

S. HRG. 98-437

JUDICIAL ACCESS AND THE ELDERLY

HEARING
BEFORE THE
COMMITTEE ON
LABOR AND HUMAN RESOURCES
UNITED STATES SENATE
NINETY-EIGHTH CONGRESS
FIRST SESSION
ON
OVERSIGHT TO REVIEW LEGAL PROBLEMS OF THE ELDERLY WITHIN
THE SCOPE OF THE LEGAL SERVICES CORPORATION

JULY 12, 1983



the use of the Committee on Labor and Human Resources

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1983

2892-
92894

COMMITTEE ON LABOR AND HUMAN RESOURCES

ORRIN G. HATCH, Utah, *Chairman*

ROBERT T. STAFFORD, Vermont	EDWARD M. KENNEDY, Massachusetts
DAN QUAYLE, Indiana	JENNINGS RANDOLPH, West Virginia
DON NICKLES, Oklahoma	CLAIBORNE PELL, Rhode Island
GORDON J. HUMPHREY, New Hampshire	THOMAS F. EAGLETON, Missouri
JEREMIAH DENTON, Alabama	DONALD W. RIEGLE, Jr., Michigan
LOWELL P. WEICKER, Jr., Connecticut	HOWARD M. METZENBAUM, Ohio
CHARLES E. GRASSLEY, Iowa	SPARK M. MATSUNAGA, Hawaii
JOHN P. EAST, North Carolina	CHRISTOPHER J. DODD, Connecticut
PAULA HAWKINS, Florida	

RONALD F. DOCKSAI, *Staff Director*
KATHRYN O'L. HIGGINS, *Minority Staff Director*

(II)

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by
Public Domain

United States Senate
to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

CONTENTS

STATEMENTS

TUESDAY, JULY 12, 1983

	Page
Coleman, Nancy, staff director, Commission on Legal Problems of the Elderly, American Bar Association.....	108
Prepared statement	112
Fretz, Burton D., executive director, National Senior Citizens Law Center, accompanied by Bruce M. Fried, staff attorney	66
Joint prepared statement	90
Handlesman, M. Gene, Deputy Commissioner on Aging, Administration on Aging	2
Prepared statement	5
Hartley, Gregg, Director of the Office of Field Services, Legal Services Corporation	37
Prepared statement	40
Moore, Wayne, legal counsel for the elderly, American Association of Retired Persons	54
Prepared statement	57
Power, Daniel L., director, Drake University Law School Legal Clinic.....	122
Prepared statement	127
Proffitt, Russell, chairman, Iowa Association of Area Agencies on Aging.....	25
Prepared statement	27
Tynes, Karen L., executive director, Iowa Commission on the Aging.....	18
Prepared statement	20
Weiss, Jonathan, director, Legal Services for the Elderly of New York City.....	49

ADDITIONAL INFORMATION

Articles, publications, etc.:	
Report of the Mini-Conference in Legal Services for the Elderly.....	68
Communications to:	
Grassley, Hon. Charles E., chairman, Subcommittee on Aging, from Jonathan A. Weiss, director, Legal Services for the Elderly, July 6, 1983	52
Questions and answers:	
Responses of Mr. Weiss to question asked by Senator Grassley	100
Responses of Mr. Moore to question asked by Senator Grassley	102
Responses of Mr. Fretz to question asked by Senator Grassley	105
Responses of Mr. Power to questions asked by Senator Grassley.....	138

(III)

NCJRS

FEB 6 1984

ACQUISITIONS

JUDICIAL ACCESS AND THE ELDERLY

TUESDAY, JULY 12, 1983

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, D.C.

The committee met, pursuant to recess, at 2:15 p.m., in room 428-A, Dirksen Senate Office Building, Senator Charles E. Grassley (acting chairman of the committee) presiding.

Present: Senator Grassley.

OPENING STATEMENT OF SENATOR GRASSLEY

Senator GRASSLEY. I will call this hearing to order.

Prior to my opening statement, I would like to say that I arrived late because I just came from Finance, waiting to offer an amendment that I must offer to a bill there. No quorum yet exists in Finance Committee. I am going to stay here and then will be called away at the appropriate juncture to offer an amendment which is controversial but shouldn't take a great deal of time. Therefore, if I have to call a recess you will understand the purpose of it.

This morning the Committee on Labor and Human Resources held the second in a series of oversight hearings in preparation for considering the reauthorization of the Legal Services Corporation. This afternoon this committee will examine one congressional mandate to the Corporation contained in the 1974 Legal Services Act.

Section 1007 of that act requires the Legal Services Corporation to adopt procedures—and I am quoting—“for determining and implementing priorities for the provision of * * * assistance, taking into account the relative needs of eligible clients for such assistance, including particularly the needs of eligible clients with special difficulties of access to legal services or special legal problems”—and in parentheses—“including elderly individuals.”

We are here today to examine whether the mandate is being met by the Corporation as presently constituted, and if not, why not. In addition, we will focus on how the special legal needs of the elderly are being met by the Administration on Aging and by efforts of the private bar.

Because of our late starting time and ambitious agenda, I do not intend to make extensive remarks at this time. However, I want to make my position perfectly clear in one area that we are going to address: Government legal service programs serving the elderly will best meet their needs by providing direct client services to as many individuals as possible.

I would like to now go to our first witness, Gene Handlesman, the Deputy Director of the Administration on Aging. We appreci-

ate the fact that you, Gene, are able to be with us today to give us an overview of the administration's efforts to provide legal services to the elderly under title III-B of the Older Americans Act.

I would make an announcement for you as well as for everybody else, that we would hope that you could summarize your statements and if you desire—which I hope you do—that your entire statement would be placed in the record, it will be.

**STATEMENT OF M. GENE HANDLES MAN, DEPUTY COMMISSIONER
ON AGING, ADMINISTRATION ON AGING**

Mr. HANDLES MAN. Thank you, Mr. Chairman.

I am pleased to appear before you today to discuss the legal needs of the elderly and how they are met under title III-B of the Older Americans Act. I would like to thank you for the opportunity to share with you the many accomplishments, new programs and strategies that have been developed under title III-B and title IV of the Older Americans Act to enhance access to legal services by older individuals throughout the Nation.

The central topic of today's testimony, legal services to older people, has been and continues to be an area of serious concern to the Administration on Aging. Under the Older Americans Act, each State agency must provide for the coordination of the provision of legal services to older individuals within the State. State and local governments decide how best to provide legal services for the elderly. In addition, each area agency must expend an adequate portion of title III-B funds for legal services under the area plan in the planning and service area, unless the need for legal services is adequately met from other sources.

Title III-B provides a method to address the legal problems of many older persons. Many of these problems come about because of the special problems older persons may encounter. For example, older persons may fail to recognize some of their problems as legal problems. Older persons may not be aware of or know how to look into existing legal resources. They may not feel comfortable accepting free or low-cost legal services, or they may even be wary of dealing with members of the legal profession.

Of the nearly 700 area agencies on aging, about 80 percent of them directly fund legal services programs as required under the act. Other area agencies have secured funding from sources other than title III-B, as allowed under the Older Americans Act. The number of older persons receiving legal services through area agencies rose from 301,000 served in fiscal year 1979 to 507,000 in fiscal year 1982, an increase of 41 percent over a 3-year period.

Most of the services for older clients are provided on a 1-to-1 basis, and involve Government benefits such as social security, supplemental security income, medicaid, and medicare. Other legal matters include housing, consumer rights, pensions, guardianship, age discrimination in service or employment, wills, and simple estates.

In addition, the Administration on Aging has provided more than \$16 million since 1980 under title IV for legal services related functions, including such activities as technical assistance and training efforts to strengthen legal representation for the elderly.

For the past 5 years a portion of these funds have supported grants for State legal services developers, usually an attorney in each State agency on aging.

These developers assist area agencies on aging and their local legal service providers funded under the act to establish, improve, and coordinate legal service activities. They also assist in the development and implementation of State unit on aging policies and procedures to effectuate legal services under the act. They also assist the State unit on aging and the area agencies and legal service providers to increase the involvement of the public and voluntary sector responsible for legal services for low-income persons in addressing the legal needs of low-income older persons.

In addition, the Administration on Aging is currently funding under title IV four projects to develop information and service models in the areas of legal and protective services for older people. The Protection and Advocacy Agency of Hawaii is developing a model of guardianship and protective services that will demonstrate the program efficiency and cost effectiveness of serving the mentally impaired elderly and the developmentally disabled under one protective system.

The American Bar Association is developing a corporate counsel for the elderly program. This project allows attorneys to expend up to 10 percent of their employment time on pro bono activities. For example, Aetna Life & Casualty, with technical assistance from the American Bar Association, is providing free legal services to older residents of Hartford, Conn.

The Administration on Aging has been working with the legal counsel for the elderly of the American Association of Retired Persons to operate and evaluate a program of volunteer representative payees. The American Association of Retired Persons is also working with the banking industry to develop low-cost financial services for the older client population in need of protective services.

Finally, the Institute on Mental Disability and the Law, National Center for State Courts, is conducting a 17-month research project to develop a model coordination system between courts and community care resources. The objective is to utilize the doctrine of the least restrictive alternatives in the involuntary civil commitment process.

These four projects will provide the Administration on Aging with valuable information as to what protective and legal service models work best at the State and community levels, and will provide further examples of public and private partnerships.

Another area of particular concern to the Administration on Aging is the problem of abuse of the elderly, and the Administration on Aging is funding three model projects or demonstrations in this area.

Appropriate use of the legal system for our elderly population is a challenge that affects us all in shaping and defining the quality of life and in upholding the principles of equity. It is a challenge that merits the priority and attention from the legal profession that, perhaps more than any other, stands as gatekeeper of the laws and formal rules by which older citizens—and indeed all citizens—come together, work together, and live together.

Mr. Chairman, this concludes the summary of my prepared remarks. I appreciate the opportunity to share this information about some of our efforts with you. I will be happy to respond to any questions which you have.

[The prepared statement of Mr. Handlesman follows:]

STATEMENT BY M. GENE HANDLESMAN, DEPUTY COMMISSIONER ON AGING,
ADMINISTRATION ON AGING

Mr. Chairman, and Members of the Senate Labor and Human Resources Committee, I am pleased to appear before you today to discuss the legal needs of the elderly and how they are met under Title III B of the Older Americans Act. I would like to thank you for the opportunity to share with you the many accomplishments, new programs, and strategies that have been developed under Title III B and Title IV of the Older Americans Act to enhance access to legal services by older individuals throughout this nation. My brief remarks will touch on targeting those in greatest social or economic need; involving the private bar in legal services for the elderly; working with older persons' organizations; the roles of State Agencies on Aging and Legal Services Developers; volunteers and lay advocates; and legal services projects in specialized areas, as they involve current Administration on Aging programs.

The central topic of today's testimony, legal services to older people, has been and continues to be an area of serious

concern to the Administration on Aging. Under the Older Americans Act each State agency must provide for the coordination of the provision of legal services to older individuals within the State. State and local governments decide how best to provide legal services for the elderly. In addition, each area agency must expend an adequate portion of Title III B funds for legal services under the area plan in the planning and service area unless the need for legal services is adequately met from other sources. Title III B legal services provide a method to address the legal problems of many older persons. Many of these legal problems come about because of special problems older persons may encounter, for example:

- o older persons may fail to recognize some of their problems as legal problems;
- o older persons may not be aware of, or know how to look into, existing legal resources;

- o they may lack transportation; they may be physically restricted, or cannot use available transportation;
- o they may not feel comfortable accepting free or low cost legal services or they may even be wary of dealing with members of the legal profession.

Of the nearly 700 Area Agencies on Aging, about 80 percent of them directly fund legal service programs as required under the Older Americans Act. Other providers have secured funding from sources other than Title III B as allowed under the Older Americans Act.

The number of older persons receiving legal services through Area Agencies on Aging rose from 301,000 served in Fiscal Year 1979 to 507,000 in Fiscal Year 1982, an increase of 41 percent over a 3-year period. Most of the cases for older clients are provided on a one-to-one basis and involve government benefits--Social Security,

Supplemental Security Income, Medicaid and Medicare.

Other legal matters include housing, consumer rights, pensions, guardianship, age discrimination in service or employment, wills and simple estates.

In addition, the Administration on Aging has provided more than \$16,000,000, since 1980, under Title IV for legal service related functions, including such activities as technical assistance and training efforts to strengthen legal representation for the elderly. Also, for the past 5 years a portion of these funds have supported grants for "State legal services developers"--usually an attorney--in each State Agency on Aging. Examples of the types of activities in which legal services developers engage include the following:

- o Assist Area Agencies on Aging and their local legal services providers funded under the Older

Americans Act to establish, improve and coordinate legal services activities.

- o In coordination with the State Long Term Care Ombudsman and Area Agencies on Aging, generate agreements and working relationships between legal services providers and long term care ombudsman programs.
- o Assist in the development and implementation of State Unit on Aging policies and procedures to effectuate legal services under the Older Americans Act.
- o Provide State Unit on Aging staff with information and advice on legal aspects of public policies affecting the elderly and on the capacity of legal services programs to address legal aspects of aging concerns, such as employment, housing, and health.

- o Provide support to State Unit on Aging staff with responsibilities to protect the rights of vulnerable older persons. Assist the Long Term Care Ombudsman in securing access to long term care facilities and in addressing legal issues affecting such residents. Assist staff responsible for protective services activities with regard to legal aspects of protective services for older persons.
- o Assist the State Unit on Aging, Area Agencies on Aging and legal services providers to increase the involvement of the private sector in meeting the legal needs of older persons.
- o Assist the State Unit on Aging, Area Agencies on Aging, and legal services providers to increase the involvement of the public and voluntary sector responsible for legal services

for low-income persons in addressing the legal needs of low-income older persons.

In addition, AoA is currently funding under Title IV four projects to develop information and service models in the areas of legal and protective services for older people.

- o The Protection and Advocacy Agency of Hawaii is developing a model of guardianship and protective services that will demonstrate the program efficiency and cost effectiveness of serving the mentally impaired elderly and the developmentally disabled under one protective system.
- o The American Bar Association is developing a corporate counsel for the elderly program. This project allows attorneys to expand up to

ten percent of their employment time on pro bono activities. For example, Aetna Life and Casualty, with technical assistance from the American Bar Association, is providing free legal service to older residents of the Asylum Hill area of Hartford, Connecticut. The Bar Association has contacted about fifty corporate counsels in companies such as Exxon, Union Carbide, Western Electric, Xerox, Aetna, and Prudential to encourage their development of corporate counsel programs.

