheco, et als. vs. Garden State Coop. Assoc., Inc., Rubén Natal, Glassboro Service Assoc., Inc. Civil No. 76-7395 (1976).

b. Case filed at the Ponce Superior Court of Puerto Rico, November 17, 1976.

c. *Violations alleged.*

1. Violation to the Farm Labor Contractor Registration Act.

d. Status—Pending.

47. a. Miguel Rodriguez Rivera, et als. vs. Garden State Service Coop. Assoc., Inc., Glassboro Service Assoc., Inc., Green Giant Company, Civil No. TD-3099 (1975).

b. Case filed at the Ponce District Court of Puerto Rico on August 22, 1975.

c. *Violations alleged.*

1. Unjustified termination of employment.

d. Status—Pending.

48. a. Luis Angel Rivera Santiago vs. Garden State Service Coop. Assoc., Inc., Glassboro Services Assoc., Inc., Puerto Rican American Insurance Co., Civil No. TD-75-191 (1975).

b. Case filed at the Yauco District Court of Puerto Rico, on May 19, 1975.

c. *Violations alleged.*

1. Excessive deductions for transportation.

d. Status—Transaction made and worker already paid. Still pending court judgment.

*Asked for back wages—$123 and penalty. March 10, 1977 settled : $200.

49. a. Luis Armando Alicea Galarza vs. Garden State Service Corp. Assoc., Inc., Glassboro Service Assoc., Inc., Puerto Rican American Insurance Co., Civil No. 75-192 (1975).
b. Case filed on May 19, 1975.
c. *Violations alleged.*
1. Excessive deduction for transportation.
d. Status—Transaction, closed case.
50. a. Victor Santiago Negrón et als. vs. Garden State Coop. Assoc., Inc., Rubén Natal, Glassboro Service Assoc., Inc., Civil No. 76-1531 (1976).
b. Case filed at Aibonito Superior Court of Puerto Rico on November 23, 1976.
c. *Violations alleged.*
1. Violation to the Farm Labor Contractor Registration Act.
d. Status—Pending.
51. a. Francisco Montes Mercado vs. Garden State Service Coop. Assoc., Inc., Glassboro Service Assoc., Inc., Frank R. Tomasello, P.R. American Insurance Co., Civil No. 74-4284.
b. Case filed at the Ponce Superior Court of Puerto Rico on July 27, 1974.
c. *Violations alleged.*
1. Unjustified termination of employment.
2. Inadequate housing.
d. Status—Pending.

MAYAGUEZ OFFICE

52. a. Porfirio Vélez Caballery & Pedro Matías Villarrubia vs. Garden State Coop. Assoc., Inc. (Grievance), Civil No. TD-76-1490 (1976).
b. Filed on December, 1976.
c. *Violations alleged.*
1. Violations to Articles 2A, 4A; 3B (1) (2) (3) and 3B (3) of the contract.
2. Comment: Contract estipulated termination date on December 1976 and workers were discharged on November 1-3, 1975.
d. Status—Pending. Trial set for April 15, 1977.
53. a. Mario Báez Ortiz vs. Garden State Coop. Assoc., Inc. (Grievance).
b. Filed on February 18, 1977.
c. *Violations alleged.*
1. Violations to the Fair Labor Standard Act.
2. Worker was not paid for his last week on the job.
d. Status—Pending.
54. a. Vicente Rivera Vargas and Salvador Aponte Ramos vs. Garden State Coop. Assoc., Inc., Civil No. TD-76-1455.
b. Case filed on December 8, 1976.
c. *Violations alleged.*
1. To Article 2A: Worker wasn't provided with work starting October 31, 1975.
2. To Article 3A (1) (2) (3): Unjustified termination of employment.
3. To Article 3B (3): Failure to summit a written notification of discharge, with reasons, to worker.
d. Status—Pending.
55. a. Amadeo Soto Caraballo vs. Garden State Coop. Assoc., Inc., Civil No. 76-1491 (1976).
b. Case filed on December 13, 1976.
c. *Violations alleged.*
1. To article 9A of contract.
d. Status—Pending.
56. a. Elmer Horrach Irizarry vs. Garden State Coop. Assoc., Inc., Civil No. TD-76-1433 (1976).
b. Case filed on December 1, 1976.
c. *Violations alleged.*
1. Article 2A: Worker wasn't provided with work starting November 6, 1975.
2. Article 9C: Worker wasn't provided with the total cost of transportation back to Puerto Rico.
3. Article 4A: Guarantee violation.
4. Article 9E: Excessive transportation deductions.
5. Article 5G (2): Records doesn't show how much worker was paid per hour.
6. Article 4-13: Worker didn't receive advanced pay until reaching a pay of $25 weekly in two occasions.
7. Violations to the Fair Labor Standard Act.

d. Status—Pending.
57. Víctor Rivera Vácquez vs. Garden State Coop. Assoc., Inc. (Grievance) Civil No. TD-76-1412 (1976).
b. Grievance filed on November 24, 1976.
c. *Violations alleged.*
1. Article 2A: Worker wasn't provided with work since November 24, 1976.
2. Article 9C: Worker wasn't provided with the total cost of transportation back to Puerto Rico.
3. Article 9E: Excessive transportation deductions.
4. Article 5D: Worker was paid, less by piece rate than what he have earned per hour.
5. Article 5G: Pay records doesn't show how many hours were per piece.
6. Violations to the Fair Labor Standard Act.
d. Status—Pending.
58. a. Primitive Cruz Avilés and José Cruz Rivera vs. Garden State Coop. Assoc., Inc. (Grievance), Civil No. TD-75-1781.
b. Grievance filed on July 23, 1975.
c. *Violations alleged.*
1. One working day owed to the workers.
d. Status—Pending.
59. a. Primitivo Cruz Avilés, José Cruz Rivera and Santos Morales Cardona vs. Garden State Coop. Assoc., Inc., Civil No. CS-66-178.
b. Case filed on January 16, 1976.
c. *Violations alleged.*
1. Unjustified termination of employment.
d. Status—Pending.
60. a. Nerí Pabón Sáez, Luis Bonilla Vázquez vs. Garden State Coop. Assoc., Inc., Civil No. CD-77-048 (1977) (Grievance).
b. Grievance filed on January 17, 1977.
c. *Violations alleged.*
1. Article 2A: Worker wasn't provided with work since November 6.
2. Article 9C: Worker wasn't provided with the total cost of transportation back to Puerto Rico.
3. Article 5G: Pay records doesn't show how many hours were worked per piece.
4. Violations to the Fair Labor Standard Act.
d. Status—Pending.
61. a. Jaime Ortiz, Miguel Ramos Rivera vs. Garden State Coop. Assoc., Inc., Civil No. TD-76-307 (1976).
b. Case filed on November 9, 1976.
c. *Violations alleged.*
1. Unjustified termination of employment.
d. Status—Pending.
62. a. José Cordero Vale vs. Garden State Coop. Assoc., Inc., Civil No. CS-76-820 (1976).
b. Case filed on February 27, 1976.
c. *Violations alleged.*
1. Unjustified termination of employment.
d. Status—Case pending for October 25, 1977.

ARCIBO OFFICE

63. a. Carmelo Rodriguez Mercado vs. Garden State Coop. Assoc., Inc., Civil No. 74-1611 SL Number 73-11-23 (1974).
b. Case filed on June 25, 1974.
c. *Violations alleged.*
1. Violarion to the Puerto Rico Constitution (overtime).
2. Violation to the Puerto Rico Statutes (overtime).
(a) 29 Puerto Rico Law Annotated §§ 274, 275 and 298.
(b) Public Law No. 87 (1962).
d. Status—Closed case.
64. a. Ismael González vs. Garden State Coop. Assoc., Inc., Civil No. 74-645 SL Number 73-3-15 (1974).
b. Case filed on June 19, 1974.
c. *Violations alleged.*
1. Unjustified termination of employment.

d. Status—Pending.

65. a. Felipe Vázquez Ortiz, José Irizarry Torres vs. Garden State Coop. Assoc., Inc., Civil No. 74–2355 SL Number 74–6–4 (1974).

b. Case filed on July 9, 1974.

c. *Violations alleged.*

1. Violations to contract as bonus, transportation cost, diets and overtime.

d. Status—Closed.

66. a. Luis González vs. Garden State Coop. Assoc., Inc., Civil No. 74–1715, SL Number 73–12–7.

b. Case filed on July 5, 1974.

c. *Violations alleged.*

1. Violation to the Puerto Rico Constitution (overtime).

2. Violation to the Puerto Rico Statutes (overtime).

(a) 29 Puerto Rico laws Annotated §§ 274, 275 and 298.

(b) Puerto Rico Public Law No. 87 (1962).

d. Status—Closed.

67. a. José Acevedo Vega vs. Garden State Coop. Assoc., Inc. Civil No. 73–1208 SL Number 73–11–2 (1973).

b. Case filed on October 1973.

c. *Violations alleged.*

1. Unjustified termination of employment.

2. Violation to contract clauses as to bonus and transportation.

d. Status—Case pending for April 28, 1977.

68. a. Félix Aguilar Santiago vs. Garden State Coop. Assoc., Inc. Civil No. 75–2770 SL Number 75–7–8 (1975).

b. Case filed on September 11, 1975.

c. *Violations alleged.*

1. Article 8A(1)—(Housing).

2. Article 8C—(Food services).

3. Violations as to overtime.

d. Status—Closed case. Judgment on March 18, 1976.

69. a. Juan Correa vs. Garden State Coop. Assoc., Inc., Civil No. 75–203, SL Number 74–9–13.

b. Case filed on November 28, 1975.

c. *Violations alleged.*

1. Overtime.

d. Status—Judgment on June 21, 1976.

70. a. Delman Molina vs. Garden State Coop. Assoc., Inc., Civil No. 75–1–75, SL Number 75–9–37 (1975).

b. Case filed on October 10, 1975.

c. *Violations alleged.*

1. Salary reclamation under P.R. Law No. 140.

d. Status—Transaction.

