

Helaine M. Barnett  
President  
Legal Services Corporation

Testimony Before the  
Subcommittee on Commercial and Administrative Law  
House Committee on the Judiciary  
U.S. House of Representatives

October 27, 2009

Good morning, Chairman Cohen, Congressman Franks and other members of the Subcommittee. I am Helaine Barnett, in my sixth year as president of the Legal Services Corporation (LSC), and it is my pleasure to be with you today.

I am joined by Mike McKay of Seattle, the distinguished Vice Chairman of the LSC Board of Directors. Mike has served on the Board since 2003, and he chairs the Finance Committee of the Board. LSC benefits from his deep knowledge of the judicial system, both from his service as the U.S. Attorney for the Western District of Washington (1989-1993) and from his years as an attorney providing *pro bono* services to the poor in the Seattle area and years of volunteer work with the state Equal Justice Coalition. Mike and his brother, John, a former LSC president, were honored by the Legal Foundation of Washington in 2008, with the 22<sup>nd</sup> annual Charles A. Goldmark Distinguished Service Award. We are most fortunate to have Mike as one of our leaders.

I would like to begin by thanking you, Chairman Cohen, and the other Subcommittee members for your continuing support of civil legal aid programs around the nation and for giving us an opportunity to discuss the legal services that LSC-funded programs provide to the nation's poor. A part of my testimony will summarize the Corporation's recently released report that contains updated and expanded information on the "justice gap," an urgent and complex challenge to our nation and its promise of ensuring equal access to justice for all.

**The Legal Services Corporation**

My entire legal career has been devoted to providing legal assistance to low-income individuals and families. I have been privileged to be the longest-serving president of the Legal Services Corporation in its 35-year history. Prior to my appointment in January 2004, I spent 37 years at the Legal Aid Society of New York City, with three decades of service in the management of its Civil Division and as its Attorney In Charge from 1994 to the end of 2003. I know first hand what our mission means to the lives of our clients and have a deep personal commitment to the mission of providing high-quality civil legal assistance to eligible low-income Americans.

The clients of LSC-funded programs are the most vulnerable among us. They live at or below 125 percent of the federal poverty guideline—an income of \$27,563 for a family of four. Three out of four clients are women, and many are mothers struggling to keep their families together and their children safe, fed and housed. Program clients are all races and ethnicities, young and old, and include the working poor, people with disabilities, victims of domestic violence, victims of natural disasters, families with children, veterans and military families.

LSC-funded programs closed 889,155 cases in 2008, our most recent data. Family law cases accounted for 35 percent of these cases, the largest category of casework. Housing was the next largest category, representing about 26 percent of total cases closed. LSC has funded the development of statewide websites, which allows ever-increasing numbers to access legal information and download legal forms via the Internet. According to LSC data, web-based services that offer access to legal education materials, legal forms and self-help materials have grown from 8 million in 2004 to nearly 13 million in 2008. LSC-funded programs expect to receive increasing numbers of requests for help in coming months because of the continuing effects of the recession—from people who have lost jobs, lost health care and are at risk of losing their homes through foreclosure.

The Legal Services Corporation, established by Congress as an independent 501(c)(3) nonprofit organization, is the single largest source of funding for civil legal aid for low-income Americans. LSC provides grants to 137 independent nonprofit programs with 918 offices that serve every Congressional District.

The Corporation marked its 35<sup>th</sup> anniversary in July, and I want to thank you Chairman Cohen for honoring us with a commemorative statement in the Congressional Record. The White House also honored us with a Presidential Proclamation in July. Just weeks earlier, the House rejected an amendment to eliminate LSC, on a 323-to-105 vote. We are most appreciative of the bipartisan support for equal access to justice for all Americans.

The Corporation's Fiscal Year 2009 appropriation is \$390 million. The House has approved a FY 2010 appropriation that would provide \$440 million for LSC. The Senate Appropriations Committee has approved a \$400 million appropriation. For the first time in several years, the White House has proposed to increase funding for LSC, requesting \$435 million for FY 2010.

