



AMERICAN BAR ASSOCIATION

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STATEMENT OF

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on behalf of

THE AMERICAN BAR ASSOCIATION

before the

SUBCOMMITTEE ON COMMERCIAL AND ADMINISTRATIVE LAW

of the

**COMMITTEE ON THE JUDICIARY
U.S. HOUSE OF REPRESENTATIVES**

on the subject of

THE LEGAL SERVICES CORPORATION

February 28, 2002

Mr. Chairman and Members of the Subcommittee:

I am Jonathan Ross a lawyer in private practice with the Manchester, New Hampshire law firm of Wiggin & Nourie. I submit this testimony at the request of the President of the American Bar Association, Robert E. Hirshon of Portland, Maine, to voice the Association's views with respect to the operation of the Legal Services Corporation ("LSC" or "Corporation") and its importance to ensuring equal justice for all.

The American Bar Association, the world's largest, voluntary professional organization with more than 400,000 members, is the national representative of the legal profession, serving the public and the profession by promoting justice, professional excellence and respect for the law.

I testify today in my capacity as Chair of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. This Standing Committee serves the ABA and the nation by examining issues relating to the delivery of civil legal assistance and criminal defender services to the poor. It maintains close liaison with state and local bar association leaders, providing information and developing policy on civil legal aid and indigent defense. It advocates for and works to ensure the availability of legal aid and defender services for indigent persons through a variety of activities and projects.

I also testify today based on my 35 years of direct, personal involvement in the provision of legal services for the poor. I first became interested in this issue while I was still in law school in 1965, when I worked for the Neighborhood Legal Services Office of the Office of Economic Opportunity in Washington, DC. I became actively involved in the national debate in 1985. Ironically, back then I didn't think the ABA was doing enough in this area and I also thought LSC was badly managed. In 1986, I co-founded the Bar Leaders for the Preservation of

Legal Services for the Poor during my term as president of New Hampshire Bar. I formed this ad hoc organization, along with the Texas and Massachusetts Bar Presidents, to raise awareness of the problem within the organized bar, and to engage in advocacy before the LSC Board, in Congress and in other appropriate forums. Today, I'm pleased to report that the ABA is extremely active in ensuring the Constitution's promise of "equal justice for all" and that the LSC is a well-managed organization. The ABA and the LSC are full partners in working to ensure that low-income Americans can address their basic everyday legal problems. We're a long way from reaching that goal, but we're active and we're working together.

I. The Legal Services Corporation Plays A Vital Role in the Justice System

Your Subcommittee is focusing today on many of the management issues related to LSC: whether LSC-funded programs are counting their cases accurately, whether programs are complying with the LSC regulations and whether programs are representing ineligible clients or taking on restricted cases. While these issues are necessary and important to your Subcommittee's oversight role, before I address some of these matters I think it is vitally important to put a human face on the work LSC-funded programs do.

For more than a quarter of a century, the Legal Services Corporation has been a lifeline for Americans in desperate need. For poor Americans, LSC-funded legal services programs have been there at times when they had nowhere else to go. These are just a few examples of the clients served by Georgia Legal Services.

- In Polk County, a woman's step-daughter sought to evict her from the mobile home that she had shared with her husband before he entered a long term care facility because of progressive Alzheimers Disease. The step-daughter obtained a power of attorney (POA) from her father 18 months *after* he entered the nursing home. Alleging that her father and step-mother were divorced, the step-daughter used the POA to get his Social Security benefits switched to her as representative payee, closed the parties' joint bank account, and then attempted to evict her step-mother from the marital home. Georgia Legal

Services successfully represented the step-mother and the step-daughter dismissed the eviction suit.

- Georgia Legal Services represented a young women from Douglas County who was first beaten by her spouse, and was then forced to respond to an overly zealous case worker from the Department of Family and Children Services (DFCS) who removed her children from her custody. DFCS used her status as a victim of domestic violence as a basis for deprivation proceedings. Through a series of hearings and negotiation sessions, the legal aid program helped the client gain protection from her husband and regain custody of her children.

These are just a few of the millions of people legal aid lawyers help every year. The Corporation, formed in 1974 with bipartisan Congressional support and the endorsement of the Nixon Administration, was created to ensure that all Americans have access to a lawyer and the justice system for civil legal issues regardless of their ability to pay. The 2000 census (released in September 2001) reports 31 million Americans continue to live in poverty, and another 7 million live on the brink of poverty, making more than one in seven Americans eligible for LSC-funded representation.¹ In 1994, a Temple University study commissioned by the American Bar Association reported that, despite the combined effort of legal services programs and the private bar, only 20 percent of the civil legal needs of the poor were being met. More recent studies conducted in several states, including Oregon and Vermont, show that nine years later 80 percent of the civil legal needs of the poor are not being addressed.²

¹ Joseph Dalaker, US Census Bureau, Current Population Reports, Series P60-214, *Poverty in the United States: 2000*, U.S. Government Printing Office, Washington, D.C. U.S. Census Bureau, "Historical Poverty Tables – Current Population Survey, (table) 6. People Below 125% of Poverty Level and the Near Poor"; published September 2001.