71. a. José A. Ocaña Rodríguez vs. Garden State Coop. Assoc., Inc. Civil No. 74–109 SL Number 74–1–4 (1974).

b. Case filed on July 19, 1974.

c. *Violations alleged.*

1. Articles 1–7(B) and 11–F Salary reclamation, Violation of contract as to bonus, diets and passage costs.

d. Status—Closed case, settled favorably to the worker.

72. a. Juan A. Correa vs. Garden State, Utuado District Court, Civil No. 75–164.

b. Filed on September 9, 1975.

c. *Violations alleged.*

1. Overtime.

d. Status—Attorney for plaintiff filed a motion to desist because the claim ascended to $100 which is the minimum allowed in the small claims court procedure used in this case. Case closed.

CAGUAS OFFICE

73. a. Ramón Núñez Pérez vs. Glassboro Service Assoc., Inc.; Garden State Serv. Coop. Assoc., Inc.; Sunny Slope Farms of South Carolina, Inc.; P.R. American Insurance Co., Civil No. 75–12091, Caguas Superior Court.

b. Date: October 14, 1975.

c. *Violations alleged.*

1. Illegal termination of employment without good cause.

2. Return transportation to Puerto Rico.
3. Full contract guarantee.
d. *Damages*
1. $5,400—Illegal termination of employment as guaranteed by clause 10-C of the contract.
2. $193.54—Transportation to and from New Jersey.
3. $5,000—In damages arising from contract violations.
e. Status—Pending.
74. a. Gerónimo Dávila Rodríguez vs. Garden State Service Coop. Assoc., Inc.; Glassboro Service Assoc., Inc.; Frank Tomasello and Rubén Natal, Civil No. 76-739, Caguas District Court.
b. Date: August 17, 1976.
c. *Violations alleged.*
1. Non payment of ticket to the point of recruitment and $15 for subsistence when worker became physically unfit for employment according to clause 11(B) of the contract.
2. Material breach of contract for violating the above mentioned contract provision.
d. *Damages.*
1. $180—Return ticket and subsistence.
2. $2,852.72—Guarantee for failure to comply with agreement according to clause 10(C) of the contract.
e. Status—Pending.
75. a. Luis Berríos Pereira and Lydia Rivera Méndez, on behalf of his son Luis A. Castro Rivera vs. Sunny Slope Farms of South Carolina, Inc.; Glassboro Service Assoc., Inc.; Garden State Service Coop. Assoc., Inc. and Puerto Rico American Insurance, Civil No. 76-8621, Caguas Superior Court.
b. Date: June 28, 1976.
c. *Violations alleged.*
1. Illegal termination of employment without good cause.
2. Material breach of contract for violating the above mentioned contract provision.
3. Not providing the guaranteed work of paying the worker in violation of article 4 of the contract.
d. *Damages.*
1. $5,400—Full contract guarantee according to article 12(G) of the contract.
2. $1,634.40—Guarantee according article 4-C of the contract.
e. Status—Pending.
76. a. Pablo Miranda Rodríguez vs. Sunny Slope Farms (a member of Garden State), Civil No. 75-856 (T.D. Caguas).
b. *Violations alleged.*
1. Failure to offer employment to the worker after he had been returned by defendant.
c. *Remedy sought.*
1. The full guarantee of the contract. Clause 10C(1) of said contract established the full guarantee (40 hours × hourly rate × number of weeks= $2,116.00).
d. *Decision.*
The Court awarded the plaintiff the full guarantee of $2,116.00 on February 1977.

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Ponce office: This case was omitted in the listing of cases from Ponce and we are including it here.
77. a. José M. Rodríguez Vázquez vs. Garden State, Puerto Rican American Insurance Co., Ponce Superior Court, Civil No. 74-4285. Filed on July 29, 1974.
b. *Violations alleged.*
1. Forced overtime—specific amount undetermined.
c. Status—Decision pending on Motion for Summary Judgment filed by plaintiff.
d. In this case attorney for defendant did not appear on a hearing on a motion to dismiss filed by defendant.

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HUMACAO OFFICE

78. a. Inocencio Millán Soto vs. Garden State Services, Glassboro, Puerto Rican American Insurance Co. Civil Number: TD 75–12. Humacao Superior Court.

b. *Alleged violations.*

1. The employer did not return to the worker the amount of money deducted for transportation from Puerto Rico to New Jersey.

c. *Damages.*—$76.53.

d. Status of the case. Settle for $21.20.

79. a. Antonio Medina Santiago vs. Glassboro Service Assoc. Inc., Medio de Marco. Puerto Rican American Insurance Co., Inc. Civil Number: CD 76–7. Humacao District Court.

b. *Alleged violations.*

1. The employer violated the contract by not paying three days that the migrant worked.

c. *Damages.*—$151.40.

d. Status of the case. Dismiss by the 11 Rule of the "Tribunal de Primera Instancia del Estado Libre Asociado de Puerto Rico"

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80. a. Jacinto Sánchez Soto vs. Glassboro Service Assoc. Inc. Civil Number: CD 75–420. Humacao District Court.

b. *Alleged violations.*

c. *Damages.*

d. Status of the case. Settle for $86.76.

81. a. Miguel Cruz Inostroza vs. Glassboro Service Assoc., Inc., Garden State Service Assoc., Inc., Sikking Brothers, Puerto Rican American Insurance Co., Inc. Civil Number: CD 75–52. Yabucoa District Court.

b. *Alleged violations.*

1. Excessive deductions for transportation.

c. *Damages.* $175.78.

d. Status of the case. Closed because the worker lost interest in it.

82. a. Félix J. Ayala Quintana vs. Rubén Natal, Agent of Glassboro Service Assoc. Garden State Coop. Assoc. Complaint by Law 140, July 23, 1974.

b. *Alleged violations.*

1. The worker was dismiss because of bad weather conditions, but he was paid $30 instead of the $50 that the contract specify in cases like this.

2. The worker had to pay four pairs of gloves, which were supposed to be paid by the employer according to the contract.

3. The employer did not compensate over time according to the laws of Puerto Rico.

c. *Damages.* $84.72.

d. Status of the complaint. Settle for $28.83.

83. A. Francisco Díaz Cruz vs. Garden State Service Cooperative Assoc., Inc. Glassboro Service Assoc., Inc., Laning Brothers, Puerto Rican American Insurance Co Civil Número: TD 74–25. Yabucoa District Court.

b. *Alleged violations.*

1. The employer did not offer enough work to the worker during three different periods of 15 days as to comply with the guaranty.

2. The employer did not provide to the worker an adequate place to live.

3. The employer required the worker to pay some of the equipment necessary for the tasks, that he was assigned.

4. Psychological and moral sufferings.

c. *Damages.* $2,000.

d. Status of the case. Settle for $36.08.

84. a. Domingo Díaz Fuertes, Roberto Díaz Cruz vs. Garden State Service Coop. Assoc., Inc., Glassboro Service Assoc., Inc., Laning Brothers, Puerto Rican American Insurance Co., Inc., Civil number: 74–14. Yabucoa District Court.

b. *Alleged violations.*

1. The employer did not offer enough work to the workers during two different periods as to comply with the guaranty.

2. The employer did not pay the bonus of $25.00 to the co-demandant Roberto Díaz Cruz for working more than 24 weeks, as the contract stated.

3. Psychological and moral suffering.

c. *Damages.* $2,375.

d. Status of the case, Settle for $120.27.

85. a. Eleuterio Cintrón Rosado vs. Garden States Service Coop. Assoc., Inc., Glassboro Service Assoc., Inc., Raymond Liberton, Puerto Rican American Insurance Co., Inc., Civil Número: CD 75–357. Humacao District Court.

b. Alleged violations.

1. Excessive deductions for transportation.

2. The employer did not offer enough work to the worker as to comply with the guaranty.

c. *Damages.* $65.40.

d. Status of the case. Closed for lost of interest by the worker.

86. a. Juan M. Díaz Cruz vs. Garden State Service Coop. Assoc., Inc. y otros. Civil Number: 74–23. Yabucoa District Court.

b. *Alleged violations.*

1. The employer did not offer enough work to the worker as to comply with the guaranty in several occasions.

2. The employer did not pay to the worker the bonus of $25 to which he was entitled for having worked more than 24 weeks as the contract specified.

3. The employer did not provide to the worker an adequate place to live.

4. The employer required the worker to pay some of the equipment necessary for the tasks that he was assigned.

5. The worker suffered serious psychological and emotional damages.

c. *Damages.* $2,186.05.

d. Status of the cases. Settle $80.50.

87. a. Gregorio Rosario Millán vs. Garden State Service Coop. Assoc., Inc., Glassboro Service Assoc., Inc., Laning Brothers, Puerto Rican American Insurance Co. Inc. Civil Number: 74–112, Humacao Superior Court.

b. *Alleged violations.*

1. The employer did not offer enough work to the worker as to comply with the guaranty in two occasions.

2. The employer paid only $35.00 instead of the $50.00 he should pay as a bonus to the worker, according to the contract.

3. The employer did not provide to the worker an adequate place to live.

4. Excessive deductions for transportation.

5. The employer required the worker to pay some of the equipment necessary for the tasks that he was assigned.

6. The employer did not pay to the worker $15.00 for transportation and dinner from the airport to his house, according to the contract.

7. The employer compensated overtime on a regular salary bases.

8. The worker suffered emotional and psychological damages which value amount to $5,000.

c. *Damages.* $5,621.44.

d. Status of the case. The Court dictated a favorable sentence for the worker and ordered the employer to pay $150 to him.

88. a. Pedro de León Rivera vs. Glassboro Service Assoc., Inc., Garden State, Service Assoc., Inc., Puerto Rican American Insurance Co. Inc., Civil Number: CD 76–69. Humacao District Court.

b. *Alleged violations.*

1. The worker suffered wounds in his hands while working on the field caused by the spines of the plants that he worked on.

2. The worker was maintained for three days in his house without medical attendance and without pay.

3. He was denied a medical report about his condition and for that reason he could not get medical attention from the State Insurance Fund.