- o The Administration on Aging has been working with the Legal Counsel for the Elderly of the American Association of Retired Persons to operate and evaluate a program of volunteer representative payees. These volunteers are assisting mentally impaired older people in

managing their financial affairs. The American Association of Retired Persons (AARP) is also working with the banking industry to develop low cost financial services for the older client population in need of protective services.

- o Finally, the Institute on Mental Disability and the Law, National Center for State Courts, is conducting a seventeen month research project to develop a model coordination system between courts and community care resources. The objective is to utilize the doctrine of the least restrictive alternatives in the involuntary civil commitment process.

These four projects will provide the Administration on Aging with valuable information as to what protective and

legal services models work best at the State and community levels, and will provide further examples of public/private partnerships.

Another area of particular concern to AOA is the problem of abuse of the elderly. AOA is funding three model projects or demonstrations on elder abuse with the following goals in mind:

- o The Rhode Island Department of Elderly Affairs is developing a system of alternative methods for prevention and treatment of abuse;
- o The Massachusetts Department of Elderly Affairs is producing a data base on the incidence and causes of abuse and neglect, and the costs of services to abused elders; and
- o The Metropolitan Commission on Aging in Syracuse, New York, is developing and demonstrating a viable strategy for the

prevention and treatment of elder abuse, relying mainly on the existing service delivery system.

In a related project, Wayne State University in Detroit is developing an index of elderly abuse for use by agencies working with the elderly and to provide instructional materials in the use of the index.

Appropriate use of the legal system for our elderly population is a challenge that affects us all in shaping and defining the quality of life and in upholding the principles of equity. It is a challenge that merits the priority and attention from the legal profession that, perhaps more than any other, stands as "gatekeeper" of the laws and formal rules by which older citizens--and indeed all citizens--come together, work together, and live together.

Mr. Chairman, this concludes my prepared remarks. We appreciate this opportunity to share information about some of our efforts with you. I will be happy to respond to any questions which you or any of the other committee members may have.

Senator GRASSLEY. Well, thank you very much for your testimony. I appreciate the update, particularly as to your ongoing studies and projects which will further answer the concerns and questions that have been raised.

I only have maybe two, three, four questions at the most. Again, as to the administration—what are their overall goals with respect to legal service programs under title III-B?

Mr. HANDLES MAN. Well, the administration's goal is to insure that the mandate of title III of the act with respect to legal services is fulfilled. Each State agency has the responsibility to assure coordination of legal services provided to the elderly within the State. The State also assures that each area agency expends an adequate proportion of title III-B funds for legal services, unless the service is adequately provided from other sources. However, State and local governments decide the types and the levels of legal services to be provided with title III funds based on locally determined priorities.

We intend to continue to develop the legal service provider system through the award of funds, through title IV of the act, and through these awards we hope to increase the involvement of the private sector, as well in meeting the needs of older persons, and to assist the State units on aging, area agencies and legal service providers, to increase their involvement of the public and voluntary sector in addressing the needs of low-income older persons. Specifically, we will strongly encourage an increase of pro bono activities provided by private attorneys on behalf of the elderly.

Senator GRASSLEY. Well, do you seek maximum flexibility for individual States in accomplishing these goals?

Mr. HANDLES MAN. We think the goals are being accomplished. As I said earlier, the number of legal services provided to older persons have increased by a substantial percentage over the last few years. Therefore, we think that through the maximum flexibility permitted under the Older Americans Act this is happening in the States.

Senator GRASSLEY. We have heard that State aging officials argue that legal services is—and in fact they would even go further and say it should be—a low-priority item under title III-B, and that their funds would be better expended elsewhere. Does the administration have a view of that perception of how money ought to be spent under title III-B?

Mr. HANDLES MAN. The level of priority given to the provision of services, as I indicated, is determined at the local level and it is determined through needs assessments that are conducted by the State and area agencies. Therefore, the priority is established at that point. There are reasons why a State or area agency may give more or less priority to the provision of legal services, dependent upon the availability of low-cost legal services that are available from other sources and providers, or there may be a significant number of competing service needs which may affect the priority given to give legal services.

Our data indicates, based on the number of services that have been provided, that about a half million persons receive legal services in the States. That, compared to the number of people receiving other kinds of services, is a moderate figure. However, none of

the data that we have would indicate that, or support the view that legal services is, or should be, given low priority.

Senator GRASSLEY. A term that is given rather broad meaning in the Older Americans Act is the term "advocacy." Whose responsibility is it to carry out advocacy under the meaning of the act—to put it another way—is it the responsibility of legal services programs under title III-B?

Mr. HANDLES MAN. The act specifically establishes advocacy as the responsibility of the Administration on Aging under title II. In addition, under section 305 of the act a corollary advocacy responsibility is established for the State agency on aging; and, finally, advocacy is mandated as an area agency on aging function in section 306 of the act which requires the area agency to serve as the advocate and focal point for elderly within the community.

Legal service providers are primarily charged with the responsibility to assist older persons by protecting their rights or enabling them to obtain benefits for which they are eligible. In performing these functions, legal services providers may have occasion to undertake some advocacy type activities. However, the primary duty of legal service providers is to give legal assistance to individuals or groups of older persons, so that the basic responsibility for advocacy rests with the area agency.

Senator GRASSLEY. Well, I have no further questions but let me make a general announcement at this point, not only for your benefit but all panels. Other members of the committee could not be here because the morning session took up so much time. You may get some questions in writing and we would appreciate a response. Also, for any additional material you might want to submit, whether they are a panelist or not on a panel, the record will be kept open for 2 weeks from today.

Therefore, I want to thank you for your testimony and appreciate the administration helping us address these issues. Thank you very much.

Mr. HANDLES MAN. Thank you, Mr. Chairman.

Senator GRASSLEY. I am very proud to welcome as our first panel two very capable officials from my own State of Iowa. Karen Tynes is the director of the Iowa Commission on Aging; we were delighted to welcome her to Iowa when she left a position with an area agency to join Governor Branstad's administration.

Then a person I have known longer, Russ Proffitt, the director of the Heritage Area Agency on Aging in Cedar Rapids, and chairman of the Iowa Association of Area Agencies on Aging.

I would like to have both of you come to the table now. We were lucky to find both of them in town this week to attend the convention of the National Association of State Units on Aging and the National Association of Area Agencies on Aging. I would be pleased to have you proceed in the order in which I introduced you.

I would like to let you know, Karen, as this is my first opportunity to meet you, that I had a lot to do with your State agency under its previous director when I was ranking Republican on the House Aging Committee, then since my election to the Senate as a member of the Senate Special Committee on Aging, and now as chairman of the Subcommittee on Aging. Therefore, we look forward to your expertise and advice as well.

In fact, we would even ask you not to sit back until we ask for such advice. Please be very forthcoming in your opinions to us. I have always valued that sort of a relationship with your commission and want to continue that sort of an arrangement. If I had been on my toes I would have shaken hands with you as I came in the door, but I was late and I wanted to get the meeting started, so pardon me. Russ knows me well, and anything you want to find out about me, he will let you in on all the details.

Would you proceed then, please?

**STATEMENT OF MS. KAREN L. TYNES, EXECUTIVE DIRECTOR,
IOWA COMMISSION ON THE AGING**

Ms. TYNES. I do appreciate this opportunity to testify before you today in behalf of older Iowans and in behalf of the Iowa Commission on the Aging. While I recognize the problems facing this committee regarding legal services for the low-income and the elderly, I would like to share with you the concerns of the Iowa Commission on the Aging.

It is the responsibility of the State units on aging, in conjunction with their area agencies on aging, to conduct regular needs assessments of their population age 60 and older. To address the identified needs, regular assessments of available resources must also be conducted.

As administrators of Federal funds we have an obligation to utilize those funds to first address the identified unmet needs that are priorities. Where other resources are available to address these needs, our primary focus should then be on coordination. In rural areas, the case is often that other public resources are unavailable and the area agency on aging must develop coordinated efforts with the private sector, if possible.

As we begin to refocus our resources to serve seniors who are at risk, we must also rethink our approach to serving the elderly. Do we continue to utilize the band-aid approach through a fragmented array of services, or do we begin dealing with the total needs of the older person? Obviously Federal funding alone only allows for a fragmented approach.

Historically the aging network has had to seek other resources and volunteer assistance to carry out its commitment to serving seniors. While the elder population is increasing disproportionately to financial resources, the coordination of services and funding at the local level has become critical.

Because title III-B funding in Iowa has been cut severely, and because Legal Services Corporation funds have been cut similarly, the area agencies in our State have been moving increasingly toward utilizing private bar providers on a reduced fee basis, law school resources have been marshalled, and lawyer-supervised paralegals are being utilized. In short, a wide variety of approaches are being utilized in an attempt to provide legal services to senior citizens with the greatest economic and social need.

Even with the lessening of detail proposed in the 1983 regulation changes of the Older Americans Act, there is still in place an overly detailed and restrictive burden on the area agencies at a time when they are attempting to plan for the provision of legal

services to the elderly in an innovative and cost-effective manner. Currently, Iowa's area agencies on aging are struggling to address the need for services to our elderly, and I have included in my testimony a list of ways that the area agencies are coping.

In focusing services on the frail, homebound elderly and the institutionalized older person, it is imperative that the rights of these seniors be protected. Not only is there concern for individual rights, but the rights of this frail segment of the population require strong advocacy activities. Can Legal Services Corporation programs, with added restrictions in their lobbying activities, be effective advocates for those seniors at risk? Can the alternatives to LSC-funded programs be better advocates?

I do want to emphasize that the aging network has always recognized the need for legal services, as demonstrated by the creation of this service by many area agencies prior to the intense development of Legal Services Corporation programs. While we support the efforts of Legal Services Corporation, we also feel that we must have greater flexibility in the manner in which we address the identified priority needs of our elders in the most cost-effective manner.

The work done by senior advocates and paralegals can provide more time for client representation by attorneys. These paraprofessionals developed by the area agencies are, to a greater extent, a part of the aging network, thus creating greater access to legal services by seniors.

In conclusion, the Iowa Commission on the Aging identifies legal services as a need among Iowa's seniors. Access to legal services will vary from area to area, as will access to other services needed by the elderly. Limitations on funding have greatly restricted our service delivery systems. Progress in the development of additional services directed toward these seniors at risk has been slow at best.

[The prepared statement of Ms. Tynes follows:]

TESTIMONY—ACCESS TO LEGAL SERVICES BY THE ELDERLY

(Presented by Karen L. Tynes, executive director, Iowa Commission on the Aging)

SENATOR GRASSLEY AND DISTINGUISHED MEMBERS OF THE SUB-COMMITTEE ON AGING, MY NAME IS KAREN TYNES. I AM THE EXECUTIVE DIRECTOR OF THE IOWA COMMISSION ON THE AGING. I APPRECIATE THIS OPPORTUNITY TO TESTIFY BEFORE YOU TODAY ON OLDER IOWANS' ACCESS TO LEGAL SERVICES.

WHILE I RECOGNIZE THE PROBLEMS FACING THIS COMMITTEE REGARDING LEGAL SERVICES FOR THE LOW-INCOME AND THE ELDERLY, I WOULD LIKE TO SHARE WITH YOU THE CONCERNS OF THE IOWA COMMISSION ON THE AGING IN THIS AREA.

FOR YEARS I HAVE ADVOCATED IN BEHALF OF ADEQUATE ACCESS TO LEGAL SERVICES FOR ALL. AS A FORMER DIRECTOR OF AN AREA AGENCY ON AGING, AND NOW AS A DIRECTOR OF A STATE UNIT ON AGING, I MUST QUESTION THE APPROPRIATE PROVISION FOR, AND PRIORITY OF LEGAL SERVICES.

IT IS THE RESPONSIBILITY OF THE STATE UNITS ON AGING IN CONJUNCTION WITH THEIR AREA AGENCIES ON AGING TO CONDUCT REGULAR NEEDS ASSESSMENTS OF THEIR POPULATION AGE 60 AND OLDER. TO ADDRESS THE IDENTIFIED NEEDS REGULAR ASSESSMENTS OF AVAILABLE RESOURCES MUST ALSO BE CONDUCTED. AS ADMINISTRATORS OF FEDERAL FUNDS WE HAVE AN OBLIGATION TO UTILIZE THOSE FUNDS TO FIRST ADDRESS THE IDENTIFIED UNMET NEEDS THAT ARE PRIORITIES. WHERE OTHER RESOURCES ARE AVAILABLE TO ADDRESS THESE NEEDS OUR PRIMARY FOCUS SHOULD BE ON COORDINATION. IN RURAL AREAS THE CASE IS OFTEN THAT OTHER PUBLIC RESOURCES ARE UNAVAILABLE AND THE AREA AGENCY ON AGING MUST DEVELOP COORDINATED EFFORTS WITH THE PRIVATE SECTOR, IF POSSIBLE.

AS WE BEGIN TO REFOCUS OUR RESOURCES TO SERVE SENIORS WHO ARE AT RISK WE MUST ALSO RETHINK OUR APPROACH TO SERVING THE ELDERLY. DO WE CONTINUE TO UTILIZE THE "BAND-AID" APPROACH THROUGH A FRAGMENTED ARRAY OF SERVICES OR DO WE BEGIN DEALING WITH THE TOTAL NEEDS OF THE OLDER PERSON? OBVIOUSLY, FEDERAL FUNDING ALONE ONLY ALLOWS FOR A FRAGMENTED APPROACH. HISTORICALLY THE AGING NETWORK HAS HAD TO SEEK OTHER RESOURCES AND VOLUNTEER ASSISTANCE TO CARRY OUT ITS COMMITMENT TO SERVING SENIORS. WHILE THE ELDER POPULATION IS INCREASING DISPROPORTIONATELY TO FINANCIAL RESOURCES, THE COORDINATION OF SERVICES AND FUNDING AT THE LOCAL LEVEL HAS BECOME CRITICAL.

BECAUSE TITLE III-B FUNDING HAS BEEN CUT SEVERELY AND BECAUSE LEGAL SERVICE CORPORATION FUNDS HAVE BEEN CUT SIMILARLY, THE AREA AGENCIES IN OUR STATE HAVE BEEN MOVING INCREASINGLY TOWARD UTILIZING PRIVATE BAR PROVIDERS ON A REDUCED FEE BASIS, LAW SCHOOL RESOURCES HAVE BEEN MARSHALLED, AND LAWYER-SUPERVISED PARALEGALS ARE BEING UTILIZED. IN SHORT, A WIDE VARIETY OF APPROACHES ARE BEING UTILIZED IN AN ATTEMPT TO PROVIDE LEGAL SERVICES TO SENIOR CITIZENS WITH THE GREATEST ECONOMIC AND SOCIAL NEED. EVEN WITH THE LESSENING OF DETAIL PROPOSED IN THE 1983 REGULATION CHANGES OF THE OLDER AMERICANS ACT, THERE IS STILL IN PLACE AN OVERLY DETAILED AND RESTRICTIVE BURDEN ON THE AREA AGENCIES AT A TIME WHEN THEY ARE ATTEMPTING TO PLAN FOR THE PROVISION OF LEGAL SERVICES TO THE ELDERLY IN AN INNOVATIVE AND COST-EFFECTIVE MANNER.