LSC distributes more than 95 percent of its annual appropriation directly to the nonprofit programs that deliver civil legal services. The Corporation provides guidance and oversight to ensure that the programs provide high-quality services and comply with Congressional requirements, funding restrictions, LSC rules and regulations. Administrative expenses are less than 4 percent of our budget—low by any standard.

The Corporation's challenge is great. About 54 million people—including 18.5 million children—are eligible for LSC-funded services, according to Census Bureau data released last month. That represents an increase of almost three million people from 2007 to 2008. This is the highest number of people eligible for civil legal assistance in LSC's history. Although there are reports that the recession appears to be ending, the Office of Management and Budget projects that unemployment will remain high, peaking at a rate above 10 percent. LSC will likely see another increase in the number of people eligible for legal services when the Census issues a new count next year.

These are harsh economic times. Millions of Americans are falling deeper into poverty and millions more are slipping into poverty for the first time. Clients come to civil legal aid programs when they need a lawyer to help them escape an abusive relationship; to gain access to health care, food, subsistence income and disability benefits, and to prevent foreclosure and eviction that may lead to homelessness. LSC-funded programs save lives and save taxpayer dollars by averting more costly interventions by state and local social services and public assistance agencies.

Legal aid can help prevent the downward spiral of the poor into costly public support. It greatly improves their chances of keeping their home rather than moving into a shelter, holding a job rather than going onto public assistance, retaining custody and support of their children rather than losing them to foster care, receiving early medical care rather than costly hospitalization, and escaping an abusive relationship rather than suffering further injury or even death. Civil legal assistance saves both lives and money.

In these troubled economic times, legal aid can facilitate solutions and help clients who have nowhere else to turn. Ensuring that the poor are adequately represented in the civil judicial system greatly improves their chances of keeping or securing basic necessities—the keys to stability and self-sufficiency. It also helps keep communities healthy. The work of LSC and its programs are more critical than ever before.

### **The Justice Gap**

Last month, LSC released an updated and expanded report on the “justice gap”—the difference between the level of civil legal assistance available to low-income Americans and the level that is necessary to meet their needs. This 2009 report, “Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans,” updates the first Justice Gap Report released by the Corporation in 2005.

The program data collected in 2009 confirmed the conclusion of the 2005 Justice Gap Report—that there continues to be a major gap between the civil legal needs of low-income people and the legal help that they receive.

For every client served by an LSC-funded program, one person who sought help is turned down because of insufficient resources, the 2009 data show. In one category—foreclosures—LSC-funded programs are turning away two people for every client served. Programs also are meeting less than half of the requests for assistance with employment and family law matters, according to the program data.

The report used three different methodologies to examine the extent of unmet civil legal needs. First, LSC asked programs to document the number of people actually seeking assistance from the program who could not be served due to insufficient program resources. Programs collected the data from March to May 2009, the same time period used in 2005 for data collection. Second, LSC analyzed civil legal needs studies from seven states that were conducted since the 2005 report. Those findings were compared to nine state studies conducted during 2000-2005 that were discussed in the 2005 report. In addition, the report took into account the Comprehensive Legal Needs Study funded by the American Bar Association and released in 1994. In the third methodology, the report counted the number of legal aid attorneys (working in LSC and in non-LSC programs) available to low-income Americans and compared that to the total number of private attorneys providing personal legal services to the general population of the nation.

The first methodology documented again for 2009 that 50 percent of the potential clients requesting assistance from LSC-funded programs were turned away for lack of adequate resources.

The new state legal needs studies add to a body of social science knowledge that shows only a small fraction of the legal problems experienced by low-income people (less than one in five) are addressed with the assistance of either a private attorney or a legal aid lawyer.

