

Testimony of

# Helaine M. Barnett

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President, Legal Services Corporation  
Before the Committee on the Judiciary  
United States Senate  
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Good afternoon, Senator Cardin, Senator Specter, and members of the committee. I am Helaine Barnett, President of the Legal Services Corporation, and it is my pleasure to be with you this afternoon.

First of all, Senator Cardin, I want to thank you for holding this hearing today and for giving us an opportunity to talk about LSC's groundbreaking report on the justice gap in America and the work that LSC-funded programs are doing to serve the civil legal needs of the poor. I know of your long-standing public support and hard work for civil legal aid in Maryland, your Chairmanship of the Maryland Legal Services Corporation, and your association and friendship with Herb Garten, a true champion for equal justice and a member of our Board. Now we are able to thank you for your national leadership on this important issue.

I am accompanied today by a distinguished member of the LSC Board of Directors and former Assistant Attorney General of Arkansas, Jonann C. Chiles. She was nominated by President George W. Bush to the Board of Directors of the Legal Services Corporation in March of 2006 and her nomination was confirmed by the United States Senate on June 29, 2006. Mrs. Chiles recently served as a member of the ad hoc committee of the Board charged with addressing the recommendations of the GAO reports on the Corporation.

## The Legal Services Corporation

My entire legal career has been devoted to providing legal aid to low-income persons. I am honored to be the first legal aid attorney to hold the position of President of the Corporation in its 34-year history. Prior to my appointment as LSC's President, 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 ten years as its Attorney In Charge. 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 services to eligible low-income Americans.

The Legal Services Corporation is the single largest source of funding for civil legal aid for low-income individuals and families. We fund 137 programs with more than 920 offices serving every Congressional district.

LSC distributes more than 95 percent of its appropriation directly to these programs and provides guidance, training, and oversight to ensure that programs provide high-quality legal services and comply with Congressional requirements and restrictions, LSC rules, and regulations. Administrative expenses are only about 4 percent of LSC's budget--low by any standard.

Our programs' clients, the most vulnerable among us, live at or below 125 percent of the federal poverty level--an income of about \$25,000 a year for a family of four. Three out of four are women, many of whom are mothers struggling to keep their families together and their children safe, fed and housed.

The clients of LSC-funded programs are all races and ethnicities, young and old, the working poor, people with disabilities, families with children, veterans, victims of domestic violence, victims of natural disasters such as Hurricane Katrina, and victims of the recent, ever growing foreclosure crisis. LSC-funded programs make a meaningful difference in the lives of their clients--helping them secure basic human needs such as safe and habitable

housing, access to needed health care, protection from abusive relationships, an adequate source of income, and assistance in preventing foreclosures.

Fifty million Americans are eligible to receive civil legal aid from LSC-funded programs, including more than 13 million children -- one in five. The stark reality that we face today is the demonstrable fact that the need for civil legal aid is much greater than the resources available.

The Justice Gap

In September 2004, the LSC Board asked the staff to try to document the extent to which civil legal needs of low-income Americans were not being met, taking into account all the changes in the civil justice system in the last decade, including both LSC-funded services and non-federal resources. As a result, I convened a Justice Gap Committee which included individuals from both within and outside LSC with experience in documenting unmet legal needs. Based on the advice of this Committee, LSC conducted a year-long study culminating in the 2005 report entitled "Documenting the Justice Gap in America--The Current Unmet Civil Legal Needs of Low-Income Americans." The report was unanimously approved by the LSC Board of Directors.

The study used three different methodologies to examine the extent of unmet civil legal needs. First, LSC asked its grantees over a two-month period, from March 14, 2005 to May 13, 2005, to document the number of potential clients that came to their offices that the programs were unable to serve due to lack of program resources. Second, it carefully analyzed the nine individual state studies<sup>1</sup> from 2000 to 2005 regarding the civil legal problems faced by low-income residents and examined them for national implications. These studies were also compared to the results of the 1994 American Bar Association national study on the subject. Finally, it totaled the number of legal aid lawyers, those in both LSC and non-LSC funded programs available to the low-income population, and compared that to the total number of attorneys providing civil legal assistance to the general population in our nation.

These three methodologies demonstrated that at least half of the need is unmet. The LSC "unable to serve" study, the first comprehensive national statistical study ever undertaken, established that for every client who receives service, one eligible applicant is turned away, indicating that 50 percent of the potential clients requesting assistance from LSC grantees were turned away for lack of adequate program resources. As lawyers and those committed to a civil society, turning away half of the people who seek legal assistance is not acceptable. Equal justice under law is a bedrock principle and these numbers do not reflect equal justice.