CURRENTLY, IOWA'S AREA AGENCIES ON AGING ARE STRUGGLING TO ADDRESS THE NEED FOR SERVICES TO OUR ELDERLY. FOLLOWING ARE SOME OF THE WAYS IN WHICH WE ARE ATTEMPTING TO ADDRESS THE LEGAL

NEEDS OF IOWA'S AGING POPULATION WITH NO INCREASE IN FUNDING AND WHILE MINIMIZING THE DECREASE IN OTHER CRITICALLY NEEDED SERVICES:

... ONE AREA AGENCY HAS A CENTRAL COLLECT CALL NUMBER THAT SENIORS MAY UTILIZE. REFERRALS ARE THEN MADE TO EITHER OF TWO ATTORNEYS IN EACH COUNTY IN THE AREA'S REDUCED-FEE LAWYER REFERRAL PROGRAM.

... ANOTHER AREA HAS APPROXIMATELY THIRTY-FIVE (35) SENIOR ADVOCATES WHO PROVIDE ASSISTANCE IN CERTAIN NON-TECHNICAL AREAS OF THE LAW.

... A THIRD AREA EMPLOYS A FULL-TIME PARALEGAL WHO SUPERVISES 7 OR 8 SENIOR ADVOCATES. THIS ARRANGMENT PROVIDES A BROAD RANGE OF LEGAL ASSISTANCE UNDER THE AS-NEEDED-SUPERVISION OF AN ATTORNEY. THE PARALEGAL CONCEPT HAS ALSO BEEN ADOPTED BY YET ANOTHER AREA AGENCY.

... TWO AREA AGENCIES RETAIN THE SERVICES OF AN ATTORNEY WHO SUPERVISES SENIOR ADVOCATES AND/OR PROVIDES LEGAL SERVICES TO THE AREA'S SENIORS.

... THE AREA AGENCY SERVING THE DES MOINES AREA IS UTILIZING A LEGAL CLINIC THROUGH THE LOCAL LAW SCHOOL.

... TWO AREA AGENCIES ARE CONTRACTING WITH LEGAL SERVICES CORPORATION OF IOWA TO ASSIST WITH THE TRAINING OF ELDERLY ADVOCATES AND TO PROVIDE LEGAL SERVICES TO THE ELDERLY.

... IN ADDITION, TWO AREAS HAVE CONTRACTED WITH LOCAL NON-PROFIT ORGANIZATIONS FOR LEGAL REPRESENTATION AND ADVOCACY.

FOLLOWING ARE EXAMPLES OF PROBLEMS SOLVED BY LEGAL SERVICE PROGRAMS DESIGNED FOR IOWA'S ELDERLY.

... AN ELDERLY COUPLE WERE MANAGERS OF AN APARTMENT COMPLEX. THEY WERE REIMBURSED FOR ONLY 50% OF THE SERVICES THEY RENDERED BY THE OWNER OF THE APARTMENTS. THE AREA AGENCY INTERVENED THROUGH THEIR ADVOCACY PROGRAM. THE COUPLE WAS GRANTED FULL RESTITUTION AND GIVEN ADEQUATE TIME TO RELOCATE.

... ALL RESIDENTS OF A RETIREMENT CENTER WERE TO BE ASSESSED A PERCENTAGE OF A PROPOSED TAX WHEN THEY WERE AT RISK OF LOSING THEIR TAX EXEMPT STATUS. THE AREA AGENCY INTERVENED AND WENT TO COURT AS A "AMICUS CURAE" AND RECEIVED A JUDGMENT IN BEHALF OF THE RESIDENTS.

... AN ELDERLY MAN IN HIS 80s WHO WAS A RETIRED FARMHAND COULD NEITHER READ NOR WRITE. AT THE TIME OF THE VISIT OF THE SENIOR ADVOCATE HE WAS VERY UPSET. THE REASON? HIS WIFE HAD BEEN IN THE HOSPITAL FOR SOME TIME AND HE HAD NOT HEARD FROM HER. THE SENIOR ADVOCATE TOOK HIM TO THE HOSPITAL BUT HIS WIFE WAS NOT THERE. NO ONE COULD GIVE THEM ANY INFORMATION. AFTER A WEEK OR SO, THEY LOCATED HER IN A CARE CENTER. A NIECE HAD TAKEN OUT GUARDIANSHIP PAPERS AND MOVED HER. THROUGH THE EFFORTS OF THE SENIOR ADVOCATE, LEGAL SERVICES CORPORATION AND THE AGING ADVOCATE, THE PROBLEM WAS RESOLVED. WHILE THE NIECE NOW LEAVES THEM STRICTLY ALONE, BOTH OF THESE ELDERLY PERSONS DESPERATELY NEED TO GO TO THE DOCTOR BUT ARE AFRAID TO BECAUSE OF THEIR PAST EXPERIENCE.

IN THE SITUATION WHERE A "WAIVER" WAS GRANTED TO ONE OF IOWA'S AREA AGENCIES AND NO OLDER AMERICAN ACT FUNDS WERE USED TO FUND LEGAL SERVICES THE AREA AGENCY DEVELOPED A LEGAL SERVICES PROGRAM THROUGH THE COOPERATION OF LOCAL ATTORNEYS DURING FY'83. PRO-BONO SERVICES WERE PROVIDED TO THE AREA'S ELDERLY. IOWA'S SUCCESS AT INVOLVING THE PRIVATE SECTOR HAS COME ABOUT AT THE LOCAL LEVEL PRIMARILY BASED ON PERSONAL RELATIONSHIPS WITH ATTORNEYS WHO HAVE EXPRESSED A CONCERN FOR THE LEGAL NEEDS OF THE ELDERLY. THIS RELATIONSHIP HAS PROVEN TO BE THE MOST EFFECTIVE RECRUITING DEVICE FOR THE LOCAL AREA AGENCIES ON AGING.

IN FOCUSING SERVICES ON THE FRAIL, HOMEBOUND ELDERLY AND THE INSTITUTIONALIZED OLDER PERSON, IT IS IMPERATIVE THAT THE RIGHTS OF THESE SENIORS BE PROTECTED. NOT ONLY IS THERE CONCERN FOR INDIVIDUAL RIGHTS BUT, THE RIGHTS OF THIS FRAIL SEGMENT OF THE POPULATION REQUIRES STRONG ADVOCACY ACTIVITIES. CAN LEGAL SERVICES CORPORATION (LSC) PROGRAMS, WITH ADDED RESTRICTIONS IN THEIR LOBBYING ACTIVITIES, BE EFFECTIVE ADVOCATES FOR THESE SENIORS AT RISK? CAN THE ALTERNATIVES TO LSC FUNDED PROGRAMS BE BETTER ADVOCATES?

THE AGING NETWORK HAS ALWAYS RECOGNIZED THE NEED FOR LEGAL SERVICES AS DEMONSTRATED BY THE CREATION OF THIS SERVICE BY MANY AREA AGENCIES PRIOR TO THE INTENSE DEVELOPMENT OF LEGAL SERVICES CORPORATION PROGRAMS. WHILE WE SUPPORT THE EFFORTS OF LEGAL SERVICES CORPORATION, WE ALSO FEEL THAT WE MUST HAVE GREATER FLEXIBILITY IN THE MANNER IN WHICH WE ADDRESS THE IDENTIFIED PRIORITY NEEDS OF OUR ELDERS IN THE MOST COST EFFECTIVE MANNER.

THE WORK DONE BY SENIOR ADVOCATES AND PARALEGALS CAN PROVIDE MORE TIME FOR CLIENT REPRESENTATION BY ATTORNEYS. THESE PARAPROFESSIONALS DEVELOPED BY THE AREA AGENCIES ARE, TO A GREATER EXTENT, A PART OF THE AGING NETWORK, THUS CREATING GREATER ACCESS TO LEGAL SERVICES BY SENIORS.

IN CONCLUSION THE IOWA COMMISSION ON THE AGING IDENTIFIES LEGAL SERVICES AS A NEED AMONG IOWA'S SENIORS. ACCESS TO LEGAL SERVICES WILL VARY FROM AREA TO AREA AS WILL ACCESS TO OTHER SERVICES NEEDED BY THE ELDERLY. LIMITATIONS ON FUNDING HAS GREATLY RESTRICTED OUR SERVICE DELIVERY SYSTEMS. PROGRESS IN THE DEVELOPMENT OF ADDITIONAL SERVICES DIRECTED TOWARD THOSE SENIORS AT RISK HAS BEEN SLOW AT BEST.

Senator GRASSLEY. Russ?

STATEMENT OF RUSSELL PROFFITT, CHAIRMAN, IOWA ASSOCIATION OF AREA AGENCIES ON AGING

Mr. PROFFITT. Senator, I want to thank you for this opportunity to tell you about the Heritage Agency on Aging's elderly law project.

The Heritage agency serves a seven-county area in eastern Iowa which has both rural and urban populations. The agency has developed a three-part legal services program utilizing an attorney, senior advocates, and referral attorneys. The law project is funded under the Older Americans Act, with a total budget of approximately \$46,000. This past year we served 1,435 unduplicated clients.

We have one part-time attorney who is in private practice and is under contract with the Heritage Agency on Aging to provide direct legal representation, make educational presentations in the community, supervise senior advocates, and make referrals to cooperating attorneys. The three senior advocates are part-time retired persons who were trained by the attorney and other professionals in areas of concern to older persons. The 100 referral attorneys are located throughout the seven-county area, and have agreed to accept older persons on referral from the program for a reduced fee of \$10 for the initial half hour interview.

Because of the time demands on the staff, it is necessary for us to establish priorities for the types and numbers of cases handled by the attorney and the senior advocates. These priorities are set by the Heritage Agency Elderly Law Project Advisory Committee, which is composed of older persons, concerned citizens, and attorneys in the area.

The high priority areas are those in which direct representation is given to the client. They include public benefits, elder abuse, tax assistance, medical rights, medigap insurance, protective services, and wills. Lower priority areas are met on a general information

basis through use of printed materials or educational presentations. They include real estate, consumer, small claims court, probate, and domestic problems.

Certain areas will not be handled by our program. These are criminal cases, fee-generating cases, and cases where a private attorney has already been obtained.

I have selected several actual cases to indicate for you the types of services rendered. Mrs. C had a very unusual case. When she called the attorney she was very upset because she was not getting her social security checks. Another woman with the same name had died, and the social security office had confused the two and now told Mrs. C she was not getting her checks because, according to their records, she was dead. Mrs. C had tried for 4 months to correct the problem. With assistance from the attorney the records were corrected and her checks sent within 30 days.

Mrs. D purchased an annuity contract from a company and, being hard of hearing and feeling pressured by the salesman, she did not understand what she purchased. When she needed money for home repairs, she discovered that she was going to suffer a substantial penalty. The attorney contacted the local agent but received no help. The attorney then contacted the out-of-State home office of the company, and Mrs. D received a full return of her investment.

Mrs. E had purchased medicare supplemental insurance policies from a local agent, only to discover that after 6 months and \$7,000, she had no insurance at all. The agent had been keeping the premiums, selling policies from a bankrupt company, and having checks made out to him directly which were not used for service fees or insurance. Mrs. E's friend discovered the problem and called the attorney. While Mrs. E lost several thousand dollars, some of the money was returned to her, and she had the satisfaction of seeing that criminal charges were filed against the agent, and knowing that his license was suspended so he would not be doing this to other older persons.

The following are areas, in our opinion, that need improvement. There is a continuing problem in getting information to older persons about their legal rights and where they can go for help. Transportation is still a problem, especially in rural areas. One of the major problems we face is that older persons often fear or distrust attorneys, and are afraid of the legal system and Government agencies in particular. Finally, one of the major problems we face—as with any program—is that of limited resources.

The Heritage Agency on Aging is committed to working to find solutions to these problems with the goal of making legal services accessible to all the elderly people in our area.

Once again, I want to thank you for this opportunity to testify.
[The prepared statement of Mr. Proffitt follows:]

HERITAGE AGENCY ON AGING ELDERLY LAW PROJECT

Submitted by: RUSSELL PROFFITT
Chairman
Iowa Association of Area
Agencies on Aging

The Heritage Agency on Aging in Iowa services a seven county area in Eastern Iowa which services both rural and urban populations. The agency recognized that older persons in the area needed a legal services program designed particularly for older persons. In order to adequately reach and serve the elderly in both the urban and rural areas, the Heritage Agency on Aging developed a three part program utilizing an attorney, senior advocates, and referral attorneys.

The Heritage Elderly Law Project is funded under the Older American's Act and is subject to federal regulations which establish that the persons to be served are those individuals sixty years of age or older. There are no economic guidelines established but rather a directive to emphasize service to those persons with greatest economic and social need.

The Heritage Elderly Law Project is staffed by one part-time attorney and three part-time senior advocates. The attorney is in private practice and is under contract with the Heritage Agency on Aging to provide direct legal representation, information, make educational presentations in the community, supervise senior advocates, and make referrals to cooperating attorneys. The senior advocates are part-time retired persons who were trained by the attorney and other professionals in areas of concern to older persons. After the initial training program, the senior advocates and the attorney meet on a monthly basis to discuss recent developments and to share experiences or to discuss questions or problems which arise during the month.

The senior advocates travel through the seven county area and visit approximately forty-five communities. Their schedules are published in the Heritage Agency on Aging newsletter INVOLVEMENT along with articles which concern older persons legal rights. The senior advocates conduct personal interviews with the goal of reaching persons

in their own communities and encouraging them to discuss their problems. The senior advocates are trained to directly assist persons in areas where lay advocates can provide assistance. When a situation arises where legal advice is needed, the senior advocates refer the case to the attorney. The fact that the senior advocate is a trained listener and an older person himself aids the individual client in feeling more comfortable in discussing their problems or in asking questions. The senior advocates also do community education which assist in advising older persons of current information on areas such as social security, taxes, and consumer rights.

