

**STATEMENT
OF THE LEGAL SERVICES CORPORATION
BEFORE THE
SUPREME COURT OF TEXAS**

**September 8, 2004
1:30pm**

**Presented by
Helaine M. Barnett
President**

Introduction

Members of the Court, thank you for the opportunity to testify before you today as you review the "state of legal services for the poor."

My name is Helaine Barnett and I am President of the Legal Services Corporation. After a 37-year career at the Legal Aid Society of New York City, in January of this year I was selected by the LSC Board of Directors to be President of the Legal Services Corporation. It is an honor for me to appear before you today in that capacity. I also bring you greetings from our Board Chair, Mr. Frank Strickland, and the entire Board. I join our Board in expressing our appreciation of your leadership which has resulted in many positive developments in the Texas state justice community since you held a similar hearing on the "state of civil legal services" four years ago. These developments have benefited low-income Texans who need civil legal assistance, as well as providing legal services providers, including the three LSC-funded grantees, with more support to carry out their work more effectively and efficiently. You have also set an example of judicial leadership which has been a model for courts throughout the country. State after state have used your work as a template for their efforts to increase access to justice for those in need in their respective states.

When then-LSC Board Chair Douglas Eakeley appeared before this Court in 2000, I understand that he provided you with a detailed overview of the Legal Services Corporation and our network of grantees. Mr. Eakeley also reported on the then-ongoing state planning effort in Texas, specifically on the restructuring initiative among the then 10 LSC funded programs.

I would like to follow the same outline for my remarks, but with an emphasis on new developments and changes that have taken place in the intervening four years both nationally and in Texas.

Congressional Bipartisan Support for LSC

Today, LSC enjoys unprecedented bipartisan support in Congress. As leaders of the legal community of this important state, members of this Court and of the State Bar of Texas have contributed greatly to the efforts that have resulted in the prevailing bi-partisan Congressional support for LSC. I want to acknowledge the hard work by the Past President of the State Bar, Mr. Guy Harrison, by former Access to Justice Chair, Mr. John Jones, your former colleague Justice Deborah Hankinson, who came to Washington, D.C. and participated in the ABA-sponsored Law Day this past May with the stated purpose of solidifying Congressional support for LSC's funding. By the time the delegation arrived back in Texas, Texas Senators Kay Bailey Hutchinson and John Cornyn, both Republicans as you know, had signed a "dear colleague" letter along with a bipartisan group of the Texas delegation in the House in support of

LSC's FY 2005 appropriation request of \$352.4 million. This remarkable support is the result of the efforts of this Court and the State Bar. I also want to express our gratitude for the many years of support and advocacy on behalf of the national legal services community provided by another leader and former President of the Texas State Bar, Bill Whitehurst.

The LSC Board and I are confident that the bipartisan support for the work of LSC and our grantees and for stable funding for LSC in the past few years reflects a widespread understanding and realization by the Congress, the courts, the organized bar and others that our local grantees have been performing a valuable service to millions of low-income Americans who need civil legal assistance. We are nonetheless gratified that the current Administration has demonstrated strong support for LSC's funding and appreciate the advocacy on our behalf provided by your former colleague, White House Counsel Alberto Gonzales. His support has been invaluable in the support provided by the President and the White House.

Update on LSC's Appropriation

When LSC last testified before this Court in January 2000, LSC's appropriation was \$305 million. The next year, FY 2001, Congress appropriated \$329.3 million for LSC. In fiscal years 2003 and 2004, LSC's appropriation was \$338.8 million; the slight increase of almost \$9.5 million was specifically earmarked to cushion the effect of drastic funding losses to programs and states that experienced a

decline in their overall and poverty population under the 2000 Census. This year, the full House passed the Commerce, Justice, State and Judiciary appropriations bill in July, which included level funding for LSC at \$335.3 million which was the amount LSC received for 2004 after two modest across the board budget recessions. Timing for action in the Senate is uncertain.

While we are immensely grateful for the funding and support we have continued to receive from Congress and the Administration, nonetheless, as you review the state of civil legal services in Texas and throughout the country we would be remiss if we were not to point out to you that federal funding for legal services has lagged far behind the growth of our client population. Our authorizing legislation requires that federally-funded legal assistance be provided to those living in poverty. LSC grantees continue to meet, at best, 20% of the critical legal needs of eligible clients. Moreover, a recent Census report stated that in 2003, 35.9 million people were living in poverty, 1.3 million more people living in poverty than in 2002. This recent increase comes on top of a 5.74% increase in the number of people living in poverty in all LSC services areas from 1990 to 2000 and additional increases in 2001 and 2002. To quote a Washington Post editorial on August 31, 2004, “The number of people in extreme poverty—that is subsisting on less than half the income defined as the poverty line—stands at 15.3 million, higher than at any time since the Census Bureau began collecting data 28 years ago.”