4. He had to pay $100 for medical attention, because of the employer delay in sending the medical report.

5. The worker hands became worst as a result of the delay in getting medical attention.

6. The worker could not seek any job during 7 months because of the conditions of his hands.

7. The worker suffered intense pains which prevented him from sleeping and live a normal life.

c. Damages. $5,000.

d. Status of the case. Dismiss.

89. a. Tito Ortiz Reyes, José L. Colón Lozada, Eduardo Andino Clavijo, Gilberto Rivera Cruz, Victor Ramos Serrano, Luis M. Cruz Córdova vs. Puerto

Rican American Insurance Co., Garden State Service Cooperative Assoc., Inc., Glassboro Service Assoc., Ruben Natal. Civil Number: 76-3548. Humacao Superior Court.

b. *Alleged violations.*

1. When the co-defendent, Ruben Natal, offered the jobs and the transportation to the plaintiffs, he did not have the certificate required by the First Labor Contractor Act.

2. When the co-defendant, Ruben Natal, offered the jobs and transportation to the plaintiffs he did not have an identification as an employee of a "Farm Labor Contractor", as required by FLCRA reglamentation.

3. When the co-defendant, Ruben Natal, recruited the plaintiffs, on purpose, he did not tell them of the contract's condition in Spanish.

4. When the co-defendant, Ruben Natal, recruited the plaintiffs, he did not tell them, on purpose to what farms and the particular crops they will be working.

5. While the plaintiffs work in New Jersey, they never saw any written document which explained the conditions of the contract in a language that they could understand.

6. While the plaintiffs were working in the farms to which they were assigned they never saw any written document which they would occupy their houses in a language easily understandable.

7. The violations to the FLCRA which they made produce physical and emotional damages to the plaintiffs.

c. *Damages.* No less than $500 to every one of the plaintiffs for every one of the violations.

d. Status of the case. Pending.

90. a. José Sánchez Surillo vs. Garden State Coop. Assoc., Inc., Civil No. 74-111 (1973).

b. *Violations alleges.*

1. Article 3A: Violations to the guarantee.

2. Aricle 1B: Bonus and Subsistence payments not what contract specified.

3. Inadequate housing.

4. Article 4-A: Inadequate records.

c. Status—Case has been submitted, decision pending.

EXHIBIT XII

IN THE SUPREME COURT OF PUERTO RICO

No. 0-75-126

Green Giant Co. and Saint Paul Fire and Marine Insurance Co., petitioners vs. Superior Court of Puerto Rico, San Juan Par, Hon. Héctor A. Colón, Cruz, Judge, Plaintiffs. José Monge Carrasquillo, Intervenor.

Dissenting opinion by the Chief Justice Mr. Trías Monge. San Juan, Puerto Rico, this 22d of December, 1975.

I respectfully dissent from the majority opinion. The issues before the Court may not be properly decided in the absence of an adequate record. Both the District Court and the Superior refused, in memorandum judgments, to dismiss the complaint filed by the migrant workers or to grant the summary judgment requested against said workers. We are today reversing both divisions of our Court of First Instance and holding without any record but the allegations of the parties, that Section 16 of Article II of the Constitution of the Commonwealth of Puerto Rico and the legislation which establishes the legal work schedule in Puerto Rico, does not cover migrant workers hired to render temporary agricultural services in the United States.

It is my opinion that a matter so transcendental and of such magnitude should be only examined within the most ample possible record of facts, especially when the result and the doctrine to be applied could be object of debate and when both necessarily involve the evaluation of socio-economic factors and realities which should be subject to the presentation of evidence.

The first difficulty consists in determining exactly the principle of Private International Law which is applicable to the instant type of obligation. We must point out that the Puerto Rican conflictual system has its genesis in Roman law At one time this Court held that the Private International Law of his country should be guided by the tests developed in the United States. *Cruz v. Domínguez*, 8 DPR 590 (1905). See also: *Colón v. Registrator*, 22 DPR 369, 374-375 (1915);

López v. Fernández, 61 DPR 522 (1943). That position is incorrect. Vélaz-quez, Guaroa, *Fundamental Directives of Puerto Rico Private International Law*, Ed. UPR 1945, pags. 42–43, 94. Although certain clauses of the Constitution of the United States may affect the application of one rule to a specific case, the primary source of our Private International Law is unquestionably our Civil Code.

Our Civil Code, however, as did the Spanish Civil Code before the amendment of its preliminary Title in 1974, regulates very fragmentarily the contractual matter in this area. Given the silence of the Code, with respect to this matter, it is our duty as a consequence, to avail ourselves of the provision of its Article 7 and decide the case on the basis of equity. 31 LPRA 7. Under those circumstances, we can freely examine the collisive norms propounded in different places but always keeping in mind the terms of Article 7 to the effect that we should consider "natural justice as embodied in the general principles of jurisprudence and in accepted and established usages and customs". The necessity to know those useages and customs merits the presentation of evidence so that we may securely identify the usages and customs and select the adequate norm under Article 7.

Different theories have been propounded to decide the conflicts of law in the contractual area. We could mention nationality (*lex patriae*); domicila or habitual residencey (*lex domicilii*); place of the execution of the contract (*lex loci contrastus*); the place where the obligation is to be effected (*lex loci executionis* the autonomy of the will; vested rights; connecting or contact points; the forum (*lex fori*); and, the functional theory. There are many others to which we shall refer below.

The dream of formulating a valid rule for all time and all type of obligations has been vanishing with the years. More and more the tendency has been to particularize, to distinguish the difference judicial figures cover by contracts. In that respect it is convenient to review different experiences in the analysis of the specific problem with which we are faced. We shall see that sometimes justice is sacrificed to obtain certainty. Essentially complex problems are treated simply. Facts and circumstances which are indispensable to keep in mind are not considered. No distinction is made between legal figures that while superficially similar are fundamentally diverse.

The employment contract has been considered by many as a separate category although in general the differentiation process stops there and sometimes everything is grouped under the excessive general class of labor relations. Let's take a look at some points of view and proposals.

The Bustamente Code, which is in full force and effect in most Latin American countries, provides in Article 198: "The legislation with respect to work related accidents and social protection for the worker is also territorial." See Abraham, J.M., *Code of Private International Law*. Caracas, 1955. Article 10–6 of the new Spanish Preliminary Title. Decree 1836 of May 31, 1974 based on the Law of Bases of March 17, 1973, provides:

"The Law of the place where the services are rendered is applicable to the obligations arising out of the employment contract, unless there has been an express submission of the parties and without prejudice to the provisions of subparagraph 1 of Article 8.[1] 69 R.G.L.J. 214.

The European Economic community has been in the process of discussing an agreement to make uniform the Private International Law with respect to obligations. The proposed standards are different to those of the old Bustamante Code and those of the present Preliminay Title of the Spanish Civil Code. Article 8 of the proposed convention states:

"In the absence of an express or implied selection, the contracts with respect to labor relations shall be governed by the law of the State

(a) where the worker usually performs the services; or

(b) If the worker does not usually perform the services in a particular State, where the contract has its business, unless it appears in view of all circumstances that the employment contract has a more close connection with another State." (our translation) 21 Am. J. of Comp. L. 588 (1973).

Article 2(3) of the Convention conditions the above since it states that "in contracts dealing with labor relations the selection by the parties of the applicable law shall not affect the mandatory provisions approved from the protection

[1] This subparagraph provides that: "The penal laws, those of the police and public security bind everyone within the Spanish territory."

of the workers within the State where he habitually works." 2 Am. J. of Comp. L. 587 (1973).

There are different criteria in the United States. In *general terms*, the Courts have been reticent in granting extraterritorial effect to statutes in the absence of an express legislative mandate. Rothman, *Conflict of Laws in Labor Matters in the United States*, 12 Vand. L. R. 997 (1959). However, the Supreme Court of the United States gave extraterritorial effect to the provisions of the Federal Reasonable Labor Standards Act precisely with respect to the payment of overtime in a case of a legislative history which [illegible] not clear in that respect. *Vermilya-Brown Co. v. Connell*, 335 U.S. 337 (1948).

In the second reformulation of the North American Law in this matter, *Restatement of Law- Conflict of Law 2d*, Sec. 196, the following is provided:

"The validity of a contract to render services and the rights that this contract creates are determined in the absence of an effective selection by the parties, by the local laws of the State where the contract requires the services to be rendered, unless, with respect to that matter, another State has a more significant connection with the matter and the parties under the principles authorized in Section 6, in which case the law of that other State will be applied." (our translation)

Section 6 provides: "(1) Subject to Constitutional restrictions, the courts shall enforce the legislative mandate of their own State with respect to the selection of the applicable law.

(2) When no such mandate exists, the relevant factors to make the selection include:

(a) the needs of the interstate and international system;

(b) the relevant policies of the forum;

(c) the relevant policies of other interested states and the relative interest of those States in the decision of the controversy;

(d) the protection of reasonable expectations;

(e) the basic policies of the forum relative to the specific areas of the law in question;

(f) certainty, predictability and uniformity in the results;

(g) simplification in determining and applying the law which is to be applied." (our translation)

Another recommended solution is to avoid the problem or reduce its purposes via multistate or bilaterial pacts. Goldberg, *Labor Relations and Labor Standards for Employees of United States Enterprises Working in Foreign Areas*, 48 N.D.L. Rev. 23 (1971). It should be pointed out that the present practice of the Government of the United States is to pay overtime to the foreigners that are hired to work outside their country. Offshore Labor Agreement with the Republic of the Philippines, TIAS 3646, 7 U.S.T. 2539, 19 U.S.T. and O.I.A., page 7500, treaty signed at Manila on December 28, 1968.

Another position, particularly sensitive to the matter of the employment contract, consists in holding that the standards which are usually proposed in this field do not necessarily produce just results and that the preferable conflictual rule is to establish that in every case the law that gives the most protection to the worker or to the weaker party should apply or, as long as they are compatable, the different laws involved. For an illustration of this theory, see CAVERSE, David F., *The Common Market's Draft Conflicts Convention on Obligations: Some Preventive Law Aspects*, 48 So. Calif. L. Rev. 603, 620, 625 (1975).