The referral attorneys are located throughout the seven county area and have agreed to accept older persons on referral from the program for a reduced fee of \$10.00 for the initial one-half hour interview. All fee generating cases are referred out as well as estate planning and probate. The cooperating attorneys have proven to be a valuable part of the program and have helped to make this a complete service program.

Since the Heritage Elderly Law Project is staffed by one part-time attorney and three part-time senior advocates, and since it is estimated that there are over 51,000 older persons in the seven county area covered by this project, it becomes obvious that this program cannot service all the potential legal needs of this older population. In order to comply with federal regulations and to best utilize program resources it was necessary to establish priorities for the types and numbers of cases handled by the attorney and the senior advocates. These priorities were set by the Heritage Agency Elderly Law Project Advisory Committee which is composed of older persons, concerned citizens, and attorneys in the area.

High priority areas are those in which direct representation is given to the client:

- Public Benefits (social security, S.S.I., medicare medicaid, V.A. benefits, food stamps)
- Elder Abuse (physical, emotional, financial abuse or neglect of institutionalized or non-institutionalized elderly)
- Tax Assistance (state rent reimbursement and property tax credit, personal income tax, suspension of property tax)

Medical Rights (nursing home care, care review committees, patient and resident rights)
 Medigap Insurance (insurance to supplement medicare, sale practices and frauds)
 Protective Services (voluntary conservatorship/guardianship, power of attorney)
 Wills (simple wills, limited to eight per month)
 Age Discrimination

Lower priority areas are met on a general information basis through use of printed materials or educational presentations:

Real Estate (uniform residential landlord-tenant act, sale of personal residence)
 Consumer (mail order fraud, home repairs, merchants dispute)
 Small Claims Court (procedures)
 Probate (probate procedures, inheritance taxes)
 Domestic (divorce, grandparents rights)

Certain areas will not be handled in the Heritage Elderly Law Project due to the fact that representation is available elsewhere or because the type of case is inappropriate for a limited program:

Criminal (representation available through public defender court appointed attorneys)
 Fee Generating Cases
 Private Attorney has been obtained

By establishing program priorities the Heritage Elderly Law Project can clearly inform the clients as to what services are available through the project. Where the project cannot provide direct assistance, referrals can be made through lawyer referral at the local or state level, if necessary.

In FY '82, the breakdown of the case characteristics for the senior advocates in relationship to the above priorities was as follows:

Public Benefits	21%
Probate	8%
Consumer Affairs	6%
Real Estate	4%
Taxes	44%
Miscellaneous	17%

In FY '82 the breakdown of the services provided by the attorney by case characteristics in relationship to the priorities was as follows:

Public Benefits	15%
Probate & Wills	40%
Consumer Affairs	7%
Real Estate	12%
Taxes	5%
Elder Abuse	3%
Miscellaneous	18%

It is noticeable from the above information that the program has been designed so that senior advocates provide services in areas where they are specially trained which leaves the attorney to pro-

vide services in areas where legal expertise is required (note the difference in areas of taxes and probate/wills).

In the area of legal services for the elderly, it is difficult to simply recite numbers and statistics because it is the individual client who has the most important information. In order to accurately report on the Heritage Elderly Law Project, it is necessary to give a few examples of the cases handled by the attorney and the senior advocates.

Public Benefits

Mrs. X was having difficulty meeting her monthly expenses with her small pension check and in particular could not afford to pay for her medication and have food in the house. A senior advocate became aware of Mrs. X and encouraged and assisted her in applying for S.S.I. which she had not applied for previously because of the difficulty in gathering together the necessary information. Mrs. X was eligible for S.S.I., received medicaid benefits and food stamps.

Mr. A. was suffering from high blood pressure, diabetes, and cancer. He was denied social security disability benefits. The attorney took his case through the hearings level and he was awarded benefits.

Mrs. B was receiving a small social security check and a small V.A. widow's pension. After the cost of living raise for social security, she was notified that she had been overpaid in V.A. benefits and must repay a sizeable amount. Mrs. B could not afford to repay any amount since she suffered from several health problems and had very high medical bills. The attorney assisted Mrs. B in making application for a waiver of overpayment which was obtained.

Mrs. C had a very unusual case. When she called the attorney, she was very upset because she was not getting her social security checks. Another woman with the same name had died and the social security office had confused the two and now told Mrs. C she was not getting her checks because according to their records she was dead. Mrs. C had tried for four months to correct the problem. With assistance from the attorney the records were corrected and her checks sent within thirty days.

Probate

The attorney will do simple wills for older persons and works with the senior advocates to reach those persons who are isolated and homebound.

Mrs. Y did not remember why her daughter was handling her business affairs. She talked to a senior advocate who in turn talked to the attorney. After some checking it was discovered that there was a conservatorship for Mrs. Y. A check of the court records and a telephone call to the daughter with a return visit to Mrs. Y answered her questions and reassured her that everything was taken care of. Mrs. Y's daughter also decided to consult with her mother on more items which also helped Mrs. Y in understanding the financial situation.

Consumer Affairs

Mr. Z was having difficulty with a television repairman when he contacted a senior advocate. The senior advocate assisted Mr. Z in writing the company and soon the television set was returned in working order.

Mrs. X was having difficulty in obtaining a mail order from a company. A senior advocate assisted in writing letters and soon the merchandise was received.

Mrs. D purchased an annuity contract from a company and being hard of hearing and feeling pressured by a salesman, she did not understand what she purchased. When she needed money for home repairs she discovered that she was going to suffer a substantial penalty. The attorney contacted the local agent but received no help. The attorney then contacted the out-of-state home office of the company and Mrs. D received full return of her investment.

Insurance

Mrs. E had purchased medicare supplemental insurance policies from a local agent only to discover that after six months and seven thousand dollars that she had no insurance at all. The agent had been keeping the premiums, selling policies from a bankrupt company, and having checks made out to him directly which were not used for service fees or insurance. Mrs. E's friend discovered the problem and called the attorney. While Mrs. E lost several thousand dollars, some of the money was returned to her and she had the satisfaction of seeing that criminal charges were filed against the agent and knowing that his license was suspended so he would not be doing this to other older persons.

Mrs. F had difficulty in getting a claim paid by her new insurance company because of the technical wording of the policy concerning pre-existing illnesses and the waiting period. The agent had assured her when she purchased the policy that a prior visit to the doctor which she had described to him, would not be a problem under this policy. When she visited the attorney, the attorney encouraged her to write a letter on her own to the company and describe the problem. Mrs. F wrote a letter in her own words following the attorney's suggestion. Mrs. F returned to the office and was excited because she had received payment on her claim in excess of five hundred dollars.

Real Estate

Mr. Y needed assistance in signing up for homestead credit. A senior advocate gave him that help.

Mrs. G did not understand how her property was titled. She visited the attorney who explained joint tenancy and how making a deed to her son and herself could affect her property, taxes, property tax credit, and inheritances.

Taxes

The senior advocates prepare simple individual income tax returns. They also assist in preparing property tax credit forms and rent reimbursement forms. In the first six months of 1983, the senior advocates have prepared returns which total rent reimbursements for seniors in the amount of \$16,875.37. The property tax credits range from 100% - 20% but there are not dollar figures since the county treasurer computes the amount.

Elder Abuse

Mrs. H was physically handicapped and mentally abused by her husband. The attorney assisted her in emergency placement and in applying for S.S.I. benefits so she could live on her own.

Mr. J was living in a rooming house where he was being beaten by a neighbor. Again, emergency housing was found and relocation removed Mr. J from a dangerous situation.

Mrs. K was being intimidated by her grandson into changing a will and deeding her house to him. After consulting with the attorney, Mrs. K realized she did not have to make these changes and she revoked a power of attorney that he had pressured her into making for him.

The foregoing is a very small sample of the types of cases handled by the Heritage Elderly Law Project. There are needs which we see and which we cannot meet. There are areas that need improvement.

There is a continuing problem in getting information to older persons about their legal rights and where they can go for help. Many older persons do not get newspapers because they are costly and they simply cannot afford them. Others cannot read the newsprint because it is small or too faint. Part of the resolution for this project has been the use of the INVOLVEMENT newsletter published by the Heritage Agency on Aging and distributed at no cost to the older persons in the area. The INVOLVEMENT carries the senior advocate schedules and articles describing legal problems and your rights. In addition to the newsletter, the project attempts to get publicity from local newspapers. Public education programs are presented regularly in the community by the senior advocates and the attorney. Information about the project also goes to local senior citizen groups, councils on aging, information and referral and other public service groups.

Transportation is a problem especially in a rural area. To help in this problem the project goes to the people by visiting rural sites, congregate meals, community centers, etc. The visits are timed so that transportation systems for the elderly are available. Both the senior advocates and the attorney visit persons who are homebound or in nursing homes. The telephone is used whenever possible to supplement the visits of the senior advocates or the attorney.

It was discovered that one of the major problems was that the older persons feared or distrusted attorneys and were very afraid of the legal system and government agencies in particular. In order to deal with this problem, the project utilizes older persons as the senior advocates. This helps the client to identify with the senior advocate and to expect a good listener. Public education is used to let the older persons know about what they can do to protect themselves and to assert their rights in dealing with the legal system. In particular, the attorney usually encourages an older person to use the small claims court system by themselves since it is designed for the lay person to use without benefit of attorneys and the judges do see that a lay person has every opportunity to present their case. The attorney has found that by using plain english she is able to ease fears of older persons in talking to her and explaining their legal problems.

One of the major problems with any program is that of limited resources. In order to deal with that problem the project has established priorities as set forth above. The public seems to understand that the priorities are necessary since we cannot do everything for everybody. There is also a continuing attempt to keep the private bar involved through the referral program and there are many occasions when cases are taken pro bono by private attorneys on referral from the project. The project is always encouraging older persons to be advocates for themselves. There are many times when the older person can be a very effective advocate for themselves when they know that they have backup support and adequate information to work with. The senior advocates and the attorney believe that this is an important part of the project goals and have noticed in recent years that the older persons are more active in asserting their rights.

The people who have been working in this project are dedicated to the program and to the people they work with. The attorney and the senior advocates have been with the program for a minimum of

seven years each. The program is designed to reach older persons who either do not have ready access to legal services or cannot afford it. We who work with the program hope that we have been of assistance to the clients we have worked with. We also hope that we can always work to improve our skills and our services and to make them available to those who need them.

Respectfully submitted by Martha L. Quint this 6th day of July, 1983.

HERITAGE ELDERLY LAW PROJECT

FY'82 YEAR-END REPORT

Explanation of Chart:

The foregoing chart represents the units of service which were provided in the Heritage Elderly Law Project on the basis of service by the attorney/coordinator, the three senior advocates, the total combined program, and on a county by county breakdown. A unit of service is one contact in which legal advice, representation or counseling is given. The chart also sets forth the number of unduplicated clients who were served in the project year. As nearly as can be determined, each person is only counted once during a project year for the unduplicated client count.

Case priorities:

The Advisory committee for the Heritage Elderly Law Project has established certain case priorities which are set forth in a separate attachment to this report.

The Senior advocates in FY'82 had the following breakdown in case characteristics on client and unit records:

<u>Case Characteristic</u>	<u>Clients</u>	<u>Units</u>
Public Benefits	150	364
Probate	70	153
Consumer	27	88
Real Property	40	79
Taxes	295	809
Miscellaneous	134	310

The attorney/coordinator in FY'82 had the following breakdown in case characteristics on unit records:

<u>Case Characteristic</u>	<u>Units</u>
Public Benefits	196
Probate	514
Consumer	92
Real Estate	150
Taxes	64
Elder Abuse	41
Miscellaneous	236

Project income:

During FY'82, the program had \$ 479.00 income in the form of donations from clients. There is no fee for services provided for clients but clients are informed that we can accept a donation for the program in an amount which the individual determines according to their income and the value of the services to them.

Attorney referrals:

During FY'82, the attorney referral list was updated and the existing attorneys on the list were contacted about their willingness to continue as a referral attorney. The response was encouraging and we currently have referral attorneys in each county with a total of referral attorneys in excess of one hundred. Note: it is not possible to give an exact number due to the fact that there are law firms where a referral could go to one attorney or to others who would later be assigned by the firm.

In FY'82 there were only twelve referrals made and these were for such matters as complex wills, personal injury lawsuits or criminal matters.

HERITAGE ELDERLY LAW PROJECT
FY'82 YEAR-END REPORT

	Attorney			Sr. Advocates			Combined			Total Units
	cl	ut	ed	cl	ut	ed	cl	ut	ed	
Oct	48	135	125	73	132	800	121	267	925	1192
Nov	27	96	35	72	167	982	99	263	1017	1280
Dec	35	102	20	45	118	922	80	220	942	1162
Jan	29	105	6	49	128	477	78	233	485	718
Feb	32	139	15	117	231	990	149	390	905	1295
Mar	29	134	45	64	314	646	113	448	691	1139
Apr	28	104	25	51	131	700	79	235	725	960
May	20	89	35	44	121	689	64	210	724	934
June	23	93	0	42	108	489	65	201	489	690
July	27	107	0	35	84	531	62	191	531	722
Aug	42	131	0	48	140	679	90	271	679	950
Sept	20	91	0	55	121	932	75	212	932	1144
Total	360	1326	308	715	1615	8737	1075	3141	9045	12,186

Renton	Cedar	Iowa	County Units				Wash	Total
			Johnson	Jones	Linn			
170	107	66	159	151	370	44	1067	
245	211	128	33	152	433	78	1280	
189	149	111	17	143	463	90	1162	
164	95	83	5	66	271	34	718	
278	172	131	23	132	481	78	1295	
226	115	71	27	102	521	77	1139	
235	167	50	15	113	312	68	960	
157	160	100	12	38	385	82	934	
160	0	33	13	47	358	79	690	
161	0	37	10	49	386	79	722	
208	186	94	11	73	305	73	950	
234	166	69	17	133	442	83	1144	
2427	1528	973	342	1199	4727	865	12,061	

96

cl: unduplicated clients
 ut: units of service
 ed: education units
 total units: service units plus education units

Senator GRASSLEY. Well, thank you. If you could maintain your position there, before I ask you questions I would like to introduce Mr. Hartley, who was listed separately but I think his testimony will work right in with yours.

If you would, Mr. Hartley, I would like to introduce you and have you proceed. You are the new Director for the Office of Field Services for the Legal Services Corporation, and you come to your present position after serving as executive director for Legal Aid of Southwest Missouri. Therefore, with your Midwestern background I would think you would fit in quite well with these panelists we have. Would you proceed with your testimony, and then I will ask the entire panel questions at one time.