LSC's "unable to serve" study only documented those that actually sought assistance from an LSC-funded program, but we know that the need is much greater due to the fact that on average many eligible people do not contact a program either because they are unaware they have a legal problem, they do not know that the program can help them, or they do not know that they are eligible for free civil legal assistance.

The nine state studies demonstrated that less than 20 percent of the civil legal needs of low-income Americans were being met in those states. Eight of the nine studies found an unmet civil legal need greater than the 80 percent figure determined by the ABA in its 1994 national survey. Finally, in adding up the number of civil legal aid attorneys serving the poor and comparing that to the LSC-eligible population, it was determined that there is one civil legal services attorney for every 6,861 low-income persons. By contrast, the ratio of attorneys delivering civil legal assistance to the general population is approximately one for every 525 persons, or thirteen times more.

While our study is now two-and-a-half years old, other state legal needs studies and reports since the release of the Justice Gap Report have not only affirmed the findings but found that the unmet need for civil legal assistance remains unacceptably high, ranging up to 87 percent in Utah. The following statewide civil legal needs studies have concluded that:

? Wisconsin, 80 percent of poor households facing a legal problem do so without an attorney.<sup>2</sup>

? California, more than 66 percent of the legal services needs of low-income Californians are unmet.<sup>3</sup>

? Nebraska, 86 percent of eligible clients with a legal problem are unable to receive help from Legal Aid of Nebraska.<sup>4</sup>

? Utah, 87 percent of poor households facing a legal problem do so without an attorney.<sup>5</sup>

? New Mexico, more than 80 percent of the legal needs of low-income New Mexicans are unmet.<sup>6</sup>

? Hawaii, 80 percent of low- and moderate-income residents have unmet legal needs.<sup>7</sup>

? Arizona, 75 percent of Arizonans with civil legal needs are not represented by an attorney.<sup>8</sup>

? Alabama, soon to be released study by the Alabama Law Foundation found that 84 percent of the civil legal needs of low-income households are unmet.<sup>9</sup>

? In another related study, it has been shown that in New Jersey 99 percent of defendants in housing eviction cases go to court without a lawyer.<sup>10</sup>

In addition, programs are experiencing an alarming increase in the demand for services due to the foreclosure crisis and impact of natural disasters. The recent national crisis in sub-prime lending and foreclosures has overtaken our clients and flooded many of our programs with requests for assistance. Renters and senior citizens with fixed incomes are especially vulnerable to being displaced by foreclosure. Our programs across the country are seeing a dramatic increase in calls from people seeking assistance with housing and predatory lending matters. In some instances, the number of foreclosure-related cases handled by our programs has doubled. Many of our programs have also established special projects specifically dedicated to addressing foreclosure-related cases. We expect this demand for legal assistance to continue to grow, including the collateral needs that inevitably follow the loss of a home. Without additional funding, these programs will be unable to meet this increasing demand related to foreclosures and evictions.

The Justice Gap Report analysis was concluded before Hurricane Katrina which instantly expanded the needs of many existing clients and created a new group of eligible clients. LSC-funded programs continue to provide civil legal assistance as part of the recovery process to victims of Hurricane Katrina, as well as other natural disasters, such as the fires in southern California, the floods in the Midwest and Northwest, and the recent tornadoes throughout the country. Problems for victims of natural disasters continue in their wake. More than two-and-a-half years after Hurricane Katrina, LSC grantees continue to help people with the loss of their homes, jobs and healthcare benefits. I know from my own experience in New York City with the impact of 9/11 that the need will continue for many years to come.

Just as the need for legal aid is growing, the number of poor Americans eligible to receive civil legal aid is growing. Eight years ago, 44 million Americans qualified for LSC-funded services. Today, nearly 50 million poor Americans qualify. In addition, the recent downturn of the overall economy disproportionately impacts the poor with fast-rising food and gas prices.

These are not just numbers. Legal aid lawyers help people with basic human needs--shelter, protection from domestic violence, access to health care, and income protection. Families, and particularly children, are depending on us daily to ensure safety, adequate food, and appropriate housing.

Strategies to Close the Justice Gap

LSC is committed to ensuring that our programs operate efficiently, effectively, and that they use their funds as Congress intends them to be used. That is the first step in ensuring that we do all that we can with the resources provided to close the justice gap in America.

Technology is a vitally important tool to increase the efficiency of programs, to improve access to justice, and to provide self-help options for those that we are unable to directly serve. Technology improvements allow LSC grantees to deliver more assistance at a lower cost. In FY 2009 for example, we plan to use past successes as a guide to expand intake through online systems; expand assistance for pro se litigants through the development of additional 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.