The truth of the matter is that there is such a diversity of doctrines that the result depends on which doctrine is chosen. In this type of situation, one must be particularly cautious so that the selected standard adequately responds to the ends of the law and the context in which it operates. The situation is complicated if we consider that we are really confronting a judicial figure with special characteristics which may require the creation of a special standard or a dramatic alteration in choosing and applying a rule developed for other circumstances. We are not dealing with an ordinary employment contract. We are dealing with a mass employment contract to temporarily work outside of Puerto Rico. It is my opinion that this court should not decide in the abstract a matter as delicate as the fixing of the development of such an atypical and vital contract.

To show the complexity of a mass employment contract, we shall examine certain data with respect to the Mexican migratory movement to the United States and the historical reasons for the use in the United States of foreigners

and domestic migrant workers in agricultural work. The difficulties presented by this situation produced an attempt to reduce the problems of Private International Law and other problems involved through special legislation by the Congress of the United States, 65 Stat. 119 (1951), 7 U.S.C.A. sec. 1461–68 (1958), and a treaty between the United States and Mexico. *Migrant Labor Agreement of 1951 with Mexico*, August 11, 1951, 2 U.S.T. and O.I.A. 1968. Different guarantees were established to protect the foreign migrant. Among those were provisions with respect to minimum wage and the limitation to the daily work schedule, but not about the applicable law with respect to payment of overtime. The operation of the program produced great insatisfaction both in the United States and Mexico. The Deputy Secretary of Labor of the United States concluded in testimony before the Congress that the program had adversely affected the position of the domestic agricultural worker in the United States. Spradlin, *The Mexican Farm Labor Importation Program—Review and Reform*, 30 Geo. Wash. L. Rev. 84, 99–100 (1961). The Mexican Government was deeply unsatisfied with the working condition of the Mexico laborer. As a consequence, the 1951 treaty was derogated 14 U.S. 307.

Even the situation of the North American migrant agricultural workers has been described in the following harsh and revealing words by Arthur J. Goldberg, then Secretary of Labor:

"The majority of the American migrants . . . live in general in a world shadowed by poverty, deprivation, the absence of opportunities, and living conditions which are intolerable from any point of view . . . they live in inadequate and unsanitary dwellings; they are transported in unsafe trucks and buses which have subjected them to a high number of accidents resulting in death and grave injury. The condition of these families constitute an affront to the American concept of human dignity.

The disagreeable truth is that the migratory system in the United States has its basis in infra-employment, unemployment and poverty . . . the agricultural workers are excluded from the minimum wage, from unemployment insurance, from almost all legislation with respect to work accidents and from other social legislation.

They are excluded also from the laws that protect the rights of the workers to organize themselves and to negotiate collectively with their employers." (Spradlin, supra, 97–98; our translation.)

The argricultural migrants have been frequently used in the United States to stop the increase of low salaries, to discourage the organization of labor unions, and, as strike breakers. Spradlin, *passim*. The argument that it was impossible to pay more to better the indecorous situation condemned by Goldberg was refuted by the Department of Labor of the United States which stated that the labor cost for the period under study represented only 11.5% of the agricultural production cost for that period, which meant that the agricultural wages had to increase 8% so that the production costs would come close to 1%. Spradlin, *op cit.* 112.

Law 25 of December 5, 1947, 3 LPRA 319, Statement of Motives subparagraphs (b) (2) and (4) reveal a clear conscience of the problems outlined by Goldberg and Spradlin when it states that: "Puerto Rican workmen who wish to migrate will be guided so that they will go only to those places where a real demand for labor exists, and where their presence will not contribute to any depression of prevailing wages or to any disruption of prevailing working conditions" and that "It is the duty of the Government of Puerto Rico in the case of Puerto Rican workmen who wish to migrate to the United States or other countries, to instruct them adequately, before they leave the Island, concerning their responsibilities to industry and organized labor." For various reasons it is my position that we should have before our consideration all of the circumstances dealing with the request to the Plaintiff workers to work overtime and on the seventh day. The constitutional question involved is not limited, in the first place, to the scope of Section 16 of Article II of the Constitution of Puerto Rico We have also to face the provision of Section 1 of said Article, which orders that "the dignity of the human being is inviolable . . . Is this Court really prepared to State that under no imaginable circumstances the payment at a regular rate for overtime and the denial of a right to the seventh consecutive day did not conflict with said provision? Or is that the Department of Labor of Puerto Rico cannot violate the dignity of the human being in our 10,000 sq. kms., but it can authorize contracts so that the dignity of the Puerto Rican is violated outside? I know that it is not the intention of the Court to sanction unacceptable condi-

tions for the workers but that could be the result of a decision based on an incomplete record.

The opinion of the Court applies, in the second hand, the doctrine of the point of contracts, in its North American version, to the atypical figure of the mass employment contract for temporary work outside of Puerto Rico. Even from that point of view, it is also difficult to justify the decision in this case in a summary manner. To adequately analyze in this case the principles stated in Section 6 the *Restatement* cited above, it is necessary to have more information than the information that this Sourt has. Among the connection points which are to be evaluated, for example, are "the necessities of the interstate and internation systems". Wouldn't it be convenient to have before us the data in that respect instead of making expressions in a vacuum? The same thing may be said of other points of contact: "the basic policy of the forum in the applicable area of the law", "the protection of justified expectancies". The Court states that "caos will be created if each State applies its own labor laws to the native workers who render services in other States". Why? The countries with a civil law tradition which constitutes the European Common Market, in a well known effort to excell the standards of the *Restatement* on Private International Law, are considering the rejection of the *lex loci executionis* to permit, in the interest of justice, the application of dissimilar laws and the creation of a "caos" comparable to the caos that frightens this Court. We must make the following question, Which "caos" is more frightening, the caos that breaks a simple formal order or the caos that subjects the migrant worker to injustice and indignity?

The Court also points out that in case that the law of the forum where the services are to be rendered is not followed, "that would make impossible the uniformity in wages and conditions of employment, which is the fundamental obligation of our public policy and which also is the public policy of the States of Maryland and Delaware . . ." The arguments adduced for these statements are not at all convincing. The contracts in the record impose several working conditions for the Puerto Rican worker which are superior to those existing under the legislation of Delaware and Maryland. If any statement of this matter is justified, it is the contrary statement. The labor legislation of our country is distinguished more for the desire to improve the wages and living conditions of the workers to the compatible maximum with our necessities for economic growth and for the objective that Puerto Rican migration does not contribute to the disturbance of the possibilities for the bettering of the working conditions in other jurisdictions.

The nerve center of the opinion of the Court resides, however, clearly in the statement that if the law of the place where the obligation is to be performed is not applied "the legitimate interest of those states in promoting their agricultural development will be damaged and at the same time an additional source of employment for the Puerto Rican migrant workers would be destroyed." I obviously partake with both purposes but the problem at this stage of the proceedings is another. On the basis of what evidence does the Court conclude that if the law of this forum is applied, the agricultural development of Maryland and Delaware will be damaged or that working opportunities for our migrant workers will be destroyed? What basis is there to conclude that the additional cost may not be absorbed? What evidence is there that if the Puerto Rican migrants do not submit to the required conditions so strange to our usage, there is another mass of workers that will substitute them? We understand, also, that although work is naturally preferred to unemployment, there are limits to the working conditions that may be imposed. We have made reference to statements by a former Secretary of Labor about the conditions in which the migrant lives and labors which are prejudicial to human dignity. Would it not be convenient to explore all these points in depth, in a full trial, so that we may determine the facts before finally making an expression about the same?

The majority opinion concludes that the legislative intention has been not to extend the statutory and constitutional guarantees to the migrant workers.

Even assuming that this conclusion is correct, that does not resolve the present controversy. The legislative intention is only but an aspect to be considered among some of the theories of conflict of law that we must examine. Besides, the examination of the history of the protective legislation of the Puerto Rican migrant workers leads us *prima facie* to a contrary conclusion. The protection of the Puerto Rican migrant workers goes back to Law #19 of May 29, 1919. Law 89 of May 9, 1947 strengthened that policy. It was under its provisions that on

April 12, 1948 a regulation was enacted which provided that "The Secretary of Labor shall not approve any contract, any of which terms would be in conflict with the labor laws of Puerto Rico." This was the situation at law when the Constitution of Puerto Rico, which opened new ground in creating a Bill of Rights for the worker, was enacted. In Section 16 of Article II of the Constitution, it was conclusively stated:

"The right of every employee . . . an ordinary workday which shall not exceed eight hours. An employee may work in excess of the daily limit only if he is paid extra compensation as provided by law, at a rate never less than one and one-half times the regular rate at which he is employed."

The Commission of the Constitutional Convention in charge of this matter stated the following in it report about the Section which includes the cited provision:

"The Commission emphasizes the high dignity of the human effort and assigns to this section the naming of the basic rights of the worker as such. Particular emphasis is placed in the greater part of the working class which by reason of its helplessness historically has needed, although it has not always received, social protection." 4 Daily Journal 2573.

The debate does not discuss the express issue of whether there was an intention that this provision apply to the temporary migrant, but, the importance of extraordinary compensation was stressed not only as a method for the payment of a just compensation, but as a mechanism to disuade the extension of the daily schedule over 8 hours, so as to eliminate fatigue, illness, loss of the life expectancy of the worker and human exploitation. It is difficult to conceive that the intention of Section 16 could have been to protect the health of the worker in Puerto Rico but not the health of the temporary migrant who would return to this country to suffer the consequences of excessive toil. 3 Daily Journal 1622–3, 2247–2262, 2278–86.