**STATEMENT OF GREGG HARTLEY, DIRECTOR OF THE OFFICE OF
FIELD SERVICES, LEGAL SERVICES CORPORATION**

Mr. HARTLEY. Thank you, sir. Thank you for inviting me to appear before your committee today.

As you have stated, I am the director of the Office of Field Services for LSC. That office has the oversight responsibilities for the operations of more than 300 legal services programs for low-income persons.

I am pleased that you have invited me to speak about legal services for the elderly, as this has been an important area of activity for LSC and its programs. I am particularly pleased to speak on this subject, inasmuch as I was privileged to direct an Older Americans Act legal services provider in Springfield which also later became an LSC grantee.

Many older persons depend on Government-administered services and benefits. This relationship gives rise to a special set of legal problems. Our legal services programs have been active representing older persons who are almost totally dependent upon public benefits for their income, such as social security, supplemental security income, railroad retirement, and veterans benefits.

The legal assistance entails primarily administrative representation but also includes representation in the courts. Housing is another major concern of older persons. Our programs represent older persons in this area of the law on such matters as tenancy and tax problems.

Our programs have become increasingly involved with the more complex problems of health and social impairments. Those in nursing and boarding homes, those living at home but in need of community support, and those who have been subject to abuse and neglect have many and diverse legal needs.

The legal issues range from a determination of competency and appointment of surrogate decisionmakers, to those of eligibility for inhome services, and to those issues concerning the quality and conditions of institutional care. In addition, there has been a significant increase in the need for services in the areas of pension and employment issues which touch the lives of many of this Nation's elderly poor.

Insuring that the elderly poor have access to legal services is a major concern of the corporation. There are several critical considerations. First, in 1980 according to the census two-thirds of per-

sons over 65 had annual incomes below \$8,000 per year, and of older persons living alone, 60 percent had incomes below \$5,000 a year and 75 percent had incomes of less than \$7,500 a year.

Second, expertise is needed in such areas as social security and SSI law, long term care, guardianship, protective services, and age discrimination in employment. Nationally 14 percent of the clients served by LSC programs in 1982 were over the age of 60. This figure represents an increase over previous years.

The availability of legal representation for low-income older persons is, of course, determined in part by the availability of funding for low-income persons programs, the growth and continuation of legal service programs that specialize in areas of the law which affect the elderly, and also depends on well-trained private and staff attorneys and paralegals.

Another major component of the Federal response to the legal needs of the elderly are the programs of the Older Americans Act. As you know, the Older Americans Act created a system of State and area agencies on aging which provide access to a variety of support services which include legal services. Each area agency on aging is required to allocate some funds for the provision of legal services.

Legal Services Corporation programs have been identified in the Older Americans Act as a category of suitable providers. The number of LSC programs that receive Older Americans Act funds has grown steadily from year to year.

In fact, in 1983 173 LSC programs receive Older Americans Act funding totaling well over \$8.8 million. Fifty-six percent of all LSC field programs are currently receiving such funding. The total amount of Older Americans Act title III funds obligated for legal services in 1982 was over \$13 million. Approximately 6 percent of all title III social service funds were spent on legal services.

The impact of the Older Americans Act funding for legal services on LSC programs has been substantial. One effect has been to substantially increase outreach and community education efforts that inform older persons of their legal rights and the availability of legal services. Area agencies on aging across the country reported to the Administration on Aging that more than 500,000 older persons received some form of legal assistance, including community education, in 1982.

The Older Americans Act requires that Older Americans Act funding not be used to supplant services funded by the Legal Services Corporation. Approximately 15.4 percent of the clients of LSC programs with AAA funding were over 60, while projects without AAA funding served a clientele of whom, on the average, around 11.6 percent were over the age of 60.

Another essential component of the legal services delivery for the elderly is the private bar. The enormous potential of the private bar to serve the elderly in need of legal assistance has not been fully realized. We are encouraging such efforts through both pro bono and compensated services.

We have in the past established demonstration projects using the private bar, such as legal counsel for the elderly in Washington and the senior citizens judicare project in Philadelphia. Both of these programs have successfully served older persons using pri-

vate attorneys. My own former program in Missouri utilized a judicare panel to serve the elderly. This recognition of the importance of drawing upon the entire legal profession to meet the needs of the elderly is reflected in the Older Americans Act, which emphasizes the role of the private bar.

Studies by the Legal Services Corporation and the Administration on the Aging of legal services to the elderly have inquired into the range of activities performed by legal services programs. From a survey of area agencies on aging and senior centers in 1979, LSC discovered that a majority of legal services programs engaged in community education activities directed to older persons and those who work with them.

This survey of LSC projects found that 50 percent of the efforts were expended on legal representation or advice to individuals, 11 percent to outreach, and 10 percent to community education. In addition, representation or advice to groups constituted 6.2 percent; legislative and administrative advocacy composed 4.4 percent and 4.7 percent respectively; administrative functions constituted almost 5 percent of the functions; information referral 4.2 percent; and training of other service providers about 3 percent of all efforts by LSC programs.

Questions concerning the legal needs of the elderly and complex interrelationship between LSC, the Older Americans Act system, and the private bar are worthy of the attention of this committee. The Legal Services Corporation is ready and pleased to assist you in your inquiry, and I thank you for the opportunity to appear before your committee today.

[The prepared statement of Mr. Hartley follows:]

Testimony of Gregg Hartley
 Director of Office of Field Services
 Legal Services Corporation
 to the
 United States Senate Subcommittee on Aging
 Committee on Labor and Human Resources
 July 12, 1983

I. Introduction

Thank you for inviting me to appear before your committee today. My name is Gregg Hartley and I am the Director of the Office of Field Services of the Legal Services Corporation. The Office of Field Services has oversight responsibilities for the operations of the more than three hundred legal services programs for low income persons which receive grants from the Legal Services Corporation. I am pleased that you have invited me to speak about legal services for the elderly, as this has been an important area of activity for LSC and its programs. I am particularly pleased to speak on this subject in as much as I was privileged to direct an Older Americans Act legal services provider in Springfield, Missouri, which also later became an LSC grantee.

II. The Legal Needs of the Elderly

Many older persons depend on government administered services and benefits. This relationship gives rise to a special set of legal problems. Our legal services programs have been most active representing older persons who are almost totally dependent upon public benefits for their income, such as Social Security, Supplemental Security Income, Railroad Retirement, and Veterans' benefits. The legal assistance entails primarily administrative representation but also includes representation in the courts. Many of this country's elderly depend upon either Medicare or Medicaid for assistance in providing protection for meeting health needs. Routine legal questions of eligibility and coverage for these health programs are typical of the issues our programs handle on a daily basis.

Housing is another major concern of older persons. Our programs are actively representing older persons in this area of the law in such matters as tenancy and tax problems. Of particular concern to the elderly is their property and the disposition of it to those who will follow them. Our programs have been providing simple estate planning and wills for low income older persons.

Our programs have become increasingly involved with the more complex problems of health and social impairments. Those in nursing and boarding homes, those living at home but in need of community support, and those who have been subject to abuse or neglect have many and diverse legal needs. The legal issues range from a determination of competency and appointment of surrogate decision makers, to those of eligibility for in-home services, to those issues concerning the quality and conditions of institutional care.

Finally, it is appropriate to note that there are other legal needs of the elderly. LSC programs provide assistance to the elderly in consumer related problems. For example, obtaining supplemental health insurance, health equipment, home repairs, and funeral services are areas of concern where legal advice or representation are often needed. In addition, there has been a significant increase in the need for services in the areas of pension and employment issues which touch the lives of many of the nation's elderly poor.

III. The Legal Services Delivery Systems for the Elderly

Ensuring that the elderly poor have access to legal services is a major concern of the Corporation. There are several critical considerations:

(1) A need for attorneys and paralegals who can advise and represent the elderly poor. In 1980, according to Census Bureau data, two thirds of persons over 65 had annual incomes below \$8,000 per year, and of older persons living alone, 60% had incomes below \$5,000 a year and 75% had incomes of less than \$7,500 a year. Many of the poor or near poor older persons are women and minorities who cannot afford legal representation.

(2) An awareness and expertise of the legal profession to the special problems of the elderly. Expertise is needed in such areas as Social Security and SSI law, long term care, guardianship, protective services, and age discrimination in employment.

A. The Role of the Legal Services Corporation

Nationally, 14% of the clients served by LSC programs in FY '82 were over the age of 60. This figure represents an increase over previous years. In FY '80, 12.1% of LSC clients were over the age of 60, and that figure arose to 12.9% in FY '81. The availability of legal representation for low income older persons is, of course, determined in part by the availability of funding for low income persons. The growth and continuation of legal services programs that specialize in areas of the law effecting the elderly also depend on well trained attorneys and paralegals.

B. The Role of the Older Americans Act Title III-B Legal Services

Another major component of the Federal response to the legal needs of the elderly are the programs of the Older Americans Act. As you know, the Older Americans Act created a system of state and area agencies on aging which provide access to a variety of essential support services which include legal services. Each area agency on aging is required to allocate some funds for the provision of legal services. Such services are usually provided by contract with a suitable legal services provider. Legal Services Corporation programs have been identified in the Older Americans Act as a category of suitable providers. According to research conducted in 1980 by both the Legal Services Corporation and the Administration on Aging, approximately two-thirds of the area agencies on aging that contract for legal services select an LSC program as their provider. The number of LSC programs that receive Older Americans Act funds has grown steadily from year to year. In 1983, 173 LSC programs receive Older Americans Act funding totaling \$8,826,784. Fifty-six percent of all LSC field programs are currently receiving such funding. The total amount of Older Americans Act Title III B Funds obligated for legal services in FY '82 was \$12,984,354. Approximately 6% of all Title III social services funds were spent on legal services. As of October 1981, approximately 80% of all area agencies on aging were expending some funds on legal services. It should be noted that the total amounts allocated for legal services by area agencies as well as the total amounts reported by LSC projects declined slightly from FY '81 in part as a result of the reduction in funding for the Older Americans Act Title III-B program.

The impact of the Older Americans Act funding for legal services on Legal Services Corporation programs has been substantial. One effect has been to substantially increase outreach and community education efforts that inform older persons of their legal rights and the availability of legal services. Area agencies on aging across the country reported to the Administration on Aging that more than 500,000 older persons receive some form of legal assistance, including community education, in FY '82. In 1979 and 1980 the Legal Services Corporation conducted a study of the legal needs and access problems of older persons. One conclusion was that the special efforts to serve older persons, stimulated by OAA funding, have created access to legal services that is comparable or superior to that of low income persons generally.

The Older Americans Act requires that OAA funding not be used to supplant services funded by the Legal Services Corporation. In 1979 a survey of thirteen programs disclosed that the Older Americans Act funding resulted in substantial allocation of LSC funds to special delivery units which serve the elderly funded by both LSC and OAA. Another indication of the impact of OAA funding on LSC programs is that in 1981 approximately 15.45% of the clients of LSC programs with OAA funding were over 60 while projects without OAA funding served a clientele of whom, on the average, 11.56% were over the age of 60.

C. LSC - AOA Cooperative Efforts

In recognition of the mutual and complementary responsibilities under the Legal Services Corporation Act and the Older Americans Act, LSC has cooperated with the Administration on Aging under an interagency Statement of Understanding dating back to 1978. For a number of years LSC staff were assigned to work at the Administration on Aging to assist in the development of legal services to the elderly. With the termination of that staffing arrangement in 1981, LSC continued to maintain a special unit on aging in its Washington office to assist local programs in working with the aging services system and to serve as a liaison with AOA.

LSC has sponsored two national conferences on the delivery of legal services to the elderly. The first such conference, "Working Successfully with the Aging Network", was held in Denver, Colorado in August, 1982 in conjunction with the 1982 meeting of the National Associations of State and Area Agencies. LSC has just concluded another conference, "Creative Delivery of Legal Services to the Elderly", a three day meeting in Washington, D.C. for legal services programs for the elderly. We have committed our staff and resources to this effort recognizing the leadership role of the LSC in assuring quality services for the elderly.

D. The Role of the Private Bar

Another essential component of the legal services delivery systems for the elderly is the private bar. The enormous potential of the private bar to serve the elderly in need of legal assistance has not been fully realized. We are encouraging such efforts through both Pro Bono and compensated services. We have, in the past, established demonstration projects using the private bar such as Legal Counsel for the Elderly in Washington, D.C. and the Senior Citizens Judicare Project in Philadelphia, Pennsylvania. Both of these programs have successfully served older persons using private attorneys. My own former program in Missouri utilized a judicare panel to serve the elderly. In 1981, the Legal Services Corporation adopted a requirement that every LSC program

expend at least 10% of its funds on efforts to utilize the private bar to serve low income persons. Some of these efforts have been specifically focused on the problems of the elderly. For example, in Arkansas the Young Lawyers Division of the Arkansas Bar is attempting to establish a statewide volunteer program for the elderly. In Nebraska, there is a program to train private attorneys in Social Security and SSI Law.

This recognition of the importance of drawing upon the entire legal profession to meet the needs of the elderly is reflected in the Older Americans Act which emphasizes the role of the private bar. In some areas LSC and Older Americans Act funding support Pro Bono projects for the elderly which complement the work of legal services programs. The Volunteers Lawyers' Project in Boston receives LSC funding as well as a special grant from the Boston Commission on Aging.

IV. The Unmet Legal Needs of the Elderly

Despite all that has been accomplished in the growth of legal services for the elderly there are still areas of unmet legal needs. For example, attention to the problems of older persons living in boarding homes has recently raised significant concern. The problems of those in nursing homes who are unable to manage their affairs, and the entire area of long term care, including non-institutional long term care, are issues which have not been addressed.

V. The Types of Legal Services Activities by Legal Services Programs

Studies by the Legal Services Corporation and the Administration on Aging of legal services to the elderly have inquired into the range of activities performed by legal services programs. From a survey of area agencies on aging and senior centers in 1979, the Legal Services Corporation discovered that a majority of legal services programs engaged in community education activities directed to older persons and those who work with them. The study conducted by CRC Education and Human Resources, Inc. for the Administration on Aging in 1980 surveyed activities of legal services providers with a specific breakout of activities by LSC providers. This survey of 25 LSC projects found that 50.1% of the effort were expended on legal representation or advice to individuals, 11.2% to outreach and 10% to community education. Representation or advice to groups made up 6.2%, legislative and administrative advocacy made up 4.4% and 4.7% respectively. Administrative tasks made up 4.8%, information and referral 4.2% and training of other service providers made up 2.6% of efforts by legal services programs.