Private attorney involvement is another important element of the strategy to close the justice gap. The LSC Board has taken a leadership role and is using LSC's national voice to encourage a culture of private attorney involvement as an effective tool for providing legal services to more persons in need. Today, 88 LSC-funded programs have adopted pro bono resolutions in support of enhanced private attorney involvement. Last year, private attorneys handled more than 97,000 cases for LSC-funded programs. All LSC-funded programs are required to expend the equivalent of 12.5 percent of their Basic Field Grant to recruit and train private attorneys and to refer and screen cases for them. While an important element of the strategy, all agree that private attorneys alone cannot close the justice gap.

Technology tools can increase our efficiency and extend self-help assistance and private attorneys can expand the pool of resources, but we know that LSC cannot fully realize its mission without more resources from both the public and the private sectors. In this effort, the federal government must lead the way, consistent with its role in maintaining the formal civil justice system, providing an orderly forum for the resolution of disputes, and providing an avenue to equal justice for all. State and local governments, private funding sources, and the private bar are also critical partners and share the responsibility for increasing their contributions of both funding and services.

Our Justice Gap Report concluded that to serve just those who actually sought help and were eligible to receive it, LSC's funding for Basic Field Grants would have to more than double, as would state, local, and private funding. Recognizing the political and fiscal realities at the time, the Board elected to request that the increase in Basic Field Grants be spread over five years.

LSC Appropriations

For FY 2007, the first step of the five-year plan, LSC requested a 20 percent increase in Basic Field Grants funding to \$386.6 million, and received \$330.8 million, a \$22 million or 7 percent increase. This outcome, a product of broad, bipartisan support, was the Corporation's first increase in 4 years, and resulted in 11,000 additional closed cases for the year. For FY 2008, while funding made great strides in both the individual House and Senate bills, the final funding increase for Basic Field was only one-half of one percent or \$332.4. For FY 2009, the Board has requested another 20 percent increase over last year's Senate mark, for a total LSC request of \$471 million. I should note that if LSC funding had kept pace with inflation on our FY 1995 appropriations of \$400 million, our funding level today would be \$555.6 million.

Federal funding increases are only a part of the story and a part of the need. Nationwide, LSC funds have been leveraged to accelerate state, local, and private fundraising. The amount of non-LSC funding for LSC grantees has shown a \$100 million increase in the period between 2005 and 2007. However, while state, local, and private funding have been increasing, state budget deficits and the drop in federal interest rates are placing some of those increases at serious risk. Interest on Lawyers Trust Accounts (IOLTA) funding, for example, is an extremely important source of revenue for LSC-funded programs. In 2006, it was the third largest funding source for LSC grantees, following LSC funds and grants from state and local governments. However, the falling federal interest rates are leaving IOLTA programs experiencing drastically smaller increases in 2008, or even funding cuts in some states. New Jersey, for example, is expecting a \$10 million cut in IOLTA revenue in 2008, while Maryland is expecting to just break even.

#### GAO Update

As you know, the Government Accountability Office (GAO) issued two reports, one in September 2007 on the Corporation's governance and accountability and another in January 2008 on our grants management and oversight. We appreciated both of these reviews of our policies and practices and cooperated fully with GAO throughout the audits. Further, we accepted all of the recommendations and have made it a top priority to address the recommendations of both reports and have implemented or gone beyond nearly all the recommendations of both reports. With regard to the Governance and Accountability Report, the Corporation has:

? Approved a Code of Ethics and Conduct for directors, officers and employees of the Corporation, and scheduled training for next month.

? Established a separate Audit Committee of the Board and approved a charter for the Committee. Among other

responsibilities, this committee will conduct periodic evaluations of key management processes, including risk management and mitigation, internal controls and financial reporting.

? Approved the continued use of the Government Accounting Standards Board guidelines for LSC's financial reports.

? Completed a Continuity of Operations Plan for the Corporation, which has been disseminated to all LSC staff.

In addition, LSC management has begun the process of establishing a more formal and rigorous risk management program at the Corporation. Management has researched a variety of risk management programs and best practices, identified the risk environment for the corporation, and begun an office-by-office risk assessment process. We plan to implement a risk management program this year commensurate with the size and budget of LSC.

The Board has had regular updates from management on compensation, personnel policy, compliance, and financial issues. The Board directed the Office of Inspector General to deliver the 2007 audit report from LSC's independent public accountant earlier than last year when it was delivered in April. The audit was delivered this year on January 7. To date, the Board has drafted charters for all Board committees, and approved formal charters for the Audit, Finance, and Provisions committees. Approval of a final charter for the Operations and Regulations committee and a newly constituted Governance and Performance Review committee is pending. The Governance and Performance Review committee will then have responsibility for taking action on the final governance recommendations from GAO. These recommendations include:

? Orientation for new Board members to familiarize them with LSC's programmatic roles and governance and accountability issues.