Therefore, when our Constitution was enacted, the familiar standard was that the Puerto Rico labor laws protected not only the worker in the country but the migrant hired through the State. Isn't it then reasonable to assume, in the absence of a contrary expression and given the purposes behind the wording of Section 16 of Article II, that the intention of the Constitutional Convention was to continue the existing situation at law? In that respect, I cannot understand the emphasis given in the opinion of the Court to the fact that in the Statement of Motives of Law 379 of May 15, 1948, which deals with the legal work schedule, reference is made to the legal work schedule *in* Puerto Rico. There was no reason to say anything different in that law. The regulation in effect at the time of its approval adequately protected the Puerto Rican migrant.

I am not expressing a definitive constitutional criteri. What I want to point out is that the present controversy is sufficiently complicated to merit that the constitutional question presented be within the most ample context of economic and social facts. Since we are dealing with a motion to dismiss or for summary judgment where the additional work performed has been admitted, the matters before the Court seem to pose judicial problems exclusively. We have seen, however, the variety of facts that must be known in order to be in optimum condition to decide such questions of law. The survival of only questions of law in one case do not deprive a Court *per se* of its faculty to refuse to decide said matter until the case is duly ripe and the socio-economic impact of the standards to be set can be determined with maximum precision.

To summarize, the opinion of the Court carries difficulty with respect to the classification of the contract involved in this case, with respect to the standard of Private International Law, which is applicable to the case, which problem, according to modern doctrine, not only permits but requires the use of the techniques of comparative law. Von Mehren, *Recent Trends in Choice-of-Law Methodology*, 60 Cornell L. Rev. 927 (1975); with respect to the application of the own conflictual principles chosen by the Court; and with respect to the analysis of the constitutional problems presented. I consider, with all deference to the contrary opinion, that the most prudent course in these circumstances, is a refusal to decide a case of this type, so lacking in evidence, in a summary way.

I would, therefore, examine the judgment entered and would return the case to the Superior Court for the continuation of the proceedings.

José Trías Monge,
Chief Justice.

IN THE SUPREME COURT OF PUERTO RICO

No. 0-75-126

Green Giant Co. and St. Paul Fire and Marine Insurance Co. vs. Superior Court, San Juan Part, Hon. Héctor A. Colón Cruz, Judge, Defendant. Jose Monge Carrasquillo, Intervenor.

Opinion of the Court issued by Associate Judge Mr. Torres Rigual, San Juan, Puerto Rico, this 19th day of December, 1975.

We must decide in this case whether Section 16 of Article II of the Constitution of the Commonwealth of Puerto Rico and the legislation which establishes the legal work period in Puerto Rico, Law 379 of May 15, 1948, 29 LPRA Sec. 274 et seq., is applicable to the contracts of the migrant workers who render services in agriculture in the United States.

Intervenors José Monge Carrasquillo and Eduardo Rosario signed in Puerto Rico work contracts for the years 1972 and 1973, respectively, by virtue of which they rendered services to Petitioner Green Giant Co. in the States of Delaware and Maryland. Said contracts were approved by the Secretary of Labor of Puerto Rico under the provisions of Law 87 of June 22, 1962, 29 LPRA Sec. 526 et seq., which regulates the contracting of Puerto Rican workers whose services are to be used outside of Puerto Rico.

The Intervenors filed a complaint against Petitioner in the District Court claiming the payment of extraordinary compensation for hours allegedly worked in Maryland and Delaware in excess of the regular hours of work, the seventh working day and an additional amount as penalty. The District Court denied the dismissal of the complaint, which dismissal had been requested by Green Giant Co. and the Superior Court affirmed the decision without stating any legal basis.

Petitioner requests the reversal of said resolution claiming essentially the inapplicability of Section 16 of Article II of the Constitution and the inapplicability of Law 379 to the work contract which is the object of this case and the performance of which contract occurs outside of Puerto Rico.

The decision of Petitioners writ requires that we examine the contract between the parties, the Law which regulates said contract—Law 87, supra—the purposes of said law, as well as the scope of Law 279 and of the Constitutional guaranty for overtime compensation, Section 16 of Article II of the Constitution.

The work contract minutely regulates the relations between the parties, providing, among other things, the following:

1. Terms of employement and re-employment. (Article 2).
2. Guaranty for weekly work. (Article 3).
3. Pay periods and fixing of a minimum wage of $1.80 per hour or the prevailing salary rate in the employment area, whichever is higher. (Article 4C)
4. Record keeping with respect to hours worked, salaries, types of crop, deductions and amounts retained from the salaries, providing an additional compensation to the amounts owed if the employer failed to keep these records and it appeared that the worker was not properly paid. (Article 4J)
5. A regular work schedule of 8 hours per day and 6 days per week is provided for and it is further stipulated that by mutual agreement the workers may work additional hours or the seventh day in any work week. (Article 5A)
6. Discrimination against the worker for reasons of race, color, creed, affiliation or activity in any workers organization is prohibited; and the employer assumes responsibility towards the worker for the same rights, provisions and conditions offered to industrial workers by their employers under the Compensation Laws of the state where the worker is employed; and further the employer assumes equal responsibilities when requiring the workers to live in housing proportioned by the employer. (Article 5C)
7. The employer assumes the obligation of furnishing the worker with a clean, adequate and hygienic dwelling, without cost to the worker as well as adequate food, etc. (Articles 5A and 5B)
8. The contract regulates the responsibilities of the worker. (Article 7)
9. It regulates the transportation of the worker from the departure point in Puerto Rico to the place of employment as well as the return trip. (Article 8)
10. It provides for a non-occupational group insurance policy. (Article 9.)
11. It authorizes the Department of Labor to represent the worker in any

matter arising under the contract, granting authority to the Department to cancel the agreement if the eemployer fails to comply with the same. (Article 10.)

12. It stipulates that the employer submits itself to the jurisdiction of the Courts of Puerto Rico for all purposes in enforcing the contract without limiting the right of the worker to file legal action in any competent Court of the State of the employer. (Article 11.)

The first thing that must be noted in this work contract is that in spite of the fact that the parties specifically covered their contractual relationship, they did not provide for such an important question as extraordinary compensation. The omission gathers more significance when you consider that the parties specifically establish for a working schedule of 8 hours, which could be increased by additional hours by mutual agreement. (Article 5A) That is to say, the parties consider the possibility of work to be performed in excess of the regular working schedule, but did not provide for the payment of extraordinary compensation.

The only expression in the contract with respect to the payment of additional compensation refers to the case where the employer fails to keep the records called for by the contract and it is later established that the worker was not adequately paid (Article 4J). It is logical to assume that if the additional compensation was to be applicable also to overtime, the contract would have so stated.

Plaintiffs allege that the benefits of Law 379 are applicable to them but it should be noted that the text of the law restricts its scope to work performed in Puerto Rico. The Statement of Motives is clear to that respect:

"It is the policy of this Act to limit to a maximum of 8 hours the regular working day *in* Puerto Rico, and to provide payment of double time for the hours worked in excess of the regular working day." 20 LPRA 271 (emphasis added).

With respect to Law 87, supra, which authorizes the intervention of the Secretary of Labor in the negotiation of the work contract, it is convenient to point out that said law does not include the payment of extraordinary compensation. A review of the legislative history of the law does not reveal said intention. The intervenors, however, claim that the legislative history gives sufficient basis to interpret an intention that Law 379 and Section 16 of Article II of the Constitution are applicable to the work contract. They argue that in the Report of the Labor Commission of the House of Representatives to House Bill 507, which later became Law 87, there appears the following comment: "This Commission understands that the purposes behind House Bill 507 are amendable to the public policy of the Government of Puerto Rico of protecting, with all available resources to the State, the rights of the workers as they have been defined in Article II of our Constitution and the innumerable statutes to that respect." Daily Journal 1952 at page 1382.

This expression is negated by the statements of the Chairman of the Labor Commission on the Floor, Mr. Armando Sánchez Martinez, an experienced legislator in labor matters. When House Bill 507 was discussed, Mr. Sánchez Martínez admitted that said contracts were not governed by the laws of Puerto Rico. He made the statement in answering the following issue raised by a member of the House of Representatives:

"Mr. Rivera Morales: ---

---- This means that these workers, who are used to certain norms established in Puerto Rico, first by collective bargaining agreements and then by law, where no one would ever think to agree in a collective bargaining agreement to a week of more than 40 hours or 6 days—and that always, and in many bargaining agreements, whenever you work more than ½ day on Saturday you have to receive double compensation, as well as on Sundays—*in this case the Department of Labor should not feel proud to deliver a contract to the workers, which contract authorizes the farmers in the United States to have these countrymen work 7 days a week on a regular pay basis, this is what this contract does.*"

"Mr. Sanchez Martinez:

Of course, it should be pointed out also that we, in Puerto Rico, without any doubt have a law which defines what is a work week and what is a daily working schedule. *That is to say, that here, any collective bargaining agreement which is negotiated outside of the provision of the Law would be completely illegal. But, unfortunately, no such provisions of law exist in any of the States for the agricultural aspects where these agreements are negotiated . . . or those agreements for the protection of the migrant workers.* That means that, in spite of said difficulty, certain guarantees are being established that do not exist in the legislation of those places, we have secured the guarantees mentioned in said contract of the Department of Labor in representing the migrant workers." Daily Journal 1962 at page 1383.

Another element that reinforces the conclusion that neither Law 87 nor the work contract had the intention of making applicable to the migrant workers the extraordinary compensation is that in 1969, a long time before the approval of Law 87 and the contract here in question, the regulations promulgated by the Secretary of Labor on April 12, 1948 were abolished. The Regulations provide: "The Secretary of Labor shall not approve any contract whose terms may be in conflict with the work laws of Puerto Rico." The derogation of this prohibition strengthens the understanding of the parties that the laws of Puerto Rico are not applicable to said contract.[1]

There is no doubt that if Law 87 had provided that Puerto Rico Labor Laws are applicable to the contract in question, we would be under the obligation to follow the legislative mandate. It could be argued, however, and the issue has been raised by the Intervenors, that in spite of said ommission, Section 16 of Article II of the Constitution is applicable on its own right.[2] Said argument is not valid.