VI. Conclusion

Questions concerning the legal needs of the elderly and the complex inter-relationship between the Legal Services Corporation, the Older Americans Act system, and the Private Bar are worthy of the attention of this committee. The Legal Services Corporation is ready and pleased to assist you in your inquiry. Thank you for this opportunity to appear before your committee today.

Senator GRASSLEY. Well, I thank you very much and I hope that you do well in your new position. I am sure you will but it is a considerable challenge. Of course, we are only concerned here about a small part of your total job.

I have questions of each of you, but just because I ask one member of the panel doesn't mean that the other two cannot respond if you desire, particularly if you have something to contribute.

I guess I would emphasize for Ms. Tynes and Mr. Proffitt, that one thing that has come out in your testimony is the wide diversity of programs represented by title III legal services in Iowa. In your experience and your contact with other States, are the diversity and efficiency of Iowa's programs typical of title III-B experience nationwide?

Ms. TYNES. It has been my experience as an AAA director in Ohio, and being very familiar with Ohio's system as well as becoming increasingly familiar with Iowa's system, and comparing those networks with other States, that the diversity is just as great in other States.

Senator GRASSLEY. Would you repeat your last two sentences, please?

Ms. TYNES. The diversity that I found in Ohio and in Iowa appears to be just as great in other States.

Senator GRASSLEY. Could you give a qualitative judgment of that? Could it be too diverse?

Ms. TYNES. In some instances it could be diverse, to the point that—

Senator GRASSLEY. However, you don't feel it is at this point? That is kind of what I wanted your judgment on.

Ms. TYNES. OK. I can only speak to that in regard to Iowa and I do not feel it is too diverse in Iowa.

Senator GRASSLEY. Russ, did you want to respond?

Mr. PROFFITT. No. I really would agree with what Karen said.

Senator GRASSLEY. A second phenomenon of Iowa's title III-B programs is the fact that only 2 out of 13 programs contract with Legal Services Corporation grantees, even though the Legal Services Corporation grantees are given a preference in the Older Americans Act. Is that typical of other States?

Ms. TYNES. I do not think it is typical of other States. I think that it is peculiar in Iowa for a number of reasons, first being the fact that Iowa is so very rural; second, that there are limits on the number of Legal Services Corporation programs available, although the Legal Services of Iowa is certainly available for contracting, but I did not find the percentage of LSC contracts we have in Iowa to be as high as the percentage we find in other States.

Senator GRASSLEY. Could you explain why Legal Services Corporation seems so disfavored, drawing from your own past experience with Legal Services Corporation grantees?

Ms. TYNES. I think it gets down to a matter of economics. With LSC's funding to serve low-income in general and with limited title III-B funds available, when we look at the needs that are unmet because there are no resources available to serve those seniors with those specific needs, we tend to put our funding into developing re-

sources to address the other needs. It again gets down to a lack of availability of funding.

Senator GRASSLEY. You get more bang for the buck, in a sense?

Ms. TYNES. Well, in some instances there is no title III money invested in a legal services program, although a legal services program is developed locally in conjunction with the county bar, perhaps using title V employees funded through the Older Americans Act to provide the paralegal service or the senior advocate service. Therefore, I cannot say that we get more bang for our bucks in the cases where we have nothing invested out of title III-B.

Senator GRASSLEY. Then when you said "economics" you didn't necessarily mean the economics of getting more legal advice for the dollar with your own programs than contracting with Legal Services Corporation; it was just whether or not you could put any money into legal services at all.

Ms. TYNES. That is correct.

Senator GRASSLEY. However, even where you couldn't put any money into it, obviously there are still services being delivered in this area of legal advice.

Ms. TYNES. That is correct, also.

Senator GRASSLEY. However, there are a majority of programs in our State where there is money going into the service even though it isn't being contracted with Legal Services Corporation; right?

Ms. TYNES. That is correct.

Senator GRASSLEY. Russ, did you have anything to add to that? Maybe you do, Mr. Hartley, too.

Mr. PROFFITT. One of the issues, I think, that developed in Iowa in relation to the Legal Services Corporation had to do with the amount of money that some of the agencies felt was available from title III-B for legal services. I believe that is part of the reason why a number of the agencies have not been contracting with Legal Services Corporation: that the amount of money that they felt they had available to budget for legal services did not appear to the Legal Services Corporation to be enough to warrant their involvement.

Senator GRASSLEY. Does that indicate, then, that Legal Services would have a set amount of money that they would have to do if they were going to venture into a contract at all? In other words, let's just take a figure that doesn't mean anything but let's just say that they needed a minimum of \$5,000 if they were going to do anything. They wouldn't try to do a part of a job at \$2,500 if they could be of some service? Is that basically what you are saying?

Mr. PROFFITT. I think that is probably what happened. I do know of one community where the agency budgeted approximately, I believe, \$4,000, and the Legal Services Corporation came in with a bid in excess of that and evidently felt that they needed that amount of money in order to render their services.

Senator GRASSLEY. Is there any attitudinal problem of the Legal Services Corporation in our State toward helping senior citizens, particularly through another organization?

Mr. PROFFITT. Not that I am aware of. In my own area we have a good working relationship with the Legal Services Corporation, in that our attorney in meeting with them has agreed on the types of cases that we will handle. Obviously those are elderly, and any

other cases that she runs across through family connections and such, she refers those to the Legal Services Corporation.

Senator GRASSLEY. Mr. Hartley, could you tell us the current position of the Legal Services Corporation with regard to representation by Legal Services Corporation recipients of organizations representing the elderly poor?

Mr. HARTLEY. It has been the policy of the Corporation for some time, and continues to be, that we encourage our programs to look to other programs and to the local community for resources to expand services to all clients. That is our basic policy.

There have been historically some problems that programs have experienced and area agencies on aging have experienced in coming to an agreement how that should be done. First of all, many programs find themselves in a bind when the amount of money from an area agency to provide legal services is a much smaller amount than they are proportionately receiving from the Legal Services Corporation.

The difference in regulations governing the eligibility for clients sometimes presents an economic barrier: In other words, running one program with several million dollars where you have one set of rules, and perhaps a much smaller grant that has a different set of rules. This also provides a problem to the area agency on aging, where it has been an area of concern even before the priority to spend money on legal services, whether or not they were going to pay for the full service or pay marginal costs of the provision of legal services.

In addition, there have been some problems in the area that Legal Services Corporation recipients are governed by one board of directors and the provider of title III dollars is run by a different board of directors who may have a substantially different view of priorities for that money.

Senator GRASSLEY. I need to get back to the line of questioning we were pursuing, Russ. Did your agency previously contract with Legal Services Corporation?

Mr. PROFFITT. No. Our program was started by our agency approximately 7 years ago, 8 years ago, and at that point we had one part-time attorney and four paralegals. We never have contracted with Legal Services.

Senator GRASSLEY. As you compare what you are doing with what Legal Services Corporation is doing, is Legal Services Corporation providing the same service for the money expended as the programs that you are running?

Mr. PROFFITT. I don't know, Senator, if I would be able accurately to make that comparison. I can say that the agreement has been worked out with the Legal Services Corporation that they make elderly referrals to us and so they are not, in our area, serving the elderly population.

Mr. HARTLEY. Senator, if I may, in preparing for today's testimony and reviewing some of the statistics available on provision of legal services by our recipients, we did notice that there is a disproportionately low number of elderly clients being served by programs in Iowa. This seems to be in conflict with the mandate under the Older Americans Act that those dollars not supplant the resources made available from LSC.

Senator GRASSLEY. Would my State be an exception on the basis of statistics from other States, that is, does Iowa really stand out from the standpoint of your statement?

Mr. HARTLEY. I would say it would, at least with the programs in Iowa, fall into a group with a number of programs that we have concerns about the low number of elderly proportionately that they are serving.

Senator GRASSLEY. I guess I would like to ask you, Mr. Hartley, because you were out in the field—I don't know how long you served in your previous position in southwest Missouri but you have considerable experience in the field—do you feel that the elderly have been kind of shunted aside by the Legal Services Corporation in favor of more politically popular issues?

Mr. HARTLEY. Well, sir, I served from 1978 through the beginning of 1983 as the director of a legal services program. Prior to that, I was with an area agency on aging where I established the first legal services program in southwest Missouri. That program was solely dedicated to the serving of elderly clients.

It has been my observation as a project director, and once again as the Director of the Office of Field Services, that there are programs who find that the services to the elderly may not fit their other priorities as well as people under the age of 60. That is not an indictment of programs at large; it is really an indictment of certain programs.

Senator GRASSLEY. Pardon me if I ask a question that might ask you to repeat something that was in your statement, but I want to bring this point out. What special activities is the current Legal Services Corporation staff considering to see that needs of the elderly are being met, beyond what they were say, 2 years ago?

Mr. HARTLEY. Well, sir, I think it is clear to say that we are trying to focus the activities of our recipients and of our program on the basic legal services, the individual needs of individual clients, as opposed to the often diverse purposes for which funds have been spent by our recipients—not to say that community education or other activities are not appropriate, but simply to say in many cases we feel that too many resources have been spent on side activities which are not necessarily in this time of limited resources, in our opinion, the best use of those funds. When clients who have individual legal problems are going without services, it seems to us that those individual sorts of representation should be the highest priority.

Senator GRASSLEY. Thank you very much, each of you. Unless either of you have anything to contribute in response to Mr. Hartley I want to say that I appreciate your testimony very much and want to thank each of you for the extent to which your agencies are concerned about the legal needs of the elderly and helping to fulfill them.

Thank you for your testimony. We appreciate your being here.

Our next panel consists of representatives of various organizations serving as advocates and providers of legal services for the elderly. Jonathan Weiss is director of Legal Services for the Elderly of New York City. Wayne Moore is director of Legal Counsel for the Elderly, which is associated with the American Association of Retired Persons. Burton Fretz is executive director of the National

Senior Citizens Law Center, which serves as national support center for senior citizens' issues for the Legal Services Corporation, and he is accompanied by Bruce Fried, an attorney with the center.

I welcome each of you to our hearing, and would ask that you proceed in the order in which I introduced you. If I mispronounced any of your names, I would appreciate your correcting my mispronunciation. At the end of your testimony I will have questions. Would you proceed?

STATEMENT OF JONATHAN WEISS, DIRECTOR, LEGAL SERVICES FOR THE ELDERLY OF NEW YORK CITY

Mr. WEISS. Thank you. I am Jonathan Weiss and I do work for Legal Services for the Elderly in New York.

The circumstances that people find themselves in when they reach a certain chronological age in this country are often legal. People, when they get into the classification of elderly, are involuntarily brought into a whole range of legal issues. Just as they quite often involuntarily become the new poor, they always become the legally involved.

The types of legal involvements the elderly get which are unique to them as opposed to those that all of us get and the poor get particularly, are practically all triggered by the invocation of a chronological age, and they fit into different categories. There are those laws and legal problems that occur to people against their will, for which there may be legal remedies in the assertion of legal rights. There are those programs and legal procedures which are supposed to benefit the elderly and often, in fact, harm them. Then there are specific programs which may or may not be available.

In the first category of legal matters that may in fact be harmful to the elderly, we have the whole range of age discrimination which takes many forms. The most obvious is generally that of employment, which is addressed by a number of statutes. The Federal Age in Employment Act in itself, however, perpetuates age discrimination by having an upper age limit for a protected class; once it was 65 and now it is 70.

Age discrimination cuts across many other categories. There is age discrimination involved in pension plans, for example, where you have to retire by a certain age or forfeit that pension. It also affects the ability to get jobs. It quite often affects even medical treatment, access to education, and so on.

One of the indirect effects of age discrimination occurs in the field of physical and mental health. First, you have in each State forms of involuntary commitment and involuntary appointment of people to handle money affairs for individuals deemed not capable of handling their money.

There is quite often on the part of people in charge of these programs an active, implicit age discrimination, assuming that because somebody has reached a certain chronological age they are really not capable of taking care of themselves or taking care of their finances. There has been considerable litigation trying to expand the due process protections in this area but it is not yet sufficient.

So, too, we have the problems in nursing homes where many times people are treated improperly or abused or deprived of rights and freedoms. There have been some attempts to have nursing home bills of rights. There has been considerable litigation, even, about such matters as people being thrown out of nursing homes without any procedural protections. All these have numerous horror stories which everybody who is familiar with the field can tell each other and anyone who cares to listen.

In the area of benefit programs, there is a whole range of programs, some of which have been mentioned earlier, including social security, SSI—which is like the Holy Roman Empire, none of the three words really describe the facts. It is supposed to be supplemental security income, and it offers very few people security, the supplement is small, and the income is inadequate. There are also the associated medical programs, medicare and medicaid.

All these programs have historically suffered from difficulties in determining and establishing a continuing eligibility, with a large number of irrational exclusions. They all suffer from bureaucratic problems, resulting quite often in lack of administrative due process. There have quite often been infringements of privacy.

In particular, right now the amount of money which is available to individuals is quite often pitiful, and what people have to surrender in order to become eligible is quite often very disheartening. I mean, you have people who cannot get eligible for some of these programs unless they surrender basically all the assets that they have accumulated in their life of hard work, from savings accounts to possessions.

In this area of benefits there is also the whole range of private benefits which generally take the form of pensions. There is a law now which is supposed to provide some type of protection so that people, after working for a period of time, get their benefits. It is called vesting, and they can go from one company to another and retain some sort of rights of portability.

However, what has happened is that the law becomes very complex and all the experts among lawyers seem to be those who know how to get around the provisions. There is practically nobody in the country, really, who is operating as lawyers for people who have been deprived of their pensions. Some programs have done something but it is vastly unknown, and if you go through the case-loads of legal services programs and programs of any sorts, you find very, very few pension cases brought, yet it is a major problem yet to be addressed.

This leads me into the question of whether the legal services community has been sufficiently responsive to the elderly and elderly poor. I would say it has not. I don't think you can really get much out of abstract statistics. I don't know how accurate they are about how many people have or have not been served, but certainly when you read the litigation dockets and discuss the problems with legal services lawyers, you find not only they are not that knowledgeable in things like pensions but they aren't that expert in the Government plans, have not been into nursing homes, et cetera.

I think there are a number of reasons for this. One is, a lot of the elderly are scared to go into the neighborhoods where the legal services lawyers are found. A lot of them do not know that legal

services are available, or feel that they will be treated in a demeaning fashion and receive a form of charity. I think the legal services lawyers are not properly trained and sensitized to the problems of the elderly. Their typical client in their mind is not an elderly person, and sometime the individuals who are past a certain chronological age may have radically differing political views from the legal services lawyer.