The report's analysis of the most recent available figures on numbers of attorneys shows that nationally, on average, only one legal aid attorney is available for every 6,415 low-income people. By comparison, there is one private attorney providing personal legal services for every 429 persons in the general population who are above the LSC poverty threshold.

In addition, the 2009 report included new data indicating that lower state courts, particularly housing and family courts, are facing significantly increased numbers of unrepresented litigants. Studies show that the vast majority who appear without representation are unable to afford an attorney, and a large percentage of them are low-income people who qualify for legal aid. A growing body of research indicates that outcomes for unrepresented litigants are less favorable than those for represented litigants.

Despite increases in funding for civil legal assistance over the past four years by the Congress, by 25 states and the District of Columbia, the nation continues to confront a substantial justice gap. As an initial, critical goal, as a nation, we must

provide enough funding to serve at least all those currently seeking help from LSC programs. The 2009 Justice Gap Report found that this would require a doubling of LSC funds and a doubling of the state, local and private funds that also support LSC programs.

The long-term goal must be to develop resources sufficient to meet the civil legal needs of all eligible low-income people, and that would require the federal, state, local and private funding to grow by five times. *Pro bono* efforts need to be expanded substantially in the years ahead, but even expanded *pro bono* contributions will not be enough to address a major portion of the unmet need.

Too often we summarize by using numbers, but I want to emphasize that LSC programs are focused on people and their pressing civil legal needs. Legal aid lawyers help the poor with shelter, protection from domestic violence, access to health care and income maintenance. Families, and especially children, depend on legal aid lawyers daily to help them achieve safety, security and a path to self-sufficiency.

### **Strategies to Close the Justice Gap**

Closing the justice gap and securing necessary access to civil legal assistance requires a multifaceted approach built around increased federal, state and local government funding and an array of public-private partnerships that include individual lawyers, the organized bar, foundations, charitable donors and other concerned private parties.

*Pro bono* services and private attorney involvement (PAI) are important elements in LSC's efforts to close the justice gap. In 2008, private attorneys closed approximately 10 percent of LSC cases on behalf of LSC programs.

Since the 2005 Justice Gap Report, LSC has undertaken a major initiative to increase the involvement of private attorneys in LSC-funded programs. The LSC Board of Directors adopted a PAI action plan, "Help Close the Justice Gap, Unleash the Power of Pro Bono," which included a call to programs to adopt resolutions that recognize and celebrate the involvement of private attorneys in the delivery of civil legal services, and 107 programs have done so to date.

LSC also in 2007 provided guidance to programs on resources and innovative approaches available to more effectively integrate private attorneys into the delivery of civil legal aid. LSC has recommended that programs develop long-term relationships with large law firms, corporate and government attorneys, and offer support to small law firms, solo practitioners and judicare attorneys so that they may more effectively assist low-income clients. Just as importantly, the American Bar Association and various state and local bar associations have sought to encourage and support *pro bono* contributions by private lawyers.

Across the nation, the creation of state Access to Justice Commissions has energized efforts to increase state funding and *pro bono* support for civil legal

aid. Justices of state Supreme Courts and the heads of state bar associations are leaders in these efforts, and LSC has encouraged the creation of commissions, highlighted the importance of integrated statewide delivery systems, and urged the involvement of local legal aid programs in setting goals for the commissions. Twenty-four states and the District of Columbia now have such commissions.

In your state, Mr. Chairman, the Tennessee Supreme Court announced the creation of a statewide Access to Justice Commission in April 2009 to help address the unmet civil legal needs of low-income individuals in Tennessee. Congressman Franks, the State Bar of Arizona created the Arizona Foundation for Legal Services & Education in 1978, as the Interest on Lawyers' Trust Accounts (IOLTA) funder with a mission of promoting access to justice for all Arizonans. State-based initiatives like these are invaluable in raising awareness about the justice gap in America and in setting priorities that help low-income families, especially during economic downturns when the poor more than others are at risk of losing their job, health insurance and even their home.

