



**Statement of the Legal Services Corporation
John Erlenborn
President
February 28, 2002**

Introduction

Mr. Chairman, and Members of the Subcommittee, Legal Services Corporation (LSC) welcomes this opportunity to report on our activities and discuss our FY 2003 budget request. Although we live in the world's wealthiest nation, there are more than 43 million Americans that are potentially eligible for LSC-funded services. To continue to ensure these vulnerable Americans are not completely shut out of the justice system, a strong federal role in supporting legal services continues to be vital.

LSC's FY 2002 budget is \$329.3 million. LSC has 117 full-time staff, including 17 budgeted positions in the Office of the Inspector General. During this fiscal year, LSC will distribute \$310 million dollars in federal grants to local, independent legal aid programs. Through its annual appropriation from Congress, LSC remains the single largest funding source of civil legal assistance in the country.

Programs receiving LSC funding help handle more than one million legal cases annually. LSC-funded programs are focused on serving the basic, critical legal needs of low-income clients. Ten percent of LSC clients are elderly; over 50 percent of all clients are women with young children. The most common types of cases are family, housing, income maintenance, and consumer law issues. Almost one-sixth of all cases involve efforts to obtain protection from domestic violence. Other case types frequently handled by LSC grantees include evictions, foreclosures, child custody and support, child abuse and neglect, wage claims, access to health care, and unemployment and disability claims.

To fulfill LSC's statutory mandate, the Board of Directors in January 2000 approved a set of "Strategic Directions for 2000-2005," a five-year blueprint for improving the delivery of legal services in America. The Board took this action guided by the belief that access to quality legal services is critical to a fair adversarial system of justice. Its twin objectives are to dramatically increase the number of low-income Americans who can access the civil justice system and to ensure that all clients receive quality legal services.

With a small and efficient staff, LSC management ensures accountability to Congress and the taxpayers through aggressive oversight and enforcement of federal law and other

requirements. LSC also uses a competitive grant-making process to promote the highest and best use of federal dollars. Through our *State Planning Initiative*, LSC staff work with all grantees in every state to ensure our nation's poor receive high quality and appropriate legal assistance.

A. Grantee Oversight

In 1996, Congress enacted fundamental change to the national legal services program, reaffirming the federal government's commitment to providing free civil legal assistance to poor Americans. In order to refocus the LSC-funded system on individual clients with particular legal needs, Congress placed a series of new restrictions on LSC grantee programs. These new rules apply to all private and public funding received by an LSC grantee. LSC-funded programs are not allowed to file or litigate class action lawsuits, engage in many types of lobbying, seek or receive attorneys' fees, litigate on behalf of prisoners, or represent most undocumented aliens.

In recent years, LSC management, working with the independent LSC Inspector General, has developed a system of effective oversight for federally funded legal aid grantees. LSC has taken vigorous action to ensure compliance within applicable Federal law and regulations. Charged with this specific responsibility, LSC's Office of Compliance and Enforcement (OCE) has 12 attorneys on staff, three fiscal professionals, and one management professional. With approximately \$2.2 million in budgeted funds for FY 2002, OCE investigates complaints and inquiries from members of Congress and the public, and follows up on referrals from LSC's Office of the Inspector General regarding possible violations discovered through compliance audits of local programs. The office also develops and enforces corrective action plans and recommends and enforces sanctions where necessary.

Further, as mandated by Congress in FY 2001, LSC hired an additional seven investigators for the Compliance and Enforcement Division to investigate grantee compliance with Federal regulations. To fully satisfy this mandate, LSC worked diligently throughout the beginning months of 2001 to fill all seven attorney/investigator positions. The selection process was completed by April 2001. Once hired, the new employees underwent an intensive phase of training and orientation to be fully prepared to conduct on-site reviews at LSC grantee offices.

Under the LSC system a principal mechanism for ensuring compliance is through each local program's financial statement audit, which includes a mandatory audit of compliance with LSC regulations. These audits are conducted by Independent Public Accountants (IPAs) according to guidelines established by LSC's Office of Inspector General (OIG). The OIG reviews the IPAs' audit reports and refers findings of non-compliance to LSC management for follow-up. LSC management determines the appropriate corrective action and enforces compliance, reporting back to the OIG on the steps it has taken. The OIG continues to track the progress of corrective action and enforcement. No case is closed without the OIG's agreement. In addition to the system of IPA audits, the OIG also conducts on-site audits of grantee compliance with particular restrictions and requirements. In addition, the OIG has developed a strategic plan that includes a series of operational projects, both mandatory and discretionary, to ensure grantee compliance. (See Section G).