This deficiency was supposed to be made up in part by the Administration on Aging's funding of legal services offices. It has been my experience that these offices have not, in general, engaged in really effective advocacy. Again, the statistics about how many people they may or may not have seen, I don't think are important. The question for the lawyers is, how many disputes did they resolve successfully for the client? In particular, what you really need to know is the number of cases that were closed after some litigation, be it an administrative agency or a courtroom.

I think if you looked at these programs you can find very few such instances, and yet you can go into an elderly community and give a speech to these people and they will have these same sorts of problems over and over again, of irrational eligibility, of exclusion, of prejudice, et cetera. Therefore, I would say that it would be very important that the Administration on Aging be carefully scrutinized on how they give out the grants and how the grants perform, and that the Legal Services Corporation mandate to have their programs represent the elderly be pursued with vigor. I think we have had a lot of speeches and some lip service, but not enough activity in the local offices on behalf of the elderly who have this range of problems I have just barely sketched.

[Material submitted for the record follows:]

LEGAL SERVICES FOR THE ELDERLY

132 West 43rd Street, 3rd floor
New York, N.Y. 10036

(212) EX 1-0120

Jonathan A. Weiss
Director

July 6, 1983

The Honorable Charles E. Grassley
Chairman, Subcommittee on Aging
UNITED STATES SENATE
Committee on Labor and
Human Resources
Washington, D. C. 20510

Dear Senator Grassley:

A. Legal Services has not been responsive enough to the legal problems of the elderly because:

1. The lawyers are not alert to the issues.
2. Programs exclude elderly issues--i.e. Social Security as (middle class.)
3. Legal Services lawyers are often not sympathetic to the elderly client who may have differing political views and talks at length.
4. The neighborhoods where legal services are found are often inaccessible and dangerous for the elderly.
5. Legal Services offices do not have much out-reach to elderly institutions.
6. The elderly do not believe they are welcome in legal services offices and reject them as charity.

Obviously improvement in presentation and communication must be made. The Corporation should be given this mandate.

B. The provision of legal services under the Older American Act has not been efficient or effective.

1. Legal Services, though a priority under the Older American Act, does not have funds earmarked.
2. Legal Services is funded as part of a "network" which is full of bureaucracy and often patronage.
3. The "aging network" is saturated with social workers who are anti-legal services and thwart its provision. New York is a prime example where the N.Y.C. Office of Aging has allocated less than \$100,000 a borough with over a million elderly poor in the City.
4. The co-ordination between Legal Services Corporation and the Administration on Aging is flawed as there has not even been understandings (except in abstract position papers) concerning eligibility and referrals.
5. The dispensation of grants is apparently over-politicized. Our program was cut off rather than expanded and we could never receive a reasonable explanation of the rejection in particular of the grant process in general. We doubt Administration of Aging's real commitment to the provision of legal services.

Very truly yours,

Jonathan A. Weiss
Jonathan A. Weiss

JAW:FMD

Senator GRASSLEY. Thank you.
Mr. Moore?

**STATEMENT OF WAYNE MOORE, LEGAL COUNSEL FOR THE
ELDERLY, AMERICAN ASSOCIATION OF RETIRED PERSONS**

Mr. MOORE. Thank you, Mr. Chairman.

My name is Wayne Moore. I am with Legal Counsel for the Elderly which is sponsored by the American Association of Retired Persons. With me is Dave Affeldt who is also with the American Association of Retired Persons.

Rather than recite my written testimony, I would like to highlight the most important points starting with the legal needs of the elderly. I think they are substantial. Unfortunately, there has never been a national survey of the legal needs of older people specifically, but the American Bar Foundation conducted a national survey of the population in general. They found that the annual incidence of legal problems is one for every two households.

If you apply that statistic to the elderly population, even just to the elderly poor and near poor, that yields between 2½ to 6 million legal problems a year. Based on the testimony of the Legal Services Corporation and the Administration on Aging, they are funding services to about 650,000 older persons per year, about 10 to 25 percent of the need.

Another measure of legal need that Congress has found helpful, is to determine the number of lawyers per person in the country. For the nonpoor populations again there is no data specifically on older people—there are 28 lawyers for each 10,000 nonpoor people in the United States and only 1 for each 10,000 poor people. Again the disparity is large.

Congress has also defined legal needs in terms of a goal during their deliberations of the appropriations for the Legal Services Corporation. The goal has been an appropriation of \$7 per poor person. That translates, with inflation, to about \$13 per poor person in current dollars. We are spending about \$9 per elderly poor person now, and if you consider the older population as a whole we are only spending \$1.25 per older person (age 60 and older).

Using any of the measures I have discussed, one can only conclude that there are considerable unmet legal needs.

Another way of measuring legal needs are needs surveys conducted by the State and area agencies on aging as mentioned earlier in these hearings. These surveys have never been compiled nationally. One problem with these types of surveys, and this was certainly our experience in the District of Columbia, is that older people don't realize that their problems have legal solutions.

The No. 1 need identified by most surveys conducted by area agencies, is the need for more income. Yet lack of income is often due to problems in obtaining and maintaining their public benefits. These problems have legal solutions. Similarly in the area of health care, a problem may be listed as a health care problem when, in fact, it is a legal problem involving their medicaid or medicare or some other health benefit.

The only national survey of area agencies that I know of was done a couple of years ago by the Administration on Aging, and

they found that 76 percent of those surveyed—which was about 64 area agencies—said that legal services was one of the most important services they deliver or at least a relatively important service that they deliver.

This need for legal services has been aggravated by increase in the number of older people who are poor. In 1978 only 14 percent of the older population was poor, and now 15.3 percent are poor. Since most of the data on legal needs is a few years old, I think that these data understate the current need.

I won't go into the types of legal problems that older people have. I think my written testimony will cover that. I would now like to address the issue of how to best deliver legal services to older people.

Legal Counsel for the Elderly has tried nearly every possible method of delivering legal services to low income people. As Mr. Hartley mentioned, we use private lawyers in the District of Columbia to serve older people on a pro bono basis. We were one of the first so-called organized pro bono projects serving the elderly in the country. The project began in 1977 with a special grant from the Legal Services Corporation.

Since that time we have worked with the Legal Services Corporation to help train nearly all of their grantees on how to use private attorneys to deliver free legal services. Private attorneys are a very valuable resource but there are some limitations: private attorney programs require backup from paid staff who have expertise in the areas of law mentioned earlier. Mr. Weiss spoke about the special knowledge and experience that is needed to deliver quality legal services particularly to low-income older people. I think that the private bar lacks much of that expertise.

For instance, the most common legal problems are in the public benefit area. The private bar doesn't have much experience in this area, and it is understandable. They don't have clients who have medicaid problems, welfare problems, et cetera. At LCE the volunteer private attorneys rely on our staff to give them the legal training and backup they need to handle these cases. Without that, they probably would not participate in our program.

Private attorneys also rely on our staff to help them with the special problems our clients face. A lot of our clients have special medical problems, mental health problems, and social problems that are allied to their legal problems. Private lawyers aren't used to handling these problems. Full-time staff with experience in serving this client group know how to deal with these problems; and our private attorneys really depend on us for that.

Therefore, I think that in programs using private attorneys a staff component is very important. It is often difficult to get private attorneys to handle emergencies, particularly volunteer attorneys; again, staff are needed to handle that. Private lawyers are a resource but we must realize their limitations to use them effectively.

Another resource for providing legal services to older people are nonattorney volunteers and lay advocates. We, at LCE, have had a lot of experience in this area. In fact, LCE began its existence with funding from the Administration on Aging in 1975 to test the feasibility of using lay advocates. Our experience is that nonattorney volunteers can be excellent advocates, but only if they are trained

and are closely supervised by an expert staff. Again this delivery system relies heavily on staff.

Let me return to the question of the best way to deliver legal services to older Americans? Our experience is this: the core of any free legal services delivery model has to be an expert staff. This network of expert staff already exists; it is the network funded by the Legal Services Corporation and staff projects funded by area agencies. I would have to disagree with Mr. Weiss on this. I think there are expert staff in existing Legal Services Corporation projects and title III staff projects.

In fact area agencies generally recognize this in the survey conducted for the Administration on Aging that I referred to earlier, fully 76 percent of all area agencies who contract for legal services contract with Legal Services Corporation funded projects. Now when you look at that—

Senator GRASSLEY. Could you repeat that statistic?

Mr. MOORE. Seventy-six percent of all the area agencies that contract for legal services, contract with the programs funded by the Legal Services Corporation programs.

There may be specific instances where Legal Services Corporation projects are underserving older people. But on the whole, 14 percent of all cases handled by Legal Services Corporation-funded projects are for older people; and older people constitute about 14 to 15 percent of the poverty population. Therefore these programs are serving about the right proportion of older people. Therefore, LSC funded programs do not appear to be underserving older people; and I think that is recognized by most area agencies nationally.

My biggest concern is about duplication and the lack of coordination. We have Legal Services Corporation and title III funded staff projects all over the country, serving every geographical area. Therefore it makes sense to start with this as a base. They have the support systems, they have the office building space, and they have the pencils and papers and other resources needed to serve poor people. They also have the necessary experience and expertise.

We need to build on that. Take your private attorney resources and tie them into these existing programs. Take your volunteer and lay advocate resources and tie them into these existing programs. I think this is the most effective model. If you begin new separate projects with private attorneys or lay advocates, they are all going to have their own library and operating expenses, their own office space, and other duplicate resources. We just have too much need to waste money on duplication. We need to concentrate and coordinate our resources.

Therefore, I conclude with a challenge; I think the way we are currently doing things is on target. We just need more financial resources, and we in legal services are looking to this committee to help us with that problem. Thank you.

[The prepared statement of Mr. Moore follows:]

TESTIMONY OF WAYNE MOORE, DIRECTOR OF LEGAL COUNSEL FOR THE ELDERLY,
SPONSORED BY THE AMERICAN ASSOCIATION OF RETIRED PERSONS

Thank you for inviting me to testify before your Committee today. My name is Wayne Moore, and I am Director of Legal Counsel for the Elderly (LCE), which is sponsored by the American Association of Retired Persons (AARP).

The mission of Legal Counsel for the Elderly is to expand the availability of quality legal services to older Americans, particularly those who are socially and economically needy. We have sought to accomplish this goal in many ways during our 8 years of existence. One way has been to operate a free legal services program for older residents of the District of Columbia, handling over 125 cases each month. The local program has experimented with a number of innovative ways of delivering Legal Services, and the goal of our National Project has been to disseminate these and other ideas and information to programs throughout the country. For instance, we started one of the first "organized volunteer lawyers projects" in the nation, tapping the pro bono services of attorneys in private practice. Since then, we have helped plan and conduct a series of national conferences helping hundreds of other programs develop this type of delivery system. As of last fall, there were over 200 such programs in nearly every state; almost all were funded, at least in part, by the Legal Services Corporation. Data is not available on the number of these projects which focuses exclusively on the elderly, but some do, and nearly all serve older people as part of the general poverty community.

We have also been active in developing the use of retired persons as volunteer paralegals, primarily drawing on AARP chapters and members. We held a National conference last fall on this topic resulting in a "how-to" paper on the effective use of lay advocates which is being distributed nationwide by the Legal Services Corporation. We have also worked extensively with state and area agencies on aging to help them develop legal services in their states, and we publish a wide range of materials on innovative delivery technologies and on the substantive law of particular concern to older Americans. Finally, we conduct demonstration projects, testing new ideas in Legal Services delivery. An example is a project, now operating in three states, which uses volunteers to handle the financial affairs of incapable older people who have no friends or relatives to help. We are particularly grateful to Senator Grassley for the support he has given us on this project.

I understand that the Committee is interested in assessing the extent to which older Americans need Legal Services. Unfortunately, there has never been a national survey of this nature. In 1977 the American Bar Foundation conducted an extensive national survey of the legal needs of the general public. They found the incidence of legal problems to be .53 per household per year. This means that about one out of every two households in the country experience a legal problem each year. The study did attempt to isolate the figures for those fifty-five years of age and older; but it is doubtful whether the sample was large enough to be valid, particularly for the low-income elderly.

However, they found that older people may have a slightly lower incidence of legal problems than the population as a whole. There have also been legal needs surveys conducted for various localities which have focused on the legal needs of poor people; again no one has focused specifically on the elderly.^{1/}

Together these surveys project an average incidence of 1.2 legal problems per household per year. Since there are about 34,862,000 persons (1980 census) age 60 and older, of which 4,927,000 are below the government defined poverty level, the surveys indicate that the need for legal services is staggering.

Another approach to the problem of assessing legal needs that the Congress has found useful is to estimate the number of lawyers per person in the community. There are approximately 28 lawyers in the U.S. for every 10,000 non-poor persons but less than one lawyer for every 10,000 poor persons. Thus if the number of private lawyers is an indication of need for legal services in the population as a whole, poor people- and no doubt elderly poor people- are woefully underserved.

Another way that Congress has approached this issue is to use a dollar formula. The goal of Congress under the Legal Services Corporation Act has been to provide two attorneys for

^{1/} Denver, 1968, 0.3 problems/year; Boston Bar, 1977, 1.14 problems/year; North Carolina, 1979, 1.8 problems/year; Southern Virginia, 1979, 2.5 problems/year; Long Beach, 1977, 0.21 problems/year; Western Kentucky, 1979, 1.3 problems/year. See Researching the Legal Needs of the Poor: A Status Report; National Social Science and Law Project, 1980.

every 10,000 poor people; the cost of this is currently estimated to be \$13.10 per poor person. (This is the original goal of \$7 per poor person adjusted for inflation). Approximately 14% of those served with LSC funds are age 60 and over (thus approximately \$27.4 million of the \$196 million that goes to field programs is spent on older people). About \$12.9 million of Title III funds are also spent on legal services for older persons, serving both poor and near poor. Although there is no national data available, I would estimate that other public sources of funds might amount to a few million (community block grant, etc.) When all this is added up and divided by the number of poor older persons, it amounts to only about \$9 per poor person, and \$1.25 per person if the legal needs of all older persons are considered. This is far below the \$13.10 goal.

There is also another way that legal needs are measured. These assessments are made by state and area agencies on aging, and usually rank legal needs relative to the needs for other services, such as transportation or health services. The quality of these assessments vary widely as there is rarely sufficient funds to do valid, representative surveys. There is another problem in that many older people do not recognize their problems as legal ones. For instance, most surveys rank the lack of adequate income as the number one problem of older people. However, this problem often arises from difficulties in obtaining public welfare or retirement benefits which may have legal solutions. The problem, however, will be recorded under the category of "income needs" rather

than "legal needs." Similarly, health care problems may really involve legal problems associated with Medicaid, Medicare, or Hill-Burton benefits.

