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TESTIMONY

March 3, 1999

TESTIMONY OF LSC CHAIRMAN, VICE CHAIRMAN AND PRESIDENT

Statement of the Legal Services Corporation; Douglas S. Eakeley, Chairman, John N. Erlenborn, Vice-Chairman, John McKay, President, before the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies of the House Appropriations Committee

Mr. Chairman and Members of the Subcommittee, thank you very much for the opportunity to testify. The Legal Services Corporation ("LSC" or "the Corporation") welcomes this opportunity to present our Budget Request for Fiscal Year 2000 and to report on our activities over the past year.

The need for legal services continues to be overwhelming. Although we live in a time of great economic prosperity, there are still over 35 million Americans living below the poverty level and some 10 million additional individuals with incomes between 100 and 125 percent of the poverty level who are also potentially eligible for legal services. This means that almost one in every five Americans is potentially eligible for LSC-funded services. America's children are particularly affected by poverty; a recent study conducted for the Foundation for Child Development showed that 20 percent of American children (14.2 million) lived in families with incomes below the poverty line in 1996. Current resources are insufficient to meet the needs of so many poor Americans. Last year, local programs turned away tens of thousands of people with critical legal problems.

The American public has great confidence in our system of justice; however, a recent poll shows that 90 percent of people believe that the affluent have an unfair advantage in our court system.⁽¹⁾ Unless everyone has equal access to the courts, the perception of bias shared by a growing number of Americans will inevitably erode confidence in our justice system and in our government.

The great strength of legal services programs will always be the work done to solve the critical day-to-day legal problems of low-income persons, providing a measure of fairness for the poor and vulnerable in our society. Equally important and of great consequence to our nation, local programs provide real evidence to millions of people that our nation has a system of justice that is not only for the rich.

For FY 2000, LSC seeks an appropriation of \$340,000,000. We estimate that this amount will enable local legal services programs funded by LSC to address over 1.6 million legal issues involving critical civil legal problems for eligible clients and their families. Roughly 30 percent of

the increase above the FY 1999 level would be allocated to a small cost-of-living adjustment for the local programs that provide legal services to the poor in every state and county in the United States. Seventy percent of the increase (\$30,000,000) would fund new, carefully focused initiatives to increase services to children and victims of domestic violence, and to expand the use of technology and promote client self-help.

LSC's FY 2000 budget request has been structured to allow the Corporation to focus on 1) maintaining current levels of high-quality legal services assistance; 2) using technology to significantly expand legal services and legal information to low-income persons; and 3) ensuring compliance by grantees with all congressional restrictions and LSC regulations.

Program Services to Clients: \$297,650,000

The foundation of our Budget Request is funding to preserve and maintain the services provided by the local programs that provide civil legal assistance to low-income persons throughout the United States.

In FY 2000, we seek to increase grants to local legal services programs by \$8,650,000, or approximately 3 percent above the FY 1999 level of \$289,000,000, as a cost-of-living adjustment. This increase will help ensure that local programs are able to maintain their current levels of services, which might otherwise be reduced by increases in such expenses as rent, benefits, and scheduled salary adjustments. The Corporation anticipates that improvements in efficiency and expansion of private bar involvement and non-LSC funding will enable programs to achieve a moderate increase in services with funding at the level proposed.

We would note, however, that the most significant source of non-LSC funding, state IOLTA (Interest On Lawyer Trust Accounts) programs, continues to be threatened. The Supreme Court on June 15, 1998, ruled in *Hon. Thomas Phillips v. Washington Legal Foundation* that IOLTA funds are the private property of clients. The Court sent the case back to a lower Texas court to determine if the state has "taken" private property and must compensate the owners for it. In 1997, LSC grantees received over \$57,000,000 from IOLTA programs. Loss of this funding source would constitute a major blow to many programs.

Domestic Violence/Unmet Legal Needs of Children Initiatives: \$17,250,000

The largest increase above FY 1999 funding levels will be targeted to two categories of services that have been identified by the Corporation, local programs, the Congress, and the organized bar as special priorities: domestic violence and the unmet legal needs of children. To receive the funding, each LSC grantee will be required to submit a plan demonstrating how it will use its allocation to expand services to victims of domestic violence and/or to address the unmet legal needs of children, based upon local priorities and criteria that LSC will develop. The Corporation estimates that these initiatives will result in legal services to 75,000 additional children and battered women, benefiting some 200,000 people living in poverty when the effect on other family members is taken into consideration.