LSC has made every effort to ensure that the congressional restrictions placed on grantees are strictly observed. Management has taken strong action in those instances when grantees have failed to comply with the law or LSC regulations. Fiscal sanctions have and will continue to be imposed where necessary and appropriate, up to and including termination of the grant in its entirety. Most recently, for example, LSC was forced to suspend 20 percent of a

program's funding after its repeated failure to submit the required yearly audit to LSC's Inspector General. Another program was placed on month-to-month funding after questions surfaced involving accuracy of case counts and proper utilization of resources. We take very seriously the congressionally imposed requirements on our grantees and will continue to vigorously monitor them to ensure compliance.

B. State Planning Initiative

Through its *State Planning Initiative*, LSC has radically changed the landscape of the national legal services delivery process. Beginning in 1998, LSC has required all grantees to participate in a local process to develop and implement a comprehensive, integrated delivery system in every state. The *State Planning Initiative* requires that all grantees, working together with local stakeholders, develop an assessment of the strengths and weaknesses of every state civil justice system and formulate a plan to ensure that all clients within a state receive high quality legal assistance. The overall goal of this effort is to achieve the highest and best use of the federal investment in every state.

To date, the *State Planning Initiative* has resulted in significant and positive change in the delivery of legal services throughout the country. Central to this change is the ongoing retooling of existing systems that began in 1998. Through reconfiguration the number of grantees receiving LSC funding has decreased from 262 in 1998 to 207 in 2001. In 2002, LSC projects that there will be approximately 170 programs. Federally funded legal services programs continue to serve every county, city, and state in the nation.

In a recent publication entitled *Building State Justice Communities*, LSC reports on changes in the legal services delivery system, singling out 18 states for their model reform efforts. Many states completely restructured their legal services delivery systems. All improved access to justice for low-income people, strengthened the quality of service offered, and forged new and deeper bonds among stakeholder partners in their civil justice communities. Still other states increased their funding through innovative grant projects and local fundraising efforts.

One of the centerpieces of LSC's *State Planning Initiative* has been the implementation of technology as a way to reach more clients. Congress has supported this goal since 1999 with a three-year, \$15.6 million technology investment for legal services. In 2001, LSC spread a record \$7 million in hi-tech grants to 55 legal aid programs in 28 states through its Technology Initiative Grant program. Statewide legal services web sites, toll-free phone hotlines, sophisticated computer intake systems, touch screen computer kiosks, "virtual" law offices, video conferencing for clients, and online training for advocates were among the projects funded by LSC grants.

C. Competition

The statutory role of LSC is to manage and oversee federal funds that support the direct provision of legal services across the nation and U.S. territories. Since 1996, LSC has used a competitive grant-making system to promote the economical and effective delivery of legal services, as required by § 1007(a)(3) of the Legal Services Corporation Act. LSC encourages

local legal services providers and others to compete for available grants by broadly circulating information about the availability of grant funds through an aggressive public information campaign and through technical support provided to parties seeking to apply for LSC grants.

During the competition process, LSC evaluates applications according to established quality standards and awards grants to the applicants adjudged most capable of providing high-quality legal services in accordance with applicable legal requirements. LSC also uses the competition process to promote increased volunteer private attorney involvement (*pro bono*) and to expand public-private partnerships through which additional resources can be secured to supplement federal funding. During each grant period, LSC works with successful applicants to improve problematic areas identified in the competition process.

In FY 2002, the sixth year of competition for grants, LSC received grant applications from 103 applicants for 122 service areas in 26 states and the District of Columbia. There were multiple applicants for eight service areas. Competition decisions were made in November 2001. In addition, 83 current recipients whose grants were not up for competition this year were also subject to a grant renewal process to ensure their continued compliance with grant conditions.

Competition has resulted in improved legal assistance to our client community. First, it ensures the most qualified applicant oversees the federal investment to deliver legal assistance to low-income persons in each service area. Second, the competition process identifies strengths and weaknesses of programs. When necessary, programs are visited, short-term funding is established, and improvement efforts are undertaken. This process has led to significant change. In instances in which reform is not forthcoming, it has led to the replacement of providers. Third, LSC is developing the technological capacity to analyze application data in order to identify significant statistics and trends that are valuable in making grant decisions. Finally, competition has helped facilitate the growth of centralized intake systems, increased consumer education and self-representation, and more effective *pro bono* efforts.