The Constitution and the laws generally have the purpose of solving internal situations in the country and are not to be applied under external conditions unless the legislator has given that mandate or if there are strong public policy reasons. Since there is no such mandate in Law 87 or the Constitution, we must examine the public policy of the Commonwealth with respect to the migrant workers to determine if the application of Section 16 to the work contract in this case promotes or indicates any legitimate interest of the Commonwealth.

The Statement of Motives of Law 25 of December 5, 1947, 3 LPRA 319, states the public policy with respect to migrant workers in the following manner:

"The public policy of the Government of Puerto Rico as regards promoting the welfare of workmen through lucrative employment, and as regards the migration of Puerto Ricans to continental United States and other countries for the purpose of securing employment, is as hereinbelow set forth:

(a) ----------

(b) ----------

(c) The task of guidance and direction which is incumbent upon the Government of Puerto Rico to perform concerning the migration of Puerto Rican workmen to the United States or other countries, must be circumscribed by the following basic principles: (1) The Government will undertake every task of education, improvement, and guidance so that industry, farming and commerce in Puerto Rico may at all times retain the necessary personnel for the maximum development of our production; (2) *Puerto Rican workmen who wish to migrate will be guided so that they will go only to these places where a real demand for labor exists, and where their presence will not contribute to any depression of prevailing wages or to any disruption of prevailing working conditions; (3) Wherever Puerto Rican workmen go they are to earn the prevailing wages and have the same working conditions as the native or resident workmen of those places . . .*

(d) ----------"

3 LPRA Sec. 319 (emphasis added).

The basic preoccupation of the legislator with respect to salaries has two primary interests: (a) the protection of the salaries and working conditions existing in the area of employment and (b) the obtention for the Puerto Rican

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[1] It should be stated in all justice that said regulations were brought to our attention by the Intervenors in their elaborate brief.

[2] Section 16 of Article II of the Constitution reads as follows:

"The right of every employee to choose his occupation freely and to resign therefrom is recognized, as is his right to equal pay for equal work, to a reasonable minimum salary, to protection against risks to his health or person in his work or employment, and to an ordinary workday which shall not exceed eight hours. An employee may work in excess of this daily limit only if he is paid extra compensation as provided by law, at a rate never less than one and one-half times the regular rate at which he is employed."

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workers of the same salaries and working conditions enjoyed by the native workers of, or residents, of the area of employment. The obtention for the migrant workers of salaries and conditions of employment beyond those prevailing in the area of employment are not a part of said public policy. It could not have been the purpose of the legislator to promote a priviledged treatment for the Puerto Rican worker outside of Puerto Rico since that would not only be contrary to our sense of justice but also to the principles gathered by Section 16 which guarantee equal pay for equal work.

The application of the guarantee of extraordinary compensation to the Puerto Rican workers who render services outside of Puerto Rico would be prejudicial to them since, in effect, it will destroy an additional source of employment and the corresponding income since if we impose a privileged treatment for our workers, we would in effect be closing for them opportunities for employment in States such as Maryland and Delaware, for example, which laws do not provide for extraordinary compensation.

The claim by the Intervenors that we extend to them the Constitutional guarantee in the same manner that it is applied to the workers that render their services in our country would result in the counter sense that the equal protection of the laws would constitute in this case, a privilege repugnant to itself.

The intervenors claim also that the work contract should be subject to the laws of Puerto Rico since this is the State where the dominant contacts exist in view of the doctrine established in *Vda de Tornanis* v. *American Surety Co. of New York*, 93 DPR 29 (1966), *Maryland Casualty Co.* v. *San Juan Racing Association, Inc.*, 83 DPR 559 (1961). They elaborate their argument by enumerating the different contacts that exist with respect to this forum in comparison with the contacts in relation to the State of Delaware. Among others they mention: (1) that the contracts were negotiated by the Secretary of Labor in Puerto Rico, (2) that the recruitment of the workers was made in Puerto Rico with the authorization of the Secretary of Labor, (3) that the contract started operating in Puerto Rican workers who render services outside of Puerto Rico would be prejudicial employer has to notify the Migration Division of the Commonwealth of dismissal of any worker, the payroll records, any occupational accident, (5) the employer submits itself to the jurisdiction of the Puerto Rico courts, (6) the workers are domiciled in Puerto Rico, and (7) the employer has a recruiting agent in Puerto Rico.

The doctrine of dominant contacts does not answer to quantitative criteria. It is not the number of contacts which determine the applicable law but the quality of the same with respect to the matter in controversy. It is more an analytical process in which to evaluate the diverse contracts following the general principles or factors which have been formulated by the scientific doctrine to solve conflicts of law. See LEFLAR, Robert, *American Conflicts Law*. Cap. 10 and 11; CURRIE, Brainerd, *Selected Essays of the Conflicts of Law*, 1963; SHERWOOD, Arthur, *The Transition from the Lex Loci Rule to the Dominant Contacts Approach*, 62 Mich. L. Rev. 1387 (1963-64); COYNE, Raymond, *Contracts, Conflicts and Choice-Influencing Considerations*, Univ. of Ill. L. F. 1969, 323 REESE, Willis, *Conflicts of Laws and the Restatement Second*, 25 Law and Contemporary Problems 679 (1963); WEINTRAUB, *The Contracts Proposals of the Second Restatement of Conflict of Laws A-Critique*, 46 Iowa L. Rev. 713 (1962-64); *Restatement of the Law of Conflicts of Laws 2d*, Secs. 6 and 184.

The Restatement formulates the following general principles to guide the analytical process: (a) the needs of the interstate and international system; (b) the relevant public policy norms of the forum, (c) the relevant public policy norms of other interested states and the relative interest of those States in the decision of the controversy, (d) the protection of reasonable expectations, (e) the basic public policy norms, relative to the specific areas of the law in which the controversy arises, (f) certainty, predictability and uniformity in the results, (g) simplification in determining and applying the law which is to be applied. Op Cit. Sec. 5 p. 10. LEFLAR proposes a variation of these principles summarizing the same as follows: (a) predictability of the result (b) maintenance of the interstate and international order; (c) simplification of the judicial endeavor; (d) the promotion of the fundamental interests of the forum; and (e) the application of the better rule of law, op Cit. p. 245.

These principles have been formulated merely as general guidelines which vary in importance and application depending on the matter of the case and the particular controversy. There is no unanimity in the application of the criteria.

but in any event, in the absence of appropriate legislative norms, the criteria may be of utility to orient the exercise of judicial discretion in each particular case.

In the instant case, the criteria dealing with the relevant public policy norms and the social interest affected, and which we discussed above, merit special consideration. The analysis of the contacts mentioned by the Intervenors in view of the relevant public policy norms and the affected interests convinces us that none of those contracts have the slightest importance with respect to the payment of extraordinary compensation. The steps taken by the Secretary of Labor with respect to the contracts were addressed to promoting the public policy established in Law 25 of December 5, 1947, supra, which, as we know, consists of guaranteeing to the migrant workers the same salaries and conditions of employment enjoyed by the workers who are natives or residents of the *employment area*. Likewise, the steps taken by petitioners with respect to the contracting and recruitment of the workers have no relevancy whatsoever with respect to extraordinary compensation.

On the other hand, in a service contract, as in the present case, the forum where the services are to be rendered is of fundamental importance. That is the most significant contact to determine the applicable law with respect to extraordinary compensation since both the object and the consideration—the rendering of the services and the payment of the salaries—occur in that forum. It is in that forum where the possibility of working additional hours to the agreed work schedule is going to occur and it is where the parties are going to agree to that respect. It is appropriate that any controversy with respect to that matter be decided on the basis of the relevant public policy norms of that forum.[3] Otherwise, a complete chaos will be created if every State applies its own labor laws to the workers who come from that State but render services in other States. Such a situation would make impossible the uniformity of salaries and conditions of employment which is the fundamental objective of our public policy and which is also the fundamental objective of the public policy of the States of Maryland and Delaware, to which is applicable the Wagner-Peyser Law, 29 U.S.C. Sec. 49, and its regulations, 20 C.F.C. Sec. 602-9(c).

The preceding analysis with respect to the doctrine of dominant contacts leads us to conclude that the Constitutional guarantee of extraordinary compensation is not applicable to the Puerto Rican migrant workers who render agricultural services outside of Puerto Rico.

Judgment shall be entered reversing the judgment appealed from and it shall be ordered that the Consolidated complaints in this case be dismissed.

HIRAM TORRES RIGUAL,
Associate Judge.

IN THE SUPREME COURT OF PUERTO RICO

No. 0-75-126

Green Giant Co. and Saint Paul Fire and Marine Insurance Co. vs. Superior Court, San Juan Part, Hon. Hector A. Colón Cruz, Judge, Plaintiff. José Monge Carrasquillo, Intervenor.

JUDGMENT

San Juan, Puerto Rico, this 19th day of December, 1975.

On the basis stated in the above Opinion, the judgments appealed from are reversed and it is ordered that the consolidated complaints in the present case be dismissed.

It is so ordered by the Court and is certified by the clerk. The Chief Justice, Mr. Trías Monge, dissents and reserves the right to express his dissent in writing at the appropriate time.

ANGEL G. HERMIDA,
Clerk.

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[3] The American Law Institute proposes a similar rule in the Restatement of the Law-Conflict of Laws 2d, Sec. 196:

"The validity of a contract to render services and the rights that this contract creates are determined, in the absence of an effective selection by the parties, by the local laws of the State where the contract requires the services to be rendered, unless, with respect to that matter, some other State has a more significant connection with the matter and the parties under the principles authorized in Section 6, in which case the law of that other State will be applied." (Our translation.)

IN THE SUPREME COURT OF PUERTO RICO

No. 075-126

Green Giant Co. and Saint Paul Fire and Marine Insurance Co., Petitioners v. Superior Court of Puerto Rico, San Juan Part, Hon. Héctor A. Colón Cruz, Judge, Defendants. José Monge Carrasquillo and Eduardo Rosario, Intervenors.