LSC-funded programs are the nation's primary source of legal assistance for low-income women who are victims of domestic violence. More than one out of every six LSC legal issues addressed involves efforts to obtain protection from domestic violence. In addition to prompt action to

resolve emergency situations, victims of domestic violence usually require further legal assistance to resolve their marital status and establish themselves and their children in a safe and stable situation.

Overall, two-thirds of legal services clients are women, most of them mothers with children. The legal problems faced by people living in poverty can have particularly serious, long-term consequences for children. Access to legal services can enable a child to secure support from an absent parent, remain with a family that wishes to adopt, obtain a decent home in which to live, receive adequate nutrition and health care, escape from a dangerous living situation, regain wrongfully terminated or denied disability benefits or supportive services, or acquire better education or vocational training. Each of these factors can have a profound impact on a child's future.

Despite the seriousness of the issues involved, and the unique vulnerability of children and victims of domestic violence, LSC-funded programs are unable to provide all the services to children and to victims of domestic violence that are needed in their communities. A current survey of representative local programs confirmed the existence of a critical need to expand services in these two categories. This survey is reinforced by studies that have estimated between one and four million American women experience an assault by an intimate partner each year, and 3.3 million children are exposed to violence by family members against their mothers or female caretakers.⁽²⁾ Consequently, the Corporation has accorded special priority in FY 2000 to these initiatives.

The request for these initiatives represents a decrease from LSC's FY 1999 figures for them. This is due, in part, to the fact that some LSC grantees have received domestic violence funding through the U.S. Department of Justice under the Violence Against Women Act ("VAWA") and the Victims of Crime Act. The Corporation found that 62 LSC-funded programs received VAWA grants in FY 1997. Grants ranged from \$10,000 to over \$100,000 for a total of about \$4.4 million. For FY 1998, 80 LSC-funded programs reported \$5.2 million in VAWA funding. LSC's request to fund special initiatives on domestic violence will continue to supplement funds for civil legal assistance available through the Department of Justice.

Examples from a few representative states of the initiatives that local programs might undertake with these funds include the following:

- One program in a rural area would significantly increase its assistance to domestic violence victims and serve an additional 400 clients by expanding its outreach and community education efforts and producing a video on domestic violence laws and civil processes that would be made available at public libraries throughout the state. It would also increase training and education of clients, police, and others to ensure effective services to battered women in rural areas.
- One program would add three or four lawyers to expand its work by 500 to 600 cases on behalf of battered women. Another would significantly expand to 14 rural counties its innovative domestic violence program to establish victim support groups and work with clients to ensure that community resources are properly being used to meet their needs. A third rural program would increase its representation of families of children with special needs to ensure that the schools are meeting their needs. To promote family stability, it would expand its eviction prevention program for families with children, and work with public defender offices on a delinquency prevention project, taking referrals from the public defender and

providing legal representation on the family's related civil legal needs.

- A grantee would expand its direct representation of victims of domestic violence by adding two new staff and reaching another 200 battered clients. It would also increase assistance to children in foster care and expand its child support enforcement and custody work, especially in instances where mothers are going off welfare into low-paying jobs. Another grantee in this same state would expand domestic violence work into other counties in its service area, which it is not now able to serve because of limited resources, by expanding legal services, outreach, and client education and stimulating other services by fostering the development of cooperative service agreements and protocols among the agencies that deal with domestic violence victims, including police, prosecutors, hospitals, social services, shelters, court clerks' offices, and legal services programs. It would expand services for children in two service areas where, because of limited resources, it is not now able to accept cases involving children, such as child custody.

Client Self-Help/Information Technology Initiatives: \$12,750,000

In FY 2000, LSC will allocate \$12,750,000 to new initiatives targeted toward expanding methods by which clients can resolve legal problems themselves, without the intervention of an attorney, and improving efficiency and effectiveness in the delivery of legal services through better use of technology. These initiatives have been combined because many methods of promoting client self-help can be implemented more efficiently through expanded use of information technology.