D. Challenges to LSC Regulations

LSC continues to make every effort to ensure that the congressional restrictions placed on LSC-funded grantees are strictly observed. We have embraced that responsibility all the way to the United States Supreme Court, zealously defending the Constitutionality of each of the restrictions passed by Congress in 1996. In *Legal Services Corporation v. Velazquez*, by a vote of 5-4, the Supreme Court struck down on First Amendment grounds, the congressional ban on challenges to welfare laws in the context of individual cases and left standing all other 1996 restrictions on grantee activity. In *Velazquez*, LSC demonstrated it is a responsible regulatory agency committed to enforcing the will of Congress and committed to ensuring that federal funds are utilized in the manner mandated by Congress.

In the *Velazquez* ruling, the Supreme Court stated that LSC-funded attorneys can challenge the welfare reform law but only if it is part of the client's case for individual benefits. It is important to note that the Court did not strike down any other restriction

imposed by Congress in 1996, and the *Velazquez* welfare decision will have no discernible impact on the vast majority of work done by LSC-funded programs.

Opponents of congressional restrictions on federally funded legal services recently filed another lawsuit against LSC. In *Dobbins v. Legal Services Corporation*, plaintiffs argue that the activity restrictions passed by Congress and signed by President Clinton are unconstitutional. Among the restrictions that plaintiffs challenge are the bans on class actions, collecting court-awarded attorneys' fees, representation of certain categories of aliens, and organizing and representing clients. Plaintiffs also challenge LSC's program integrity regulations. The Courts of Appeals for the 2nd and 9th Circuits have upheld the constitutionality of the restrictions being challenged by the *Dobbins* plaintiffs, and notably the Supreme Court declined to review either of those rulings when it denied *certiorari* in March 2000. Congress has made clear its intent on the 1996 restrictions, and LSC remains committed to enforcing the will of Congress.

E. Case Service Reports

LSC has acknowledged that serious questions were raised concerning the accuracy and validity of the case service report (CSR) data submitted annually by our grantees, and we have since undertaken comprehensive action to correct those problems. The accuracy problems stem, in part, from a lack of clarity found in past LSC reporting guidelines, and more generally, from insufficient attention by grantees to the existing reporting and documentation requirements.

Since we last testified before this body, LSC has answered – and, we hope, put to rest – the issues raised regarding the accuracy and validity of the Case Service Report (CSR) data submitted annually by LSC grantees. LSC has done its part to assure our grantees are provided with full and clear guidance on CSR reporting and that their case management systems comply fully with LSC's operational standards. LSC reissued its CSR instructions to all grantees, calling attention to problem areas known at that time. Recognizing that more action was needed to improve the CSR system, LSC provided additional training and issued further written guidance to LSC-funded programs, including substantial revisions to its CSR Handbook. We also now require all grantees to perform Self-Inspections of their CSR data on an annual basis.

It should be kept in mind that the issue has always been one primarily of grantee compliance with rules governing how and when to report their activities. In no instance has the Inspector General or the General Accounting Office identified any fraud or intentional misrepresentation by any grantee in the compilation and reporting of this data. LSC did not intentionally deceive or mislead Congress in order to secure increased funding, nor did it attempt at any time to hide from the public or Congress the problems that were emerging in the CSR system and LSC's efforts to correct these deficiencies. Rather, LSC views the issues concerning CSR data akin to those encountered by many government entities as they attempt to meet the goals of the Government Performance and Results Act (GPRA).

In September 1999, the General Accounting Office critiqued LSC's corrective actions by conducting a telephone survey with some 80 grantees. Based on the survey, the GAO concluded that certain policy areas required more clarification, that more effective communication and

training on new CSR policies was required, and that the certification process could be improved by better sampling and more uniformity in the certification process. In its report to Congress, GAO made eight recommendations regarding LSC's CSR reporting system. As outlined in the chart on the following page, LSC has addressed GAO's recommendations in full.

LSC's Program Letter 2000-1 issued on January 14, 2000, contains the Self-Inspection instructions for 1999 cases and provides extensive case reporting guidance consistent with the GAO recommendations. Program Letter 2000-3 on April 28, 2000, outlines the amendments to the *1999 CSR Handbook*. The *1999 CSR Handbook – Revised* issued on May 14, 2000, includes the substantive changes to Case Service Reporting and incorporates other GAO recommendations. These three documents have been sent to all LSC-funded grantees.

LSC has provided continuous and aggressive guidance by following up with grantees where corrective action was necessary and by increasing its on-site presence to test grantee compliance with the CSR reporting process. These efforts have been extremely successful. In 1999, the CSR error rate was approximately 11 percent. This figure dropped dramatically, to five percent, in 2000. LSC believes that this positive change is attributable to three factors: (1) the ongoing clarification of requirements that occurred throughout 1999 with the issuance of the *Revised Handbook*; (2) continuous emphasis on the importance of proper documentation of cases reported to LSC; and (3) grantees' increasing familiarity with the new, more rigorous reporting standards.