Individual Vote of the Associate Judge, Mr. Negrón García, San Juan, Puerto Rico, this 22nd day of December, 1975.

Being in agreement with the opinion of the Court, ordinarily it would suffice to remain silent and it would represent my judicial conscience that I respect, although disagree, with the examination that the dissenting opinion makes of the constitutional and legislative history of the extraterritoriality of the additional compensation at one and a half time and its applicability to the migrant workers. However, the manner of analysis and the conclusions propounded by the dissent forces me to file the present individual vote.

First of all, the Puerto Rican migrant workers program does not have its basis "on infraemployment, unemployment, and poverty" to which the past Federal Secretary of Labor Arthur J. Goldberg, once referred to with respect to the North American agricultural migrants, only because juridically a Constitution cannot be extended, as it would be my wish, beyond our frontiers in a limited area such as compensation at time and a half. As it would appear from the reading of a typical contract for a migrant worker, our special legislation reflecting a social vanguard, does not ". . . exclude them from a minimum wage, unemployment insurance, legislation with respect to labor accidents and other special legislation from the laws that protect the right of the workers to organize themselves and bargain collectively with their employers".

Secondly, taking in consideration a strict analysis and judicial methodology, it is not proper in order to reach a specific result over the constitutional matter in question, to enforce or to invoke a possible agreement *being discussed* before the European Economic Community, nor to the Bustamente Code, or to treaties or multistates or bilateral pacts (the Philippines and Mexico), which clearly all answers to socio-economic and political realities different to those existing in our jurisdiction. The result requires, as is done in the majority opinion of a judicial and dispassionate analysis in a logical and ordinarily balance of the applicable principles and doctrines.

In the third place, to invoke in the present case the equity norm of excellency of Article 7 of our Civil Code (31 LPRA 7), and to propose that the result should depend on the free examination of usage and customs, relegating to a second consideration a special law and a clear legislative history, constitute a dangerous and wrongful method of decidin, judicial questions, a method capable unduly recognizing rights where there are none or denying said rights where they do exist.

Fourthly, my opinion to dissent starts from certain erroneous academic premises to finally reach, without judicial basis, a contradiction in concluding that the dissent does not express ". . . a definitive constitutional criteria", all of it under the constant argument that evidence should be presented to examine the conditions of our migrants. The apparent logic of that reasoning evaporates when based with the following reality: the correct judicial solution with respect of the extraterritoriality of the constitutional provision dealing with additional compensation at time and a half, cannot depend on the other working conditions of the migrant workers; it applies or it doesn't, by virtue of the interpretation of the Fundamental Law as implemented for the protection of those workers in the legislative mandate of special law 87 of June 22, 1962 and its history (29 LPRA 326, et seq) and not on the basis of the evidence that could be presented on other conditions of employment, which are obviously irrelevant to the matter of law before the judicial forum since they belong to the sphere of other branches of government.

It cannot be validly proposed that the final judicial conclusion in that aspect is predicted on the fact that the agricultural economy in the States of Maryland and Delaware—or in the future of any of the other forty eight (48) States of the Union where our migrants may go to work—could absorb the additional costs of the claimed compensation, or to the possibility that the Puerto Rican migrants may or may not be substituted by other workers. Such factors are not only unstable and foreign to the judicial controversy, but cannot be determinative for the recognition or denial of the pretended right under the theses that its nature is "ex proprio vigore" and extraterritoriality automatic.

For any scholar or participant in the debates of our Constitutional Convention there can be no doubts that it was never contemplated that the compensation of one time and a half would be applicable extraterritoially. A reading of the debates shows that the original version of the amendments which culminated in the existing text, take as a frame of reference the *internal* prevailing situation in Puerto Rico, including various decrees promulgated by the Minimum Wage Board and their effects of the industrial climate in our country. 3 Diary Journal, pages 2247–2248; 2250–2259; 2278–2279.

One of the strongest proponents of the same, the delegate Mr. Padrón Rivera, labor leader, summarize the problem in the following manner:

"Therefore, I belief, Madame President, that the Constitutional Convention, acted intelligently in focusing the problem so that no inconvenience is credited *to the industrial process* and precisely to establish harmony between capital and labor, which harmony is not necessary at this time to avoid subversive movements which, shielded under the name of strikes, evolve to destroy what we are doing under a just and human perspective *in creating here an industrial system* of peace, progress, and harmony." Ob. Cit., pages 2286–2287. (Emphasis added).

Finally, the desent violates the simple principle that the merits of a motion to dismiss are examined in view of the allegations of a claimant and not in view of speculative conceptions of the judge.

Since it is my belief that the courts of justice exist to decide and not to create or perpetuate controversies in "all imaginable circumstances"—before what I consider a questionable tendency reflected in the desent or proposing solutions or project solutions of theoric liberality—is that I reaffirm without any mental reservations my conformity with the terms of the opinion of the Court.

ANTONIO S. NEGRON GARCIA,
Associate Judge.

Exhibit XIII, Administrative determination in the case of *Domingo Diaz Fuertes* v. *Victor Lanning.*

[Exhibit XIII has been retained in the Committee files.]

MIGRANT LEGAL ACTION PROGRAM, INC.,
Washington, D.C., March 7, 1977.

Congressman ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House Committee on the Judiciary, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: This is in response to your letter of March 1, 1977, concerning oversight of legal services programs. We welcome the opportunity to shed some additional light on the issue of representation of migrant farmworkers and the real population count of this group.

On pages 3 and 4 of its February 25, 1977, statement to your Subcommittee, the American Farm Bureau Federation sets out the statistics it believes represents the number of migrant farmworkers in the United States. On page 4 of its statement, the Farm Bureau states that ". . . a U.S.D.A. report indicates that only 188,000 or about 7% of the total hired farmworking force, were migrant farmworkers".

As a total count of farmworkers in this country, this figure is misleading. In fact, the statistics gathered by U.S.D.A. and other federal agencies are incomplete and contain extreme statistical variables. Rather than providing a complete count of farmworkers, these statistics should be viewed merely as a basis for projecting the number of migrant and seasonal farmworkers. For example, a federal agency will periodically release farm figures on the number of migrant farmworkers in the United States, based on those farmworkers actually ..rved by the agency or on a statistically abbreviated survey of areas of the country. Furthermore, when agencies apply, in an inconsistent way, such variables as who is a farmworker, the time of the year the study is done, where the study is conducted, and whether the entire family is included, extreme disparity results in the number of farmworkers projected.

In fact, variances between agencies of the same department occasionally occur. For example, the Economic Research Service of the U.S.D.A. in 1975 reported the 188,000 migrant figure that the American Farm Bureau cites in its statement. According to telephone conversations with personnel of the Economic Research Service, this figure is low and contains some statistical variability. When one compares this estimate with that of the Division of Compliance and

Enforcement in the same agency, *i.e.*, U.S.D.A., as reported in March 1976, one encounters startling variances:

There is no accurate count of migrants. The official figure adopted by the U.S. Department of Labor and accepted by other public agencies is 208,000. A more realistic figure used by program managers of migrant problems and migrant assistance organizations with data collection tools is 500,000. On the other end of the spectrum, migrant advocacy organizations, the United Farmworkers and the Teamsters, set the figure at over 750,000. Confusion surrounds their number because data collection methods used are not sophisticated enough to deal with the constant movement of migrants, their inaccessibility or location of residence. The count is further complicated by the option of many migrants, who are American citizens, to live more cheaply in Mexico during the non-productive season. This means that population census takers, operating in March, can miss counting many of the migrants who are still at their Mexican residences. The ranks are swelled by Mexican illegals who enter the country only during the work seasons. For example, records of the State of California Migrant Family Housing Centers show that 41.9 percent of their occupants make Mexico their homebase.

Other variances occurred in the count of migrants issued by the Department of HEW. In May 1975 the Health Services Administration of the Department of HEW issued a report based on the 1973 Migrant Health Program target population. This report estimated that in 1973 the total national count of farmworkers, 1,106,860 with some duplication. This figure was obtained by summing up the county-by-county migrant population data at its peak. However, this figure did not take into account the states of Georgia, Hawaii, Mississippi, Nevada, South Dakota and Tennessee. Furthermore, data for Puerto Rico was only for 40 percent of the island's geographical area.

In the face of these inconsistencies and incomplete count, the Legal Services Corporation has provided limited funds for the purpose of compiling and analyzing existing statistics and data on the number of migrant and seasonal farmworkers. This study is projected to be completed in June 1977. At that time, legal services programs hope to be able to project reasonably accurate figures for the number of farmworkers.

One last point should be made. Legal services programs serve not only eligible interstate migrant farmworkers, but also the extremely large numbers of seasonal farmworkers with stable residences. Our services are also provided to farmworkers who are in the process of settling out of the migrant stream. The total population eligible for legal services in the farmworker sector is, therefore, several times the number of interstate migrant farmworkers.

I appreciate the opportunity to complete the record in this regard. If I can be of any further assistance, please feel free to contact me.

Sincerely,

RAPHAEL O. GOMEZ,
Executive Director.

LEGAL SERVICES CORPORATION,
Washington, D.C., March 9, 1977.

Hon. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties, and the Administration of Justice, House Judiciary Committee, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: This letter responds to your request that the Corporation comment on the statement of the American Farm Bureau Federation regarding extension of the Legal Services Corporation Act of 1974. I appreciate the opportunity to submit these remarks for the record.

At the outset, we certainly agree with the Farm Bureau that "every citizen, regardless of his economic situation, should have full access to the courts and competent legal service and representation." That principle is reflected in the Legal Services Corporation Act and—as I stressed in my testimony before the Subcommittee—is what the legal services program is all about. We also agree that there is room for honest differences of opinion regarding the best means to ensure that poor people receive effective representation. Such differences exist between the Farm Bureau and the Corporation with respect to the need for an independent organization to administer the legal services program, and the necessity for extending the Act for a period of at least three years. The Subcommittee is familiar with the Corporation's position on these matters, and I will not repeat them here.