At the same time, our appropriation has been reduced by 16.25%, from \$400 million in FY 1994 (the year the 1990 Census figures were implemented by LSC) to \$335 million today. When the inflation rate over this period is considered, LSC grantees lost even more ground. LSC's appropriations have not kept pace with inflation, which has meant a reduction in funding in actual terms. If, for example, we look at LSC's appropriation of \$316.5 million in 1990, which was fairly typical in that it represented neither a high point or a low point in LSC funding, if it had kept up with inflation, our appropriation would be \$458.7 million today. To put it another way, the \$335 million we receive today would have the purchasing power of \$232 million in 1990 dollars.

Efforts to Become More Efficient and Effective

Having mentioned those stark figures, let me share with you how our community, with great support from courts, such as this one, and the private bar, has devised ways to cope with the rising demand of the client population on one hand and declining federal funding on the other, and have done so, we hope, without compromising our effectiveness as advocates.

In the past decade, LSC has stepped up its requirements that LSC grantees follow the ABA's Standards of Providers of Civil Legal Services to the Poor and LSC's Performance Criteria. Through the competition process, which was mandated by Congress beginning in 1996, grantees have been subject to a higher level of scrutiny not

only for the quality of their legal work but also for the efficiency of the legal services they provide.

LSC grantees have realized that through careful planning, through thoughtful collaborations and partnerships with the private bar and other state stakeholders, and through utilization of technology they can leverage their diminished federal funding to help diversify their funding base, stretching their overall resources to keep up, in part, with the demand for their help. Thanks to our grantees' resourcefulness and the response of local and state governments, there have been successful efforts to make up for disappearing federal funding.

The Initiative on Quality

But expanding clients' access to service is a meaningful step only if the service offered is of high quality and it is the service clients most need. While "equal access to justice" continues to be the hallmark of our mission, and "coordinated, collaborative state justice community partnerships" the vehicle, our primary programmatic emphasis, and my personal priority, is to focus on program quality.

Our goal is to assist the legal services delivery system by articulating standards and indicia of quality to which all providers should aspire to help programs achieve enhanced performance; and then, to create meaningful protocols to evaluate the effectiveness and quality of programs. LSC is committed to working jointly with the

ABA's Standing Committee on Legal Aid and Indigent Defendants (SCLAID) and the National Legal Aid and Defender Association (NLADA) to review and update the current *Standards for the Providers of Civil Legal Services to the Poor*, which were promulgated in 1986.

We are also concerned about our programs' capacity to recruit and retain qualified, high quality attorneys. So, LSC is examining the feasibility of a "pilot" Loan Repayment Assistance Program (LRAP) for legal services attorneys to secure and retain a highly qualified workforce. The House of Representatives included language in the FY 2005 Appropriation legislation that allows LSC to use \$1 million of previously appropriated but unexpended funds to launch a pilot loan repayment assistance program, and we are moving ahead with a Task Force of experts from across the country who have extensive experience with LRAPs to help LSC design a pilot program.

It is important that we know and have the capability to articulate the concrete ways in which the work of our grantees has benefited clients and the client eligible community. LSC, therefore, is soliciting input from our grantees regarding how LSC might best collect outcome data and stories demonstrating the enormous difference high quality advocacy can make in the lives of clients. We make a great difference but have to do a better job of capturing the data and stories and getting the message out to policymakers and the public. As is the case with our state planning initiative, we need help and cooperation from state and local partners to make our initiative on

quality a success. I would welcome your comments and input on this very important issue. We at LSC are committed to modeling the partnership building we have said is so important at the state level.

While LSC has continued to carry out its statutory responsibility of providing national oversight and of holding local grantees to a system of national accountability through the competition process, the regulatory compliance process and the performance review process, we are pleased that the state planning initiative of the past few years has brought the result that the center of action for the delivery system now resides with you in the states. I would like to update you on some of the enormously inventive steps that our grantees and their partners and supporters at the state level have put in motion.

Access to Justice Structure

One of the most striking and enormously important and positive developments in legal services, which started in 1996 as a result of the serious threat to the continuation of federally-funded legal services, has been the establishment of State Access to Justice Commissions to take responsibility for coordinating efforts to maintain a vibrant, more adequately funded and resourced legal services delivery system at the state level.

The Texas Access to Justice Commission (TAJC) and the Texas Supreme Court are an outstanding example of this. It was this Court that established the Texas Access to Justice Commission and

gave it the support necessary to make it one of the most successful in the country.