GAO Recommendations
Case Service Report and LSC Compliance Activities

GAO Recommendation	LSC Activity
1) Clarify and disseminate information on specific client assets that grantees must obtain, record, and maintain.	Specific and simplified guidance on the required assets documentation is found in Section 5.4 of the <i>Revised Handbook</i> . The first paragraph the section lays out the minimum standards for asset documentation and specifies further conditions where family assets exceed program asset ceilings.
2) Clarify and disseminate information on the type of citizenship/alien eligibility information grantees must obtain, record, and maintain for clients who receive assistance over the phone.	LSC clarified telephone citizenship/alien eligibility information and implemented these changes in section 5.5 of the <i>Revised Handbook</i> . The first paragraph of Section 5.5 specifically addresses under what circumstances the reduced requirements for documentation of telephone assistance apply, and it outlines the necessary conditions.
3) Clarify and disseminate LSC criteria for the single recording of a case.	Most issues of duplication are fairly clear. When unclear, a judgment call based on the facts and procedural posture of the case must be made. After several attempts at issuing new guidance, LSC has avoided further attempts to explain a single-case recording based on the reasoned determination that a different set of instructions on case reporting would not reduce the number of arbitrary results that either multiply cases or eliminate legitimate cases unjustifiably.
4) Clarify and disseminate LSC policy concerning who can provide legal assistance to clients for the service to be counted as a case.	Section 2.3 of the <i>Revised Handbook</i> provides specific grantee guidance regarding who can provide assistance to clients. This guidance relates to the local rules of practice in the grantee's jurisdiction and includes a requirement that any staff member who is rendering such legal assistance in the capacity of any attorney or paralegal keep time under the regulatory requirements of 45 CFR 1635.
5) Explore options for facilitating correct and consistent understanding of reporting requirements.	Section IV of the <i>Revised Handbook</i> and Program Letter 2000-1, which contains the Self-Inspection instructions for 1999 cases, both provide extensive reporting guidance to grantees.
6) Develop a standard procedure for future self-inspections to ensure that grantees systematically and consistently report their results for open and closed cases.	LSC Program Letter 2000-1 provided a set of 12 areas of inquiry for the 1999 Self-Inspection of closed cases, including detailed instructions for results sampling, responses, and tallying. These instructions were used for the 1999 Self-Inspection process. Similar instruments were utilized for the 2000 and 2001 Self-Inspection processes. LSC concluded it was not financially feasible to pursue the verifying of open cases given resource and time constraints. Since all open cases must ultimately be closed, rigorous safeguards for counting closed cases will have the intended effect.
7) Direct grantees to select samples for future Self-Inspections that are sufficient to draw reliable conclusions on the magnitude of case data errors.	Since the 1999 Self-Inspection, LSC has directed larger programs to sample at least 150 closed cases. Smaller programs have been required to sample a minimum of 75 closed cases. This far exceeds the GAO's recommendation of sampling a minimum of 30 cases for each grantee.
8) Ensure that procedures are in place to validate the results of LSC's 1998 Self-Inspection, as well as any future Self-Inspection.	Upon release of the GAO Report in September 1999, LSC was already focused on the 1999 CSR and Self-Inspection processes. LSC chose to conduct the 1999 Self-Inspection to compel LSC grantees to correct figures before submission. ¹ We believe that our success in diminishing the CSR error rate ² is based upon the ongoing clarification of requirements that occurred throughout 1999 with the issuance of the <i>Revised Handbook</i> ; LSC's increased emphasis on proper documentation; and programs' increasing familiarity with the new, rigorous reporting standards.

¹ The Office of Inspector General's (OIG) assessment of the 1999 CSRs, as mandated by Congress, re-validated the 1999 CSR Self-Inspection figures. The OIG's assessment resulted in a scientifically valid estimate of a thirteen percent error rate. This estimate is equivalent, within the statistical margin of error, to the eleven percent estimate LSC used based upon the error rate reported in the aggregate 1999 Self-Inspection sample.

² Using the same methodology as in 1999 for the 2000 Self-Inspection process, CSR error rate decreased significantly to an estimated 5 percent, showing significant improvement in the 2000 CSR statistics.

G. FY 2003 Budget Request

For FY 2003, LSC is seeking an appropriation of \$329,300,000 to provide funding for civil legal assistance to low-income persons in the United States. This amount represents no increase from the FY2002 appropriation. This budget request is structured to allow LSC to continue to focus on three strategic goals: (1) to dramatically increase the availability of legal services to eligible persons, (2) to ensure legal services clients are receiving appropriate and high-quality legal assistance, and (3) to ensure that legal services programs fully comply with all legal requirements.