The bulk of the Farm Bureau's statement, however, reflects an apparent misunderstanding of the legal services program's purposes and the way in which the program operates. Many of the Farm Bureau's allegations—those regarding allegedly "prescribed activities," for example, and those regarding the Corporation's eligibility standards and funding for thirteen support centers—are drawn from a recent article in *Barron's*.

That article is seriously inaccurate in many respects, and reflects the apparent view of its author that poor people are not entitled to the same access to justice as is the right of every citizen. I attach a detailed response to the *Barron's* article, and request that it be included in the record.

Two points raised in the Farm Bureau's statement require an additional response. First, the Farm Bureau questions the fact that there are 29 million poor people in this country, nearly 16 million of whom are without even minimum access to the legal system. It cites a recent study performed for the Congressional Budget Office and suggests that only about 9 million people are poor.

The figures used by the Corporation are based on the 1970 census, the most recent complete count of the poor population in this country. The study referred to by the Farm Bureau is not a new survey of the poor population. Rather, it suggests possible definitions of poverty based on the inclusion of in-kind benefits from government programs. For some purposes, no doubt, those benefits should be included—but not in determining financial eligibility for legal services. The receipt of in-kind benefits generally has little effect upon a poor person's ability to afford legal assistance. The Food Stamp and Medicaid programs, for example, are unquestionably essential to the survival of many poor Americans; legal services programs have been leaders in ensuring that those programs are administered fairly and that the recipients receive all to which they are entitled. Poor people cannot, however, use Food Stamp vouchers or Medicaid cards to purchase legal services, and that is the critical question in the setting of the Corporation's eligibility criteria.

Further, our definition of income is the same as that of the Community Services Administration, which develops the "official" poverty line. If the Corporation were to adopt an alternative definition of income, its eligibility standards would be inconsistent with those of federal agencies. Finally, the difficulty of determining the dollar value of such benefits is so great that an attempt to do so would unduly complicate the process of determining eligibility.

The second point raised by the Farm Bureau's statement that requires further discussion relates to the representation of migrant farmworkers by Corporation-funded programs. Last year the Corporation funded ten programs, or special units of general service programs, exclusively directed to the problems of migrant farmworkers.[1] Our rough estimate is that those programs handled approximately 12,000 cases in 1976. We do not have reliable information regarding the total number of migrant farmworkers eligible for legal services and in the population generally. The statistics available from various federal agencies differ in their definition of the term "migrant" and whether "seasonal" workers are to be included in the figures.[2] The Corporation has, therefore, commissioned a study to develop more reliable data in this area.

It is inconceivable, however, that Corporation-funded programs are "over serving" migrant farmworkers as the Farm Bureau's statement appears to suggest. The severely limited resources available to the programs have meant that no group of poor people has received an adequate level of service, and this harsh reality will continue long after the Corporation's minimum access goal is achieved. Many people have suggested, moreover, that the ability of legal services programs to serve migrant farmworkers has been even less than their ability to serve other groups. In serving migrants, the problems of too few lawyers and too few programs are compounded by the need for bilingual staff, the need for expertise in specialized areas of the law, and the difficulties inherent in serving clients who may move a thousand miles and live in several states during the course of a year. The Corporation is undertaking efforts to deal with

[1] The increase in the Corporation's appropriation for Fiscal Year 1977 enabled it to fund two additional migrant units, one affiliated with Texas Rural Legal Assistance and one with Florida Rural Legal Assistance.

[2] A 1973 study by the Department of Health, Education, and Welfare, for example, estimated the number of migrant farmworkers at 700,000. The study did not include seasonal workers and did not count persons in counties with fewer than five hundred migrant farmworkers. The actual number of persons who are migrants for at least part of the year is probably considerably higher.

some of these problems through its training and national recruiting programs, and is attempting to determine their effects on legal services delivery.

Insofar as I am aware, the Corporation has never received a complaint from the Farm Bureau regarding any of the alleged instances of improper conduct by legal services personnel referred to in the statement. We are currently investigating allegations that have come to us indirectly that some legal services personnel have engaged in improper organizing activities, and are attempting to gather information regarding the activities of Puerto Rico Legal Services' Migrant Division in representing farmworkers employed in the United States. It would be inappropriate to make specific comments regarding those matters until the investigations are completed. A few general comments, however, are in order.

First, the Legal Services Corporation Act does not prohibit attorneys from advising clients regarding lawful alternatives to litigation, or from providing legal assistance to groups of eligible clients who are attempting to organize. The allegation that some legal services personnel are "supporting" organizations of migrant farmworkers does not, therefore, imply a conclusion that the Act has been violated.

Second, the contract between various farm organizations and the government of Puerto Rico under which many migrant farmworkers come to the United States specifically provides that suits for violation of its terms are to be brought in Puerto Rican courts. Suits for small wage claims, moreover, are often settled out of court rather than resolved through expensive and time-consuming litigation. The fact that a number of suits have been brought in Puerto Rico and no judgments have been rendered on behalf of the farmworkers, even if true, does not imply improper conduct on behalf of the program.

Finally, parties who have been subjected to harassing or bad faith litigation may be reimbursed for their costs and attorneys fees under the common law of most American jurisdictions. That common law has been codified as Section 1006(f) of the Legal Services Corporation Act. Whatever the merits of arguments for abrogation of the so-called American rule prohibiting prevailing parties from routinely recovering their fees, there is no justification for doing so only with respect to actions brought by legal services programs. The recommendation of the Farm Bureau on this point cannot be squared with the principle of equal justice.

Again, I appreciate the opportunity to make these views part of the record before the Subcommittee. If you or other members of the Subcommittee have further questions regarding these comments or any other matter in connection with the hearings, we will of course be pleased to respond.

Cordially,

THOMAS EHRLICH.

STATEMENT OF THE LEGAL SERVICES CORPORATION IN RESPONSE TO THE "BAR SINISTER" [1]

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 pro-

[1] 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*.

grams. 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.

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 Chidlren (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 Counsels—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 insure 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, lobying, 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 articles 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 insure 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.

LEGAL SERVICES CORPORATION,
Washington, D.C., March 16, 1977.

HON. ROBERT W. KASTENMEIER,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: This is in further response to your request for information answering the allegations made about the activities of Puerto Rico Migrant Legal Services (PRMLS) by Mr. Arthur West of Garden State Service Cooperative Association, Inc. in testimony submitted to the Subcommittee on February 25, 1977. In our letter to you dated March 9, in which we

responded to a number of the general complaints raised by Garden State and the American Farm Bureau, we indicated to you that we were looking into the specific issues raised about the program in Puerto Rico. You have received a statement from Salvador Tio of PRMLS. We have had an opportunity to review that statement and to discuss the matter further with the program. We find no evidence of any violation of the Legal Services Corporation Act or the regulations issued pursuant thereto. To the contrary, based on all of the information available to us, we conclude that the Puerto Rico program is providing appropriate representation to eligible clients who requested legal assistance to challenge certain practices of Garden State claimed to be in violation of contract rights and federal law.

Garden State has made two specific charges: first, that PRMLS has failed to utilize administrative procedures and second, that their clients have not won any of the cases that have been brought. Let me respond to these in turn.

With regard to the use of administrative procedures, from the very beginning, PRMLS has indicated a willingness to submit to an informal administrative procedure to reduce the necessity of litigation. Indeed, such arrangements have been negotiated with other growers or growers associations and those procedures seem to have worked well. In the Garden State situation, however, it was not possible to reach such agreement because the program and the growers could not agree on applicable law. In 1975, the contract negotiated by the Puerto Rico Labor Department and Garden State did include a complaint resolution procedure that must be exhausted prior to judicial action. PRMLS contends that this procedure is inadequate for a number of reasons. The Puerto Rico Labor Department has no power to adjudicate controversies between growers and workers as to wages; that power rests exclusively with the Superior Courts of Puerto Rico. The Labor Department has no power to enforce its decisions, thus requiring litigation even after a decision is reached. The procedure does not provide a due process hearing at any stage of the proceeding. In spite of these objections, the program has used the procedure, filing a total of 112 claims in 1976. The program is presently negotiating with the Labor Department for an improved procedure, and Garden State has been a party to those negotiations.

With regard to the other charge raised by Garden State, the evidence submitted by PRMLS contradicts the contention of the growers that none of the cases brought to trial have been won by the plaintiffs. In fact, of the 92 cases filed against Garden State, 18 have been won, two lost, and one dismissed for inaction. It is true that the program has been forced to desist or withdraw in 41 cases, but an examination of the facts in those situations indicates that the charges of frivolousness are unfounded.

Most of these cases involved the claim that contracts regulated by the Government of Puerto Rico failed to guarantee a fundamental right to overtime pay contained in Article II, section 16 of the Constitution of Puerto Rico, PRMLS did win on the merits of this issue in several District Superior Court cases. The Puerto Rico Supreme Court ultimately held, however, the the overtime provisions of the Constitution did not extend to workers recruited in Puerto Rico whose services were performed outside of Puerto Rico. As a result of that decision, 32 cases involving overtime pay were dismissed without going to trial. The fact that lower courts did hold with the clients in these cases demonstrates that the claims were not frivolous, even though the final decision of the Supreme Court was adverse.

Only two of the 92 cases brought by PRMLS have been held to be without merit. The remaining seven cases that have been withdrawn were not pursued because the workers moved away from the jurisdiction, lost interest because of the delay in judicial proceedings, or feared retaliation by the growers.

Presently 36 cases are pending. The program anticipates that matters now in the grievance procedure will become judicial cases because of the inadequacy of those procedures.

There is no question that Garden State and the workers represented by PRLMS disagree about applicable law in matters affecting migrant workers hired in Puerto Rico under contract with the Puerto Rico Labor Department. Our adversary system of justice exists to adjudicate such differences, and Congress established the Legal Services Corporation to assure that low-income persons have the opportunity to use that system.

I hope that this resolves the matter for you. If you have additional questions about activities of the program in Puerto Rico, please let us know.

Cordially,

THOMAS EHRLICH.

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