Access to Justice Commissions or Committees, similar to that of Texas, currently function in 16 states with about 10 more expected to come into existence by the end of 2004.¹ In the rest of the country there are less formal state structures, such as State Bar Committees on Legal Services. Whether well-established or ad hoc in structure, these are state initiatives that coordinate statewide efforts to improve access to the justice system for low-income and otherwise marginalized clients. These bodies all have representatives of legal services providers, the private bar, the Judiciary and other stakeholders, frequently including the legislature and executive branches of state government. They directly or indirectly: participate in revenue development for the benefit of LSC grantees and other providers; increase *pro bono* participation; improve access to the court including *pro se* initiatives; coordinate websites and technology initiatives and develop loan repayment assistance for those interested in working in the public interest.

From LSC's perspective, the creation of these state bodies charged with the responsibility of "expanding and improving civil legal assistance in the state"² means that LSC now has ready and willing partners throughout the nation to work with us to advance an equal access to justice agenda. As an illustration and with gratification, I

¹ SPAN's Access to Justice Report Project, March 2004

² *id.*, page 1

would like to note briefly the numerous achievements of your own Texas Access to Justice Commission.

Created by this Court in April 2001, and ably chaired by El Paso attorney John Jones until this past June, the Texas Access to Justice Commission quickly became a model of how states can successfully and with vision chart their own path to achieve Equal Justice for All. Working in concert with the State Bar of Texas, the Commission has advocated for funding for legal services before the state legislature, the U.S. Congress and with the White House.

The Commission has also worked alongside the Texas Equal Access to Justice Foundation to raise public awareness of legal aid, including a statewide media tour to enhance the public's knowledge of what legal services does and why it is essential to the fabric of a democratic people. I understand that the Commission is also considering long-term strategic planning, including the possible creation of an endowment for legal aid and other resource development efforts focusing on corporations and on *cy pres awards*.

On behalf of LSC and our three grantees in this state, I want to thank John Jones for his dedicated service during his tenure as the first Texas Access to Justice Commission chair. I also extend our warmest welcome and full support to Jim Sales as the Texas Access to Justice Commission's new Chair. We are well aware of Mr. Sales' long years of involvement with the Houston Volunteer Lawyers and understand that he has shown great commitment, support and

leadership to LSC grantees as a local board member and during his tenure as the president of the Texas State Bar. We at LSC look forward to working with Mr. Sales as he leads the Commission on an important strategic planning endeavor to make the Texas Access to Justice Commission a permanent force and leader within the Texas state justice community.

Diversifying the Funding Base

As I said earlier, we at LSC appreciate the bipartisan support for LSC's Congressional appropriation, but the fact remains that federal funding for legal services has remained stagnant while the demand for legal assistance has grown. While IOLTA has long been a major funding source for LSC grantees, interest rates have dropped over the past several years and state leaders among the Judiciary and the private bar have become an increasingly important financial resource in the provision of legal assistance. In 2003, nationally almost \$346 million were made available from IOLTA and other funders to our 143 grantees to augment their LSC funding.

That figure is very significant and impressive, and even more so when we take a close look at the efforts such as those that you have made in Texas to increase legal services funding. It takes a tremendous amount of hard work, dedication and leadership on the part of the Judiciary and the bar to increase the resources that are essential to the delivery of legal services in a state.

This Court and the State Bar of Texas, as well as the leadership of the Texas Access to Justice Commission, have shown remarkable courage and determination in your successful efforts to provide increased funding for the provision of legal assistance to low-income Texans. It is my understanding that more than \$3 million in voluntary contributions from private attorneys as part of their annual bar dues have been raised to enhance legal services programs' funding since this Court recommended this approach in 2001. Even after the legislature acted late last year to mandate a contribution level by State Bar members, which will raise \$1.7 million for civil legal services this year alone, this Court has continued to urge attorneys to give to legal services voluntarily and at a higher level. I want to thank the Court, specifically former Chief Justice Tom Phillips, for inculcating among members of the Texas State Bar the sense that civil legal services for poor Texans should be a shared but most important responsibility. Justice Harriet O'Neal's leadership and participation on the Texas Access to Justice Commission has also been invaluable to fundraising initiatives for the benefit of legal services programs in the state.