In FY 2003, LSC will allocate \$310,000,000 in grants to local legal services programs in every state, county, and congressional district in the United States, as well as in Puerto Rico, the Virgin Islands, Guam, and Micronesia. The work of LSC-funded grantees continues to be a model of efficient dispute resolution. A very small percentage, approximately 10 percent, of LSC-funded cases is resolved by a court decision (and the vast majority of these are family law cases that require a court determination). Rather than litigating cases, legal services lawyers consistently find more efficient ways to solve problems for their clients, such as brief advice, pro bono referrals, and the provision of self-help materials. This cost-effective approach is especially important because the need for legal services remains overwhelming. More than 43 million Americans are potentially eligible for LSC-funded services. Yet because of limited resources, local legal services programs are forced to turn away an estimated 80 percent of low-income individuals with critical legal needs, according to a benchmark 1994 American Bar Association legal needs survey.

In FY 2003, LSC will allocate \$3,400,000 in FY 2003 to its Technology Initiative Grant program. As explained in Section B of this document, the TIG plan was designed to significantly increase access to legal information, self-help resources, and basic legal assistance for low-income Americans. The TIG program awards grants to eligible grantees through a competitive grant process, rewarding the most innovative and technologically proficient programs.

Only \$13,300,000 of LSC's total FY 2003 requested appropriation is for Management and Administration. These funds allow LSC to fulfill its oversight and enforcement role as well as improve the national delivery system by reviewing program configuration and performance in every state – and by promoting program collaboration and/or consolidation to maximize services throughout the country. For FY 2003, LSC is seeking additional M&A funds to strengthen its capacity to ensure compliance with congressional restrictions enacted in 1996, to offset annual compensation increases and rental costs, and to continue to provide technical assistance to LSC programs on a wide range of issues.

The Office of the Inspector General is requesting \$2,600,000 for FY 2003 – an increase of \$100,000 above its FY 2002 appropriation. The OIG has an explicit statutory role in the oversight of LSC grantees. LSC's FY 1996 Appropriations Act placed a particularly significant responsibility with the OIG – overseeing the monitoring of grantee compliance with congressional prohibitions and restrictions through IPAs' annual audit of grantees. This approach replaced the prior system of on-site checks by LSC management. This oversight

responsibility includes development of guidance for the IPAs conducting the audits, review of their audit reports, referral of findings to LSC management for follow-up, and tracking the status of corrective actions. It also includes the OIG's on-site reviews of grantee compliance

The OIG has developed a strategic plan outlining a series of operational projects that were formulated based on the OIG's risk assessment of the legal services program. The risk assessment determined that the OIG should allocate a majority of resources to assessing compliance with the prohibitions and restrictions on LSC-grantee activities and to promoting the effectiveness of the legal services delivery system. The risk assessment indicated that the threat of significant monetary losses through fraudulent activities is low. Mandatory projects include the annual audit of LSC financial statements, investigations of crimes and referral of evidence for prosecution, and review of proposed legislation and regulations. The plan also includes activities aimed at the prevention and detection of no-compliance with statutory restrictions. The OIG plans to conduct six on-site audits of grantee compliance with program integrity requirements for separation of grantees from organizations that conduct prohibited or restricted activities. The OIG will review approximately 200 grantee audit reports, refer significant findings to LSC management, and track the progress of corrective actions. The OIG will continue to manage the audit follow-up process and maintain the Audit Guide and Compliance Supplement that provide audit instructions to the IPAs.

The OIG also will conduct discretionary activities. Among these are three audits of the private involvement attorney (PAI) program under which grantees devote 12.5 percent of their basic field grants to the involvement of private attorneys in the delivery of legal assistance. The OIG will also perform two technology grant audits and 20 audit service reviews (ASRs) and will continue its ongoing assessment of the application of information technology to the delivery of legal services.

Conclusion

We at LSC are proud of our partnership with Congress and appreciate the continuing support of the Bush Administration. We pledge to continue working with this Committee to improve the civil justice delivery system in America and to ensure federal dollars allocated for legal services are being spent in the most efficient and cost-effective manner possible.

Since passage of congressional reforms in 1996, LSC has been faithful to the will of Congress and steadfast in its commitment to uphold all new restrictions on our grantees' activities. Our strong focus on compliance has been matched by our diligent efforts to maximize the federal legal aid investment in every state and to help effect major reform where necessary. We have embraced our new vision with resolve and purpose, determined to help more Americans access the civil justice system to address their critical, basic legal problems. Thank you, Mr. Chairman.