? Providing a regular training program for board members.

? Implementing a formal means by which the Board can evaluate its collective performance and the performance of individual members.

With regard to the GAO report on LSC's grants management and oversight, as evidence of its commitment, the Board of Directors at its January 2008 meeting established a three-member ad hoc committee, including a Board liaison, to work directly with LSC management and its Office of Compliance and Enforcement (OCE), the Office of Program Performance (OPP), and the Office of Inspector General (OIG) to implement the recommendations of the GAO reports.

The Board liaison held two day-long meetings with representatives from each of those offices to discuss areas where improvement could be made with respect to communication, information sharing and fiscal oversight. At its April 2008 meeting, the Board of Directors adopted a clear delineation of the roles and responsibilities of the various offices based on the recommendations of the ad hoc committee.

To date, LSC management has:

? Established working groups, held many hours of joint staff meetings to work on the roles and responsibilities of the various oversight offices, and is reviewing a draft memorandum of understanding for information sharing among OCE, OPP, and the OIG, while ensuring the OIG's independence.

? Established new protocols for information sharing and coordination of all work between OCE and OPP, including program visits.

? Completed four in-depth training sessions for LSC's oversight staff.

? Reviewed and expanded the current risk factors for selection of grantees for program visits and updated procedures in manuals. In addition, the Corporation revised procedures to ensure that they reflect our current practice of using information and results from oversight and audit activities and other risk criteria in planning internal control and compliance reviews, which also are being included in our manuals.

? Revised and created written guidelines for the fiscal component of OCE's regulatory compliance reviews and established written guidance for follow-up on grantee interviews.

? Established set timeframes for report preparation for program visits. Final reports for most visits must be provided to the grantees within 90 days from an on-site program visit, and draft reports must be provided 60 days after a program visit. For large programs with multiple offices, the timeframes are 90 days for drafts and 120 days for final. These and other procedures have all been reduced to writing in manuals.

In fulfillment of a commitment to go beyond the GAO recommendations to make related improvements, LSC suspended routine on-site program visits in February and March to complete all 2007 outstanding reports, and has now completed and provided to LSC grantees all program visits reports, in draft or final form, through 2007. With new procedures in place, LSC has set a new program visit schedule for the remainder of 2008.

The report on grants management contained troubling references to potentially improper use of grant funds by nine LSC-funded programs. I referred eight of the nine programs identified in the GAO report to the Acting Inspector General for follow-up on November 20, 2007. The ninth program, Nevada Legal Services, Inc., was retained by management for follow-up since the Office of Compliance and Enforcement already commenced a compliance review of the program prior to the GAO visit. LSC is taking action to terminate the current grant to Nevada Legal Services and replace it with month-to-month funding with strict special conditions that require monthly action and reporting to LSC. Should the program be unable to meet the special conditions, LSC will terminate the month-to-month funding and seek a different provider through a new competition pursuant to the LSC regulations.

The OIG has completed field work at all 8 of the programs referred to them with issuance of reports anticipated to be completed by the end of June. The OIG has reported that "for the first three sites reviewed and based on the OIG's preliminary analysis, management at the grantees have taken corrective actions based on the GAO recommendations, and have or are implementing additional controls to prevent those issues from recurring."

In addition, I sent an Advisory to all LSC-funded programs on March 20, 2008 reminding Executive Directors of the need for appropriate documentation of expenditures of LSC funds, the regulations regarding unallowable costs, and specifically stressing the prohibition of expenditures for alcohol and lobbying, the need for written policies governing salary advances, and a reminder of the regulation governing derivative income.

In summary, I want to assure you that we truly embrace these reviews, take them with the utmost seriousness, and welcome the opportunity that they afford us to do our job even better. We are working diligently and expeditiously to implement the GAO's recommendations and are even going beyond what was specifically recommended in the reports.

#### Conclusion

The Justice Gap Report is as compelling today as it was when it was released in September, 2005. The most current studies conducted by LSC-funded programs, state bars, and Access to Justice Commissions, and the clear impact of the current economic conditions as evidenced by the foreclosure crisis, have documented the expanded numbers in need. While the statistics are daunting, numbers alone do not tell the whole story of the impact that the lack of resources for providing high-quality civil legal assistance has on the lives of low-income individuals and families.