In addition to the "mandatory" dues assessment it is my understanding that the Texas legislature has appropriated \$2.5 million per year since 2001 for legal services, including our grantees, for victims of crime. A smaller yet still important source of state funding comes from the passage of the *pro hoc vice* legislation, which generated \$330,000 for legal services in 2004, its first year. Unfortunately, as is the case throughout our nation, these new

sources of funding have hardly made up for the diminution of IOLTA dollars resulting from declining interest rates in recent years. I shudder to think how our Texas grantees and, in turn, their clients would have fared if this Court and the Texas State Bar had not stepped up your effort to help offset the loss of IOLTA funding which, I understand, has plummeted by some 70% from almost \$10 million in 1994 to only \$3 million today!

Pro Bono Contributions

As you know, LSC requires each LSC grantee to expend not less than an amount equal to 12.5% of its LSC grant on efforts to involve private attorneys in the delivery of legal services to eligible clients. This requirement has continued unabated for 20 years. Our most recent information documents that nationwide over 111,000 attorneys have agreed to be on our grantees' PAI panels. In 2003, PAI attorneys closed over 125,700 cases providing crucial legal services to clients. As important as the case closures are, I believe the extra dimension of the requirement that our grantees expend 12.5% of their LSC funding on PAI is its roles as a bridge-builder between legal services staff attorneys and practitioners in the private bar. The frequent contacts and exchanges of viewpoints on training and case strategies have resulted in solidarity between legal services staff and private attorneys to the mutual benefit of both. It is, in part, thanks to the PAI contacts that the "campaign for justice" fund raising drives whereby private attorneys and private law firms give

generously to legal services programs in their own states, including Texas, have been so successful.

Beyond LSC's private attorney involvement requirement, the high courts of many states have adopted measures to encourage and generate *pro bono* work in service of low-income persons. These range from the creation of statewide *pro bono* structures overseen by the judiciary to mandating annual reporting of *pro bono* service to aggressive statewide judiciary led recruitment campaigns. Here, the State Bar of Texas has completed data collection studies of *pro bono* participation to aid in planning new and innovative approaches to *pro bono* recruitment and retention. We thank the bar for its leadership in this area and look forward to learning much from your efforts.

Of course, the American Bar Association's (ABA) leadership on *pro bono* issues has been outstanding. Their *pro bono* website not only contains information but also provides support and links to many other relevant and helpful sites. LSC strongly believes that *pro bono* attorneys need to be an integral part of the civil delivery system if our country is to ever come close to realizing the dream of helping everyone who needs civil legal assistance but cannot afford to pay for it. For this reason, we deeply appreciate the judiciary's leadership and the organized bar's support of *pro bono* initiatives.

Technology Projects

Congress first earmarked \$5 million in 2000 for LSC to provide technology grants to LSC grantees for the purpose of making basic legal information and court forms and additional help accessible to *pro se* litigants. Although the level of appropriation for technology has been reduced to less than \$3 million for the current year, since 2000 LSC has funded a number of innovative technology projects that have helped expand clients' access to useful legal information. With a few exceptions, we have funded statewide websites in every state that didn't already have one. These website projects provide the opportunity for other stakeholders to work closely with our grantees to ensure that up-to-date, comprehensive and relevant information be available on the site. In Texas, the website, www.texaslawhelp.org, is a joint project of the Texas Access to Justice Commission, the Texas Equal Access to Justice Foundation, our grantees, other providers of services and other stakeholders. Moreover, Texas grantees have been recipients of several LSC's technology grants that have helped promote program efficiencies by improving the programs' case management systems and expanding centralized telephone intake.

Telephone Intake, Advice and Referral System

While this is not a new idea, thanks to recent developments in telephone and software technology, more LSC grantees have made investments in establishing an effective telephone intake system to

serve as a gateway to high quality, client centered legal services.³ Given that approximately 80% of all applicants for service receive only legal advice, brief service or a referral (and only about 20% receive extended service through representation in court and before administrative bodies, as well as through lengthy negotiations or transactional representation), most of the applicants could receive the limited help they will get and many only need over the telephone rather than having to travel often considerable distances to the nearest LSC-funded office. This model of delivery, which continues to be evaluated and improved upon means that a significant barrier to service for clients living in rural or isolated areas has been reduced. Our grantee, Legal Aid of Northwest Texas, has recently increased its effort to promote its telephone access hotline in the counties where it does not maintain an actual office. Early statistics show that more people from these areas have used the telephone line to get help than have contacted and come to the offices for help.

Another LSC grantee, Texas Rio Grande Legal Aid (TRLA), has made its centralized Telephone Access to Justice an important gateway for clients in both urban centers and rural areas. This system is particularly helpful and efficient in cases that only need advice. Such a unified system that covers vast geographical areas would have been problematic five years ago. Today, not only it is in operation and serving clients, TRLA said it will also improve its efficiency with newer technology.