Recent surveys have found that many local legal services programs lack the technological capacity to make full use of existing new technology-based methods of improving efficiency and expanding services to clients. Many programs have identified a need to expand community legal education and support for client self-help but lack the resources to do so. LSC's Office of Inspector General, in an August 1996 report, *Increasing Legal Services Delivery Capacity through Information Technology*, concluded that delivery capacity could be significantly increased through enhanced use of available technology. Among the uses of technology considered in the report are support for client self-help and preventing legal problems through centralized telephone and computer-based intake systems, public-access kiosks providing legal information and forms, and provision of legal information through the Internet.

The funds for these initiatives will be as follows:

- \$3,000,000 for special one-time *per capita* grants for expanding programs' technological capacity (including purchase of computer hardware, software, telephone systems, networks, and telephone equipment). The grants would require programs to make a commitment to budget in future years an amount sufficient to maintain the equipment and stay abreast of developments in technology.
- \$9,750,000 for special grants to selected recipients for demonstration projects to enable local programs to staff and run *pro se* clinics and other methods of assistance to individuals representing themselves; provide preventive legal education; create centralized intake systems providing advice, brief services, and referral; and perform other efforts to prevent legal problems or prevent their escalation. The return on investment for this initiative will be substantial. It is estimated that by making better use of technology, LSC programs will serve an additional 100,000 persons in FY 2000 with additional increases in

future years. Special emphasis will be placed on developing technologically advanced legal services offices that serve the rural poor. The lack of state funding for legal services and the vast size of service areas in certain western states severely limit access to legal help in these areas. For example, in the state of Montana (a state that is nearly the size of Maryland, Virginia, West Virginia, and North and South Carolina combined), in 11 legal services offices across the state there is a total of only 19 attorneys, serving a poverty population of 124,853. In 1998, the legal services program handled approximately 6,500 legal problems. Montana Legal Services received just \$132,019 in non-LSC funding in 1998, which comes out to just \$1.05 per poor person living in this state. Legal services programs in Idaho, Wyoming, and the Dakotas face similar obstacles. The Corporation strongly believes that allocating a modest federal investment (\$9.75 million) toward the development of technologically advanced "model" legal services programs will significantly expand legal services information and assistance to low-income Americans in rural areas.

LSC Management and Administration: \$9,250,000

The Corporation requests \$9,250,000 for Management and Administration in FY 2000 (an increase of 3 percent from FY 1999), which is slightly more than 2.3 percent of the total amount requested. The funds will be used to support the functions of the Corporation's central administration.⁽³⁾

No new positions will be created. In the budget submission for FY 1999, funding was included for 11 additional staff positions. With these 11 new positions filled, the Corporation's Management and Administration will consist of only 80 employees, significantly fewer than the level of 125 when the current LSC Board took office.

With this pared-down, highly efficient staff, LSC carries out its responsibilities for managing and overseeing the federally funded legal services delivery system. The Corporation uses its system of competition for grants to promote the efficient and effective delivery of legal services. LSC encourages competition for grants through broad circulation of information about availability of grant funds, outreach, and provision of technical support to applicants. In the competition process, LSC evaluates applications according to established quality standards and awards grants to the applicants best able to provide high-quality legal services in accordance with applicable legal requirements. LSC also uses the competition process to promote increased volunteer private attorney involvement and expansion of public-private partnerships through which other resources can be secured to build upon federal funding. During the grant period, LSC follows up with individual local programs on areas identified in the competition process as requiring improvement in program quality and identifies broader issues affecting the legal services delivery system. In FY 2000, LSC will continue to review program configuration in all states and promote program collaboration and/or consolidation where it appears that federal funds could be used more efficiently by programs or joint efforts serving broader areas or entire states. In addition, LSC will seek to identify, test, and evaluate new strategies to enhance the effectiveness and quality of legal services, and to promote use of promising strategies.

LSC's management further ensures accountability to Congress and the taxpayers through aggressive oversight and enforcement of federal law and other requirements. The Corporation's compliance and enforcement activities include drafting and promulgating regulations; implementing new legal requirements; investigating complaints and inquiries from

clients, the public, and Members of Congress and taking appropriate action; following up on referrals from the Office of Inspector General regarding possible violations discovered through compliance audits of local programs; developing and enforcing corrective action plans; and imposing and enforcing sanctions where necessary.