I would like to offer two brief stories to put a human face on what we are talking about today:

Julie remembers with vivid detail the event that would mark the beginning of her abusive relationship with Robert, her husband. After an intense argument during a family trip to the grocery store, Julie confronted Robert who had endangered their daughter in the ensuing angry melee. A fistful of hair. A bathroom mirror. Robert made use of both, grabbing her hair and slamming her face into the mirror. A phone call. An arrest. Three days later, Robert returned

home begging for forgiveness through tears, promising nothing similar would ever happen again. What followed was a 15-year cycle of violence characterized by conflict and empty reconciliation. Finally, on one fateful day in 2006, Robert beat Julie repeatedly with a baseball bat until she was rendered unconscious. When she came to she finally made a run for it, escaping to the Guadalupe Family Violence Shelter which in turn contacted Texas RioGrande Legal Aid (TRLA). The shelter's legal advocate and TRLA staff worked with Julie to move her life forward. Months later, Julie followed through on her divorce, and she left Robert for good. Julie says, "Without the help of TRLA, my legal advocate, and my attorney, I have no doubt that I would still be running and hiding from Robert and searching for a way out."

"Betty" took two part-time jobs and sold her furniture last spring while trying to save her home from foreclosure. Now she thanks God and her legal aid attorney at the Community Legal Services of Mid-Florida, for saving her home from predatory lenders. Betty, now 64, and her husband received a no-interest mortgage loan in 1989 to make improvements to their house. The monthly payments were manageable, but when her husband died and his pension ran out last year, she began having trouble making ends meet. When a card showed up in her mail advertising a refinancing plan that promised to solve all her financial woes, Betty thought she had found her solution. She applied for and received an adjustable rate mortgage that quickly burdened her with monthly payments in excess of her income. Even when she took a second job as a Salvation Army bell-ringer during the Christmas holidays, she could not earn enough to make the payments. Foreclosure proceedings began. When Betty arrived at the offices of Community Legal Services of Mid-Florida, she was two days away from losing her home for good. Her attorney immediately filed an objection with the court and entered into negotiations with the mortgage company, which agreed to offer Betty a reverse mortgage that would allow her to stay in her home. She also received money to repurchase the furniture she sold. Community Legal Services has also filed suit against the mortgage broker for engaging in deceptive practices.

For these individuals and the hundreds of thousands of others that we serve, civil legal assistance is not just an abstract concept, but the key to their shelter, safety, health, and self sufficiency. It all flows from our founding principle of equal access to justice, a principle promised in the preamble to the Constitution and the Pledge of Allegiance. As U.S. Supreme Court Justice Lewis Powell said, "Equal Justice under Law" is not merely a caption on the facade 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." That is the mission that LSC and our grantees across the country seek every single day to fulfill.

Thank you and I would be happy to respond to your questions.

1 Legal Needs of Low-Income Households in Montana, State Bar of Montana, 2005. The Legal Aid Safety Net: A Report on the Legal Needs of Low-Income Illinoisans, Chicago Bar Foundation, February 2005. Statewide Comprehensive Legal Needs Survey, Tennessee Alliance for Legal Services, 2004. The Washington State Civil Legal Needs

Study. Supreme Court Civil Equal Justice Funding Task Force, 2003. Massachusetts Legal Needs Survey, Massachusetts Legal Assistance Corporation, 2003. Civil Legal Needs Among Low-Income Households in Connecticut, Connecticut Bar Foundation, 2003. Legal Problems, Legal Needs: The Legal Assistance Gap Facing Low-Income People in New Jersey, Legal Services of New Jersey, 2002. Legal Needs Assessment Study, Vermont Committee on Equal Access to Justice, 2001. The State of Access to Justice in Oregon, Oregon State Bar, 2000.

2 Bridging the Justice Gap: Wisconsin's Unmet Legal Needs, State Bar of Wisconsin Access to Justice Committee, March 2007.

3 California Commission on Access to Justice, March 2007.

4 State Needs Assessment, Legal Aid of Nebraska, February 15, 2007.

5 The Justice Gap: The Unmet Legal Needs of Low-Income Utahns, Utah Legal Services, January 31, 2007.

6 New Mexico Commission on Access to Justice Report to the Supreme Court of New Mexico, March, 2006.

7 Achieving Access to Justice for Hawaii's People, Access to Justice Hui. November 2007.

8 Voicing a Need for Justice, Arizona Foundation for Legal Services and Education. January 2008.

9 An Assessment of the Legal Needs of Low-Income Alabamians, Alabama Law Foundation..

10 People Without Lawyers: The Continuing Justice Gap in New Jersey, Legal Services of New Jersey, October 2006.