³ Because state rules on ethics dictate the practice of law, LSC grantees have had to address issues such as determining when the attorney-client relationship is established, conflicts, and quality of service as part of the telephone intake, advice and referral system.

Reconfiguration of LSC's Service Areas

Before I touch upon the somewhat sensitive issue of consolidation and reconfiguration among our grantees, I want to provide you with a summary of the impressive record of service of our three LSC grantees – Lone Star Legal Aid, headed by Executive Director Paul Furrh; Texas Rio Grande Legal Aid, headed by Executive Director David Hall; and Legal Aid of Northwest Texas, with Jesse Gaines as its Chief Executive Officer. In 2003, the three programs received just over \$26 million in LSC funding, which was increased by another nearly \$14 million from other sources including those provided as a result of the effort of this Court, the Texas Access to Justice Commission, and the Texas Equal Justice Foundation. With total funding of approximately just over \$40 million, the three LSC grantees had the responsibility to provide free civil legal assistance to an eligible client population of over 3 million low-income Texans. To do so, the grantees employed 548 staff – attorneys, paralegals, other professional and administrative staff – who closed nearly 52,000 cases ranging from advice and brief service to full representation before courts and administrative bodies, as well as transactional work and negotiations when appropriate. These are but the briefest summaries of our grantees' activities, but I think you would agree that this is a record and scope of work for which we can all be proud.

Let me now turn briefly to the issue of reconfiguration and consolidation, which you know predated my tenure with LSC. While

we continue to emphasize the need for grantees to collaborate and work together as an integral part of state equal justice communities, LSC-instigated consolidation has with very few exceptions come to an end as a tool to improve grantees' performance and efficiency.

When LSC last appeared before this Court in January 2000, then-Chairman Eakeley reported that LSC was funding 237 grantees throughout the country, including 10 grantees from Texas. Through reconfiguration that was strongly encouraged or mandated by LSC, its grantees today number only 143 programs, including just three from Texas. The reconfiguration of LSC grantee service areas was not without pain, and the return may only become apparent in the long run. LSC trusts that improved client service will result from increased efficiency. These are now big programs, even by Texas standards, and we hope over time that there will be economies and efficiencies of scale and benefits from it.

I understand that the reconfiguration of service areas in Texas, which took effect in 2001, has been difficult and costly and required a lot of time, energy and money. This Court, the Texas Access to Justice Commission, the organized bar and, particularly, the Texas Equal Access to Justice Foundation have mobilized scarce resources to come to the aid of the LSC grantees as they undertook the challenging task of reconfiguration and mergers in the face of declining resources due to the loss of population in Texas as reflected in the 2000 Census. I also want to acknowledge the pro bono lawyers who helped throughout this process. It was indeed a

statewide effort and I thank all of you for your perseverance and support during that difficult period. I particularly want to commend the leadership and staff of our grantees for keeping their focus on providing uninterrupted service to clients while having to face personal and professional uncertainty due to the consolidation of offices and programs. It is my hope that from this point forward, we will work closely with you to realize the potential benefits to your staff and your clients of larger scale operations.

Legal Services Corporation's 30th Anniversary

I would like to conclude by noting that it was 30 years ago this year that the U.S. Congress, in July of 1974, enacted the LSC Act which established the federally-funded non-profit Legal Services Corporation in Washington, D.C. It was founded on the principle that providing high quality legal services to those who were unable to afford private counsel would respond to the obvious need of providing equal access to the system of justice in our Nation and reaffirm the universal faith in our government of laws.

It is with great pleasure that I share with you that on November 30th of this year, LSC will have an event in Washington, D.C. to celebrate our 30th anniversary. Under the theme, "Looking Back with Pride and a Vision for the Future," the celebration will consist of a plenary session and a reception to which members of this Court and leaders of the Texas Bar, as well as your counterparts in other states, are all invited. On December 1st, there will also be a series of

substantive discussions on issues affecting the legal services community; these will be held for the benefit of the executive directors of all of our grantees who will gather together for the first time in LSC's history. We are looking forward to this historical event and hope you will join us in this celebration.

In closing, on behalf of the Legal Services Corporation, I would like to again commend the Court for holding these hearings, and thank the Court for the privilege of appearing before you. I ask the Court's permission to use this forum to also thank the many stakeholders, including the State Bar of Texas, the Texas Access to Justice Commission, the Texas Equal Access to Justice Foundation, and individual members of the bar also present today, for their steadfast support of our grantees and the important work they do. LSC is most grateful for their vision, leadership and for their willingness to partner with us to ensure that the civil legal needs of low-income Texans are responded to, not only adequately and timely, but also with the highest quality that is the standard and hallmark of our profession.

Thank you.