There has been no attempt that I am aware of to compile the results of these state and area agency needs assessments. However, there was a survey of area agencies on aging conducted for the Administration on Aging which found that 76% of the 64 area agency directors surveyed stated that legal services were one of the most important needs or a relatively important need in their community.^{2/} In the District of Columbia where we provide direct services to older people, legal services was ranked as one of 5 services most in need of expansion in an extensive telephone survey conducted in 1978 for the D.C. Office on Aging by the Bureau of Social Science Research.

This need for legal services has no doubt increased during the past few years as the number of low income older persons has increased, in part because of the cut-backs in social services and benefit programs.

^{2/} Task II of a Study to Evaluate Legal Services and Long-Term Care Ombudsman Services funded under Title III of the Older Americans Act, CRC Education and Human Development, Inc., 1981.

Legal Problems Facing Older People

Another issue that the committee is exploring concerns the types of legal problems that older people face. Again there is no national system for collecting and reporting this information. However professionals generally agree that the key issues for socially and economically needy older persons are: 1) public benefits, including social security, SSI, Medicaid, Medicare, Food Stamps, Veterans benefits, and Railroad retirement and civil service; 2) housing including landlord/tenant relations, housing code violations and quality of housing, safety and crime prevention; 3) long-term care and protective services (legal arrangements necessary to help incapable older people manage their financial and personal affairs); 4) wills and estates; 5) consumer problems; 6) utility cut-offs and energy assistance; 7) age discrimination; 8) others such as private pension problems, family problems, insurance problems, and tax problems.

Last year our caseload at our District of Columbia Office was distributed as follows

Public benefits	- 23.1%
Housing	- 14.5%
Long-term care/protective services	- 13.9%
Taxes (but this is due to a unique local law)	- 13.6%
Wills and Estates	- 12.2%
Consumer	- 9.6%
Utilities/Energy	- 3%
Discrimination	- 0.1%

Others

- 10%

The needs of middle and upper middle class older Americans are primarily: real property, estate planning, torts (injury to property or persons), and probate according to The American Bar Foundation Study described earlier.

The Best Methods for Delivering Legal Services

The final issue which I would like to address concerns the best methods for delivering legal services to older Americans. The task is so enormous that all possible resources must be used: LSC funded programs, Title III funded programs, the private bar, volunteers, lay advocates, and community and social service workers. However it is critical that these resources are coordinated so that gaps are filled and overlap is minimized.

I offer the following observations about how these resources can best be coordinated. LSC and Title III funded programs should serve as the basis for the delivery network. One or more of these programs serve every geographical area in the country. They already possess expertise in the areas of law most affecting socially and economically needy older people. There already exists a system of training and support for this network. Upon this framework I would add a network of private attorneys and lay advocates, primarily volunteers. Private attorneys already provide substantial services and there is potential for even more. However, most are unfamiliar with

many of the areas of law previously discussed, particularly the public benefits area. Furthermore even if they do have experience in, say, probate law they will not usually have experience with insolvent estates which is a typical situation of low income persons. They are also less experienced in serving the poor and near poor who often have a combination of social, medical and legal problems. Thus they rely on LSC and Title III funded programs, which specialize in serving this client group, for training and back-up support. Also they depend heavily on these programs to help deal with clients who have related social and medical problems often arising from their poverty.

Volunteers and lay advocates are an enormous resource but are only effective if they have training and extensive supervision from experts in the field. Again LSC and Title III funded staff programs are uniquely suited to this task.

Finally, this network should coordinate closely with the social service network which is also involved in addressing some of the legal problems of older persons. The social service network can provide the outreach and referral so important for reaching the most needy elderly. They can, with training and back-up, handle some of the simpler problems and refer the complex ones to legal services programs.

The system I have outlined is generally the one that currently exists - and it is working. LSC funded programs have increased services to older persons from 12.1% of their

caseload in FY'80 to 14% of their caseload in FY'82. According to the CRC study previously cited, nearly two thirds of the area agencies contracting for legal services fund LSC programs with their Title III money. Every LSC funded project is required to involve private attorneys. And the use of lay advocates/volunteers is still in a development stage, but it is growing.

Conclusion

What is needed is simply more of the same to meet the substantial need. Therefore my challenge to this committee is to find the financial resources to help this system provide the elderly with at least a minimum of access to the justice system. Until then, we can purport that the principle of Equal Justice Under Law exists in fact.

Senator GRASSLEY. Yes. There are two things now that have come up. First, I have a vote on the Senate floor, and the Finance Committee has just sent a message that I could offer my amendment at this point.

Therefore, I would like to call a 20-minute recess at this point. I hope it is not any longer than that. It depends upon how soon people get back to the Finance Committee. Therefore, we will have a short recess.

[Recess taken.]

Senator GRASSLEY. I want to thank the committee for being patient. I have met both the vote as well as my amendment, so we ought to be able to pursue the rest of the hearing uninterrupted unless, for instance, I would have another unforeseen vote.

I think it was time for your testimony, Mr. Fretz. Would you proceed, please?

STATEMENT OF BURTON D. FRETZ, EXECUTIVE DIRECTOR, NATIONAL SENIOR CITIZENS LAW CENTER, ACCOMPANIED BY BRUCE M. FRIED, STAFF ATTORNEY

Mr. FRETZ. Thank you, Mr. Chairman. My name is Burton Fretz. I am executive director of the National Senior Citizens Law Center. With me is Bruce Fried, to my left, who is staff attorney at the center and has, among other responsibilities, that of coordination with the aging network.

The National Senior Citizens Law Center is what is known as a national support center, funded principally by the Legal Services Corporation to provide specialized expertise and assistance to attorneys and paralegals and other representatives of the elderly poor across the country. That, in a nutshell, encompasses the provision of day-to-day technical assistance on an individual basis. In the last year we have rendered service in approximately 3,000 cases of this sort. We also provide other assistance more formally in litigation when requested, serve as a clearinghouse for information, briefs, and decisions, and where our resources permit, to provide training to persons within the aging network on request.

I have submitted a written statement for the record. I won't recite that statement in full unless the Chair should request that I do so. I would like to touch on one or two key parts of that statement.

Senator GRASSLEY. We will put the entire statement in the record.

Mr. FRETZ. Thank you, Mr. Chairman.

Senator GRASSLEY. Yes. You may proceed to summarize.

Mr. FRETZ. I think it is important when we talk about the legal needs of the elderly poor and the near-poor, to keep in mind that we are talking about several different layers of needs. I submit that those needs collectively are certainly as great, maybe greater than the collective legal needs of the nonelderly poor in the country.

Older persons have the usual legal problems. They have auto accidents. They are subject to consumer fraud and insurance fraud. They have problems with their landlords if they are renters, just

like other persons of low income do. However, in addition to that, a large number of poor and near-poor elderly persons confront, on really a daily basis, a complex of Federal and State laws and regulations and procedures that affect their needs pretty directly.

The need to maintain themselves on a fixed and fairly low income can quickly translate into a need for legal assistance in deciphering some provisions of the Social Security Act, for example. A need for medicine or for health care can quickly turn into a much more complex need for assistance in winding one's way through the Federal medicaid or medicare statutes. A need to address adequate nutrition can translate into a need for assistance in tying into the correct Federal food program.

Therefore, when we talk about the legal needs of older Americans, I think it is crucial that we keep in mind that we are not really talking just about getting an elderly couple to see a lawyer to draft a will. We are talking about something that is much more expansive and much more critical to their basic welfare than that.

The needs of the elderly poor and those above the Federal poverty threshold, addressed under the Older Americans Act in title III, are of course quite substantial. I would like to point out one statistic which is set forth in our statement which I think is particularly poignant. The median income of persons above 65 is about half of the median income of persons below 65.

While, of course, the numbers of elderly poor are recognized, I think that suggests that we also have a fairly significant concentration of older persons above the Federal poverty threshold but fairly close to it. I think it is that population that Congress recognized as one that needs to be given special attention under title III-B and title IV of the Older Americans Act.

That need, the vastness of it, the complexity of it, the need for specialized assistance from time to time, all has been pretty widely recognized by people who have looked at it. I would respectfully request, Mr. Chairman, that one indication of the range of legal needs of the elderly also be attached to our statement and included. It is a 1981 report of the Mini-Conference on Legal Needs of the Elderly, which was prepared in conjunction with the White House Conference on Aging in anticipation of the larger conference.

That report was the result of a miniconference, as it was called, which brought together legal services developers, area agency personnel, providers, and legal services persons. It really covers the spectrum of legal needs and ways of meeting them, and it would be helpful in just suggesting to the committee the full range of the things that older persons needing when we talk about legal help.

Senator GRASSLEY. We will receive it and print it if it is not too costly. Otherwise we will make reference to it. However, it looks to me like it is a reasonable size for printing.

Mr. FRETZ. It is about 10 pages.

[The report referred to follows:]

the 1981
White House
Conference
on
Aging

Report of
the Mini-Conference on
Legal Services for the Elderly

Note: The recommendations of this document are not recommendations of the 1981 White House Conference on Aging or the Department of Health and Human Services. This document was prepared for the consideration of the Conference delegates. The delegates will develop their recommendations through the processes of their national meeting in late 1981.

Legal Services For The Elderly

EXECUTIVE SUMMARY

Introduction - Legal services is an essential component of any effective system of delivering social services for three reasons:

- The elderly need legal assistance to protect their rights
- Legal assistance is vital in assuring the access of older Americans to the full range of other social services
- Legal assistance protects the freedom of the individual older person to control his or her own life against the dictates of big government bureaucracy.

Therefore, it is vital to maintain and strengthen the delivery of legal services to the elderly through the Legal Services Corporation, Title IIIB of the Older Americans Act, the private bar, law schools, and the aging network.

The Need - "The elderly" are a group who are present in every family and in every community. Some of them have always been poor; millions of others were middle-class for their working lives and upon retirement find themselves plunged into financial distress. One-fourth of all the elderly are poor and near-poor.

The elderly have unmet legal needs they clearly perceive. There are other needs they don't even recognize because they don't know their rights. The need will increase as more people become elderly, as economic problems continue, and as the elderly become more conscious of their problems. These are human needs, and include people with problems in obtaining the basics of health care, in-home support service, protective services, transportation, income maintenance, consumer security and estate planning.

The facts gathered by experts demonstrate the existence of a major ongoing need for legal services for the elderly. Particular human examples exist in every community in the nation.

Legal services help to empower poor individuals to overcome adverse conditions by protecting their legal rights. By reaffirming that the individual does have rights, legal services particularly promote the individual's self-respect and dignity. Lawyers can help fight government red tape and arbitrary, impersonal bureaucrats. Thus legal services help to limit government and to fight its control of society and the individual. They thus promote the federalist ideal of proper division of responsibility between local and national sectors. The aged themselves dictate what lawyers for the elderly work on. Typical issues involve protecting the right of the frail elderly, securing entitlements of older persons to assistance, or permitting an older person to remain at home with family rather than face placement in an institution.

The aged also want to enjoy the benefits for which they have been paying taxes all their lives. If a senior citizen is unfairly excluded from such benefits, legal assistance may be the necessary means of access to all other vital services. Older people, like other Americans, want to protect their rights and property. Moreover, many are frail, vulnerable, poor, or have limited mobility.

It is particularly important, then, that older persons retain independence, autonomy and dignity rather than receive care passively. Decisions on their lives should be made by the individuals themselves, and by their families. Legal assistance helps further these traditional values by informing older people of their rights, by reminding them that they are not helpless and by assisting them to regain power over their own lives.

Present Programs Are Vital in Meeting These Needs - Clearly, public funding is crucial to adequate legal representation for the elderly. The percentage of older Americans near or below poverty levels, the importance of outreach to them, and the specialized nature of many legal questions facing the elderly, all dictate publicly supported programs as the primary source of representation.

Existing programs which provide legal services for the elderly are effective. Lawyers for the elderly spend 90 percent of their time working with individual clients. When necessary to protect fully the rights of elderly clients, lawyers represent their clients in individual or high-impact lawsuits or through legislative and administrative advocacy. Most legal work does not involve lawsuits, however. It is giving advice, informing older persons of their rights, doing outreach and education, and using basic tools of negotiation.

The legal needs of the elderly can be addressed through a partnership. Publicly-funded legal programs, the private bar, and the wider aging network can efficiently work together. Most work on legal problems of the elderly occurs through programs supported by the Legal Services Corporation (because many of the elderly are poor), through Title IIIB of the Older Americans Act (because legal services provides access to all other services) or through some combination.

Congress' designation of legal services as a priority under the Older Americans Act has left much flexibility and choice to grass-roots decision-makers, yet it has brought a much-needed increase in the provision of legal services to older individuals who need them. A cost-effective partnership exists between the legal workers under the Older Americans Act and the legal workers supported by the Legal Services Corporation.

Legal services for the elderly can be enhanced through innovative ways to promote efficiency. Private lawyers can be involved even more, as through prepaid legal insurance and referral services. Law schools should sensitize future lawyers to the problems of the elderly. Social workers, paraprofessionals, and others can be cost-effective as advocates, allowing lawyers to do the work only they can do. To be efficient, both advocates and the elderly should receive technical assistance and training from experts at the Bi-Regional Support Centers and the National Senior Citizens Law Center.

Advocacy and the Elderly Network - Legal services programs for the elderly are a vital part of the elderly network, working with associations of the elderly, non-lawyer advocates, and other organizations and agencies. Legal services programs enhance the other parts of the network, by helping older individuals, and the network, know their legal rights, legal remedies, and legal skills of negotiation and advocacy.

In turn, the aging network enhances legal services programs by working together on spotting the legal problems of individuals, dealing with some of them through non-lawyer advocates, and doing referrals and community education.

All of these considerations lead this Conference to the following observations, which are set forth in full at the conclusion:

-- Legal services are an integral part of any effective delivery system of social services to the elderly, because they are frequently necessary to meet other basic needs of life.

-- Any government program of general services to the elderly should insure that legal services is an effective component. A framework for a comprehensive legal services delivery system should continue to be incorporated into the Older Americans Act. Effective legal services to the elderly requires the continued involvement of the Legal Services Corporation, other legal services units, the private bar, law schools, para-legals and non-lawyers, and support systems such as those now provided by the Administration on Aging and the Legal Services Corporation.

-- Congress should reauthorize the Older Americans Act, including the priority for legal services, and the Legal Services Corporation Act, at the fullest possible level of funding and without restrictions.

I. LEGAL SERVICES IS AN ESSENTIAL COMPONENT OF ANY