To expand the reach of their services, many LSC-funded programs are joining in partnerships. Programs have joined with local and state groups to address the foreclosure crisis and related housing issues, including partnering with lenders and banks to explore workouts that keep families in their homes and help others write down loans. In an effort to improve overall health outcomes for low-income children and families, more than 35 LSC-funded programs are participating in medical-legal partnerships, where legal aid attorneys and *pro bono* attorneys are trained to work as part of health-care teams to enforce the laws and regulations in place to protect health. In California, Illinois and Tennessee, programs are addressing challenges facing military veterans, including homelessness, re-employment rights and improved coordination of services with local military commands.

Technology is increasingly an important tool for improving access to justice and in providing self-help options for those that we are unable to directly serve. LSC's Technology Initiative Grants (TIG) use past successes as a guide to expand intake through online systems; expand assistance for *pro se* litigants through the development of more automated forms; explore innovative uses of new technologies, and provide support for replication of other technologies that have been demonstrated to both improve and expand client services. In rural areas, technology can help deliver services more efficiently.

LSC is committed to exploring ways of using technology to expand access to justice. This is essential in a good economy, imperative in a weak economy, and vital in a natural disaster or other local emergency.

Although *pro bono* efforts and technology projects need to be expanded substantially in the years ahead, these endeavors will not be enough to address a major portion of the unmet need for legal services. Federal, state, local and private funding also will have to grow to address the overall need.

Since the 2005 Justice Gap Report, many state legislatures have recognized the need to help close the justice gap in their states. Twenty-five states and the District of Columbia have adopted new or increased funding for civil legal aid. In addition, many state Interest on Lawyers' Trust Accounts (IOLTA) programs also adopted new revenue measures. But these state legislative and IOLTA increases only benefited the particular states taking action to increase legal aid funding, and the economic recession is placing many of these gains at risk.

IOLTA revenue—the second-largest single source of funding (12.7 percent in 2008) for LSC programs—has decreased significantly because the short-term interest rate has dropped to almost zero. The National Association of IOLTA Programs reports that projected IOLTA revenue will be about \$93 million this year, a dramatic 67 percent decline from 2008, when IOLTA revenue was nearly \$284 million. The impact of the IOLTA erosion varies state by state, but numerous LSC programs project they will receive significantly less IOLTA funding in the coming year and will struggle to maintain staff and services to clients.

Many states may not be able to make up IOLTA losses, in part because of overall state and local budget shortfalls. Charitable organizations also will be unlikely to contribute as much to legal aid as in the past because of the impact of the recession on the stock market and other revenue sources for private giving.

The weak economy has created stresses for legal aid programs. The recent federal funding increases provided by the Congress may help programs to avert layoffs and offset drops in IOLTA, state funding and charitable donations. With limited resources, many programs have limited intake capacity—they can only accept so many requests for assistance each day or answer so many telephone calls. One development we see is a growth in Internet use at LSC-funded programs and at LSC-funded statewide websites. Technology can provide clients with videos and information on dozens of areas of law, including foreclosures and military and veterans' issues, and provide resources to legal aid staffs, volunteers and courts. Technology permits programs to overcome distance, share information in multiple languages and expand access to legal information.

Going forward, the federal government must continue to play a vital role in providing a pathway to equal justice for all, consistent with its role in maintaining the formal civil justice system and providing an orderly forum for the resolution of disputes.

### **Charting New Directions**

Our nation's commitment to equal access to justice is far from being fulfilled, and will be achieved only through bipartisan support in the Congress, strategic partnerships with business and community groups and the dedicated work of LSC-funded staff attorneys and private lawyers rendering *pro bono* assistance to clients.