² Roy W. Reese & Carolyn A. Elfred, Institute for Survey Research at Temple University for the Consortium on Legal Services and the Public, *Report on the Legal Needs of the Low- and Moderate-Income Public*, January, 1994; Dale, D. Michael, *The State of Access to Justice in Oregon, Part I: Assessment of Legal Needs*, Sponsored by the Oregon State Bar, The Oregon Judicial Department, The Office of Governor John Kitzhaber, M.D., March 31, 2000; Honorable Denise R. Johnson and Robert Hemley et al, Committee on Equal Access to Legal Services,

II. The Legal Services Corporation Is Carrying Out its Congressional Mandate

The Legal Services Corporation has come a long way in the past several years. LSC used to be a target for elimination by some Members of Congress and certain organizations. After refocusing its efforts to serve the basic legal needs of the poor and having strengthened its delivery of those services through some initiatives I will discuss, the Corporation today enjoys the support of President George W. Bush, a strong bipartisan majority in Congress, the business community³, and individuals across the nation⁴. In 2001, for the first time in six years, the LSC budget was fully funded by the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies (“CJS Subcommittee”). Just this month, President Bush requested that LSC receive level funding of \$329.3 million for FY 2003, showing his strong support for the program. LSC has earned this trust by focusing on serving the basic legal needs of the poor, by engaging in state planning to improve service delivery and by improving its management structure and accountability to Congress.

Report on Investigation of Need and Assessment of Resources (September 2001, accessed February 25, 2002)

<http://www.vermontjudiciary.org/Resources/CommitteeReports/ULTREPT.pdf>

³ When LSC was threatened with termination in the 1980s, the CEOs of Fortune 500 companies banded together and informed Congress just how important access to the justice system was to their employees. Between 1995 and 2000, when LSC’s existence and funding were threatened, a group of Fortune 500 general counsels lobbied Congress to increase funding for LSC after its funding had been cut by the House Appropriations Committee. These general counsels represented leading American corporations, including Proctor & Gamble, Shell Oil, Eastman Kodak, Georgia-Pacific, Colgate-Palmolive, General Motors, Ford Motor Company and Dupont.

⁴ Americans strongly support spending their federal tax dollars to provide legal assistance to low-income individuals and families. An August 1997 Louis Harris poll reported that 70 percent of those queried believed federal dollars should be used to pay for civil legal aid to the poor in such cases as child custody, adoption and divorce. A June 1999 Harris poll reported that 80 percent of those surveyed believed federal funds should pay for legal assistance to low-income victims of domestic violence.

A. LSC is Focused on its Mission of Serving the Legal Needs of the Poor

LSC currently funds local legal aid programs serving every state, county and Congressional District in the U.S. and its territories. These programs provide direct services to more than one million constituents who struggle to get by on incomes below or near the poverty line as established by the Department of Health and Human Services. LSC clients include the working poor, veterans, family farmers and people with disabilities. Many beneficiaries of LSC funding were formerly middle-class, who became poor because of disaster, unemployment, illness or the breakup of a family. Historically, more than two-thirds of LSC clients have been women, most of them mothers with young children. Local legal services programs make a real difference in the lives of millions of poor Americans by helping them resolve such family law cases as domestic violence and child custody issues, and such benefit cases as wrongfully denied Social Security and veterans' benefits.

B. LSC Has Complied With GAO Recommendations to Improve its CSR Data

In 1999, the General Accounting Office (GAO) examined LSC's Case Service Reporting (CSR) system and made recommendations that included revising the system itself, providing more training to legal services providers who must comply with the CSR system, and changing procedures to ensure the uniform collection of data and reporting of statistics.

LSC responded to GAO's recommendations for improving its CSR statistics by, among other things, issuing several program letters clarifying procedures for certifying case reporting statistics and provisions in its 1999 CSR manual. LSC also issued other program letters amending the 1999 CSR manual to address specific issues raised by the GAO, including (1) who can provide legal assistance, (2) the timely closing of cases, (3) documentation requirements, and (4) client eligibility (income, assets, citizenship and alien documentation requirements); and

including a new section on legal problem categories and codes. LSC also issued a 1999 *Revised CSR Manual* in May 2000.

In its report to accompany the FY 2000 spending bill, the House Appropriations CJS Subcommittee directed the Corporation to make improvements in the accuracy of its CSR submissions to Congress a top priority.⁵ The Subcommittee required LSC to submit two special reports to Congress, in April and July 2000, documenting improvements in the accuracy of its CSR reports.

LSC submitted these reports in a timely fashion and reported vast improvements in the accuracy of its statistics. Reporting errors declined from an average of 11 percent to five percent. The CJS Appropriations Subcommittee was pleased with LSC's progress and stated so in the FY 2001 CJS Appropriations bill Committee report, H.Rept. 106-680.⁶

The ABA is satisfied LSC is making adequate progress to improve the reporting of individual grantees and the performance of the system as a whole. We encourage LSC to continue to work to find better ways to gather data to more accurately report all of the services provided.