Office of Inspector General: \$2,100,000

The Corporation requests \$2,100,000 to fund the activities of the Office of Inspector General ("OIG"), as set forth in the OIG's Annual Performance Plan for FY 2000, which is also included with our Budget Request. The OIG's mission is to prevent and detect fraud, waste, and abuse, and to promote efficiency and effectiveness in activities administered or funded by LSC. In addition, the OIG oversees routine on-site monitoring of grantee compliance with laws and regulations through annual audits by independent public accountants, referral of significant findings to LSC management, and tracking progress of corrective actions. The OIG also conducts on-site audits of grantee compliance and associated requirements.

FY 1998 Activities

In 1996, Congress enacted fundamental changes to the national legal services program, reaffirming the federal government's commitment to providing representation for individuals facing legal problems who would otherwise be unable to afford assistance. With the intention of refocusing the LSC delivery system on serving individual clients with particular legal needs, a series of new limitations were placed upon activities in which LSC-funded programs can engage on behalf of their clients, even with non-LSC funds. Among them are prohibitions on class actions, challenges to welfare reform, collection of court-awarded attorneys' fees, many types of lobbying, litigation on behalf of prisoners, and representation of undocumented and other categories of aliens. In addition, Congress adopted a number of new accountability requirements, such as mandatory timekeeping, competitive bidding, and tightened compliance monitoring.

The Corporation continues to be diligent in maximizing the use of federal dollars and in ensuring that the restrictions are enforced. We are proud of the success we have had in developing a system of effective oversight of the activities of all LSC grant recipients.

State Planning. Beginning in February 1998, the Corporation has required all grant recipients to participate in a process to provide a comprehensive, integrated statewide delivery system. The goals of this process are to ensure the following: that programs' efforts are coordinated and pressing client needs are being met; that there are enough opportunities for training and information sharing between programs; that programs are keeping up with and using new technology; and that programs are working together to increase resources and develop new initiatives to expand the scope and reach of their services. Each LSC-funded program must therefore assess the strengths and weaknesses of the current approach, establish goals to strengthen and expand services to eligible clients, and determine the major steps and a timetable necessary to achieve those goals. Our overall objective in this process is to promote the best use of federal dollars in every state system.

Competition. Late last year, the Corporation completed its third full competition for grants according to the process set forth in our regulation on competition, 45 C.F.R. 1634. Of a total of 335 service areas, 136 were subject to competition this year, pursuant to our multi-

year funding system. The remaining programs, whose grants were not up for competition this year, were subject to a grant renewal process to ensure their continued compliance with grant conditions. As in the previous competition, we sought to encourage competition for grants through published notices in state and local bar journals, one major newspaper in every service area, and one national newspaper; outreach to service providers, bar associations, law firms and other potential applicants; and selected site visits. To ensure objectivity, outside readers, as well as LSC staff, evaluated all applications.

Competition has provided LSC with useful tools for improving program quality where necessary to ensure the most effective and efficient delivery of high-quality legal services. During the proposal review process, we are able to review the individual delivery mechanisms used by applicants and evaluate these mechanisms against established quality standards. This enables LSC to make qualitative judgments about each applicant's capacity to deliver quality legal services. Where it is determined that other program improvements could enhance the delivery of legal services, they are identified and the recipients are advised of the need to address them. Where it is determined that an applicant does not meet the necessary quality standards and/or another applicant is better able to deliver legal services, LSC is able to select the better-qualified applicant. Programs in which concerns have been identified may receive funding for two years, a single year, or less, rather than the three-year cycle for which they are eligible.

The competition for the grant cycle beginning in 1998 resulted in multiple applicants in four service areas and funding for less than the full cycle because of quality issues for 14 programs. In addition, programs in 11 states were awarded grants for less than the full cycle pending consideration of possible consolidation in the state planning process discussed above.

Regulations. In FY 1998, the Corporation finalized four rules. They are 1) a new rule to implement the Burton Amendment in LSC's FY 1998 Appropriations Act, which requires recipients to disclose to the public and to LSC certain information on cases filed by their attorneys; 2) a revision of LSC's cost standards and procedures; 3) a rule to implement the provisions of the Assisted Suicide Funding Restriction Act of 1997 that are applicable to LSC funds; and 4) a rule to revise the 1996 amendments to the Freedom of Information Act regarding electronic records, time limits, and standards for processing requests for records.