In 2004, LSC launched a Quality Initiative—the Corporation’s vision for supporting, building and institutionalizing strategies within legal services programs to increase the capacity for the delivery of high-quality legal services. The centerpiece of the Quality Initiative is the revised LSC Performance Criteria, distributed to programs in 2007. It reflects a collective view of best practices to promote the delivery of high-quality legal services. LSC convened a conference of all program executive directors in 2008 to focus on quality as a value, as essential to the provision of legal services and as a vital ingredient of leadership.

Importantly, members of Congress have introduced bills that would reauthorize the Corporation and enhance efforts to increase the LSC budget by authorizing \$750 million as a new, annual funding level. The LSC Board of Directors has called for strong, measured strides to help close the justice gap, and the House and Senate reauthorization bills would accelerate LSC efforts to meet that goal. LSC is deeply appreciative of these efforts to strengthen funding for the delivery of civil legal assistance to low-income individuals and families across the nation.

LSC also wants to take this opportunity to express support for provisions in the reauthorization bills that would improve oversight of the Corporation’s grants management.

LSC is committed to holding itself and its 137 programs to the highest standards—which will ensure the most effective and efficient delivery of civil legal assistance to clients and will reinforce the importance of providing high-quality services.

The Corporation receives LSC Inspector General Management Information Memoranda, which are timely reports that offer opportunities to take appropriate action where necessary to improve operations. LSC responds to the Inspector General memoranda and acts on findings from Inspector General audits and investigations.

LSC also accepts and acts on recommendations from the Government Accountability Office, and during the last two years has implemented more than a dozen major actions to improve Board governance, financial and grants oversight and management practices.

LSC has revised and updated written guidelines for the Corporation’s two oversight offices, and fully reviewed and updated the procedures for on-site program visits.

When conducting on-site visits, LSC’s Office of Compliance and Enforcement (OCE) performs regulatory and fiscal compliance reviews. These OCE reviews include oversight on prohibited political activities, proper use of non-LSC funds, transfers of funds, program integrity, private attorney involvement, use of sub-grants in legal services delivery, proper payment of membership fees or dues, timekeeping, attorney fees and internal controls associated with program

accounting practices. LSC also has sent advisories to all LSC-funded programs reminding them about important fiscal internal control requirements and regulatory compliance requirements.

LSC's Office of Program Performance (OPP) administers the competitive grants system, engages in program quality assessments, and promotes the development and implementation of strategies to support and improve the delivery of high quality legal services. Through on-site visits, LSC identifies areas of programs' operations that would benefit from additional review, support and technical assistance. The on-site program assessment reviews are patterned on the LSC Performance Criteria, look at issues such as: the quality of board governance and oversight of programs' operations; the processes used to target priority legal needs and allocate program resources; how effectively potential clients are able to access the legal services programs; the quality of the legal work provided; and a range of program management and administration issues focusing on programs' use and implementation of acknowledged best practices for the operation of legal services programs. A critical component of the work of OPP is the sharing of innovations and best practices in legal services delivery among recipients.

In addition, LSC has:

- Enhanced coordination of program visits by OCE and OPP staff.
- Performed follow-up on each of the improper uses of grant funds involving nine programs identified in a December 2007 GAO report (GAO-08 37).
- Completed or has proceedings underway to complete actions to strengthen internal controls at LSC-funded programs, as recommended by the Inspector General.
- Strengthened internal controls over contracts for consultants on program visits.

Oversight and emphasis on proper financial management practices and provisions of law and regulation are priorities of the LSC Board, management and staff. In particular, the Board and LSC management are focusing on the oversight responsibilities of the individual boards of the nonprofit organizations that receive LSC funding. Local boards, which best understand the priorities and needs of their communities, are the linchpins in ensuring that LSC-funded programs provide high-quality civil legal assistance in compliance with all laws, regulations and best governance practices. Training is an essential component in ensuring effective oversight, particularly in the areas of board governance and fiscal compliance, and in the delivery of high-quality civil legal assistance. In fiscal years 2010 and 2011, LSC will focus on making training a priority in these areas.