C. LSC has Enforced and Defended Congressional Restrictions

The ABA continues to believe that the Corporation is committed to carrying out its mission, as mandated by Congress. In 1996, Congress imposed several restrictions on the type of

⁵ U.S. House, *Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill, Fiscal Year 2000 (to accompany H.R. 2670)* (H.Rept 106-283). Washington: Government Printing Office, August 2, 1999.

⁶ "The Committee is pleased with the efforts of the Corporation to improve the case reporting of its grantees. However, the Committee feels the Corporation can continue to work with its grantees to improve case reporting and lower the grantees' reporting rate error." U.S. House, *Departments of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Bill, Fiscal Year 2001 (to accompany H.R. 4690)* (H.Rept 106-680). Washington: Government

cases legal services programs could accept and on the clients they could serve. The Corporation has fully implemented those restrictions established by Congress.

LSC has vigorously defended every lawsuit challenging the restrictions, including Legal Services Corporation vs. Velasquez, 531 U.S. 533 (2001), in which the U.S. Supreme Court ultimately decided that one of the restrictions violated the First Amendment. LSC is again vigorously defending the restrictions in a recently filed lawsuit, Dobbins vs. Legal Services Corporation.

III. LSC State Planning Promises to Improve the Delivery of Legal Services

Beginning in 1995, LSC launched an ambitious “state planning” initiative, intended to encourage each state to undertake a careful process of system analysis and improvement:

- Obtain or significantly expand state funding for legal services;
- Establish systems for coordinating advocacy and training among programs;
- Make the court system more responsive and accessible to low-income and pro se litigants;
- Reconfigure programs where necessary to strengthen coordination, access, and services;
- Establish structures to more creatively involve the private bar in the delivery of civil legal assistance;
- Create and execute a statewide technology plan to improve access and enhance delivery;
- Develop a statewide coordinated intake system; and
- Expand the number of stakeholders within a state committed to the concept of equal justice.

In short, the LSC sought to develop structures and processes for building and maintaining comprehensive, integrated, statewide civil legal assistance delivery systems. While this initiative has required changes that have made some uncomfortable, the ABA believes that on the whole the changes it has stimulated have resulted in a stronger and more effective system.

The ABA has closely coordinated with the LSC to encourage and support efforts to improve each state’s system for delivering legal services to the poor. The ABA created in 1996,

Printing Office, June 19, 2000. The LSC reported even more progress at reducing the CSR error rate in the July 30, 2000 Special Report to Congress.

in conjunction with the National Legal Aid and Defender Association, the ABA/NLADA “State Planning Assistance Network” to provide technical assistance to those in the states engaged in the planning process. We continue to sponsor this program, seeking to promote and support state-based partnerships among the bar, the courts, and legal services providers to expand access to justice. The ABA has also assisted in the development of standards for the state planning process; I served on the LSC task force that developed those standards. While resources for state systems remain inadequate, we believe that these careful planning efforts promise more efficient use of those limited resources, and better overall access and service for clients.

IV. The Private Bar is an Active Partner with LSC in Serving Legal Needs of the Poor

The ABA actively encourages lawyers to provide *pro bono* representation to needy clients. The ABA estimates that more than 120,000 lawyers are actively participating in organized *pro bono* programs throughout the country. The ABA sponsors many programs to foster *pro bono* participation and increased funding for legal aid programs.

The ABA Center for *Pro Bono* assists ABA members and the legal community in developing and supporting effective *pro bono* legal services in civil matters as part of the profession's effort to ensure access to legal representation and the American system of justice.

The Project to Expand Resources for Legal Services, sponsored by SCLAID, assists bar associations and their leaders, private lawyers, bar foundations, IOLTA programs, legal services programs and *pro bono* programs to increase private resources for legal services.

The ABA Standing Committee on Legal Assistance for Military Personnel (LAMP) helps the military and the Department of Defense improve the effectiveness of legal assistance provided in civil matters to an estimated nine million military personnel and their dependants. America's soldiers and their families are one of the neediest groups in terms of civil legal

assistance. In response to the military activations following the September 11 tragedy, this Committee instituted the program "Enduring LAMP", which provides legal assistance to service personnel who have been deployed. Many state and local bar associations have also instituted programs to provide free legal assistance to victims of September 11.

I am pleased to report that the efforts of the organized bar have increased dramatically since 1985. I expect that we will continue to do more in the future.

V. Conclusion

Since 1996, LSC's leadership has worked closely with Congressional leadership in both the House and the Senate to ensure that the Corporation and its local grantees are focused on meeting the basic legal needs of the poor. The Corporation has demonstrated its commitment and ability to carry out the program changes. LSC management aggressively enforces the restrictions, continues to work diligently and successfully to improve the case service reporting system, and has engaged in comprehensive state planning which has significantly improved the delivery of legal services.

The single greatest deficiency of the Legal Services Corporation is the lack of adequate resources to meet the needs of the 80% of the poor who currently cannot be served. The Corporation, its grantees and their low-income clients deserve your support.