After the close of FY 1998, LSC finalized changes to the laws governing the Corporation's means to deal with post-award grant disputes. These changes included 1) streamlining the termination process and recipients' hearing rights; 2) authorizing the debarment of recipients for good cause; and 3) authorizing the Corporation to re-compete a service area when a current recipient's grant has been completely terminated. In addition, hearing procedures were streamlined and suspension rules clarified to allow a suspension in an emergency situation. The rule on denial of refunding was rescinded since LSC determined that it was no longer consistent with the law governing grants.

Two proposed rules have been published regarding recipient fund balances and timekeeping. Final versions of these rules are due in the near future.

Resolution of Challenges to New Requirements. The

Corporation has vigorously and successfully defended its regulations and the underlying statutory provisions in two lawsuits challenging their constitutionality, *Legal Aid Society of Hawaii vs. LSC* (U. S. District Court, District of Hawaii) and *Carmen Velazquez et al. vs. Legal Services Corporation* (U.S. District Court, Eastern District of New York).

A three-judge panel of the U.S. Circuit Court of Appeals for the Ninth Circuit ruled on May 19, 1998, in favor of LSC on the appeal in *LASH*. It unanimously reaffirmed the ruling of the U.S. District Court in Hawaii that the application of LSC restrictions to a recipient's non-LSC funds does not violate the plaintiffs' First Amendment rights of free speech and association. Retired Justice Byron White wrote the opinion for the panel, which concluded that LSC's regulations complied with precedents set in the 1991 *Rust v. Sullivan* case regarding restrictions on federally funded programs.

On January 7, 1999, the Second Circuit upheld as constitutional virtually all of the statutory restrictions on the use of funds by LSC's grantees that were challenged in *Velazquez v. Legal Services Corporation*. In *Velazquez*, the panel was divided with respect to welfare reform. The majority found that the proviso to the exception for "suits-for-benefits" that bars challenges to existing welfare reform laws discriminates on the basis of viewpoint -- that is, it permits representation only if it favors the status quo over change. The Corporation has filed for rehearing by the Second Circuit concerning the striking of limitations on welfare challenges. The plaintiffs have also filed for rehearing.

Compliance Monitoring. The Corporation's FY 1996 appropriation mandated a new system for oversight of program compliance. The principal mechanism for checking grantee compliance with all requirements and restrictions is now the grantee's annual audit, which includes a mandatory audit of compliance with LSC regulations. These audits are conducted by Independent Public Accountants ("IPAs"), with guidance and review by LSC's OIG. LSC Management retains responsibility for interpreting applicable law and regulations, investigating complaints, and enforcing compliance. Management worked cooperatively with the OIG to implement the new system, which is now fully in place.

We are pleased with the results to date, which we believe demonstrate general, substantial compliance by grantees with the new requirements and restrictions. As reflected in the OIG's *Recipient Audit Reports* for 1997, the IPAs did not report any cases where grantees failed to comply with any of the congressionally imposed requirements and restrictions. The IPAs have completed 52 audits for FY 1998, and have again found no violations. The bulk of the audits for the remaining 200+ programs will be submitted by April 30, 1999. We have provided the Subcommittee with detailed reports on the results of the FY 1997 audits, and will promptly notify it when the full report of FY 1998 audits is available.

Conclusion

Mr. Chairman and Members of the Subcommittee, we thank you for this opportunity to share with you our Budget Request FY 2000. We believe that the Corporation merits your continued support for its mission, as defined by the Legal Services Corporation Act: to promote equal access to our system of justice and improve opportunities for low-income people throughout the United States by providing high-quality civil legal assistance to those who would be otherwise unable to afford it.

1. *Perceptions of the U.S. Justice System*, a study conducted by M/A/R/C Research (1998).
2. According to an August 1995 Bureau of Justice Statistics Special Report, *Violence Against Women: Estimates from the Redesigned Survey* (NCJ-154348) and a report by the American Psychological Association, *Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family* (1996).
3. LSC will continue to voluntarily comply with the Government Performance and Results Act of 1993 (GRPA). During the next several months, a revised FY 2000 performance plan and strategic plan will be developed and submitted to the Subcommittee.

Testimony

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