## **Conclusion**

The people who come to LSC-funded programs are truly among the most vulnerable in our society. They are in search of fair treatment and solutions to pressing legal problems.

Every day, legal aid attorneys help low-income clients avoid unlawful eviction and the prospect of homelessness, escape domestic violence and maintain custody of their children. These lawyers not only open the doors to justice, in many cases they help prevent the downward spiral of the poor into costly public support.

The Domestic Violence Project at Memphis Area Legal Services represented a mother of three children who was locked in a power struggle with her estranged husband. Although she had left him, he stalked her, harassed her, and vandalized her property. After being convicted for aggravated assault and burglary, but before sentencing, the husband taunted the legal aid client by claiming he could deny her a divorce. With the assistance of the Memphis program, the woman was able to obtain a divorce and is raising her children in a stable home, free of abuse and violence.

Many LSC-funded programs are increasingly involved in foreclosure cases, and they often involve allegations of predatory lending. The Legal Aid Society of Cleveland participates in “Save the Dream,” a statewide response in Ohio to the foreclosure crisis there led by the state’s chief justice and governor. Cleveland legal aid trained and mentored 300 volunteer attorneys in Northeast Ohio, and these *pro bono* attorneys work with legal aid staff to prevent foreclosures. Community Legal Services in Phoenix has established a foreclosure law project to help homeowners and participates in a volunteer lawyers program, which recruits and trains *pro bono* attorneys to help low-income homeowners at risk of losing their homes. Other programs—such as Atlanta Legal Aid, West Tennessee Legal Services, Iowa Legal Aid and the Legal Aid Foundation of Los Angeles—have created similar foreclosure projects.

One couple with two children came to the Cleveland legal aid program for help because of a rise in their mortgage rate, which had an initial rate of 9.75 percent with a cap of 15.75 percent. As the date approached for the interest rate to reset, medical expenses and the loss of a job by the husband created financial problems, which led the lender to file a foreclosure action. Unable to keep up their payments under a forbearance agreement, the couple turned to housing authorities, the state of Ohio and the Cleveland legal aid program for help. Legal aid lawyers assisted the couple through mediation, which ended with a loan modification, ensuring a 6 percent fixed rate for 30 years.

In Tucson, staff attorneys at Southern Arizona Legal Aid helped stop the eviction of a woman who was accused of not paying her rent. The case began when the woman received a letter from a law firm representing a creditor indicating that the landlord was involved in a bankruptcy case and that the woman must begin

paying her rent to the law firm. The woman did, but then received a nonpayment of rent notice from the landlord, who began an eviction suit. Legal aid lawyers looked into the matter and got the creditor's attorney to contact the landlord. The eviction effort was dropped.

The Legal Aid Foundation of Los Angeles sponsors a Homeless Veterans Project. It helped an honorably discharged Army veteran who had served in Vietnam and lived with the ravages of war. Every day was a quest for food and shelter. The Los Angeles project filed a claim for benefits with the Veterans Affairs Department, pointing out that their client had physical limitations, an inability to work and was homeless. The VA granted pension, medical and housing benefits, and this veteran is reunited with his once-estranged son and lives in an apartment.

As these examples show, civil legal assistance saves lives and makes communities stronger. Telling people who come to our offices that we are unable to assist them is by far the hardest task of the day, because we know that they often have nowhere else to turn. With the help of this Congress, with the support of the organized bar and private attorneys providing *pro bono* services, with partnerships in business and community groups, with the involvement of courts and law schools, we can make progress toward achieving the goal of equal access to justice.

As U.S. Supreme Court Justice Lewis Powell Jr. said, "Equal justice under law is not merely a caption on the façade of the Supreme Court building. It is perhaps the most inspiring ideal of our society . . . it is fundamental that justice should be the same, in substance and availability, without regard to economic status.

Thank you. I am happy to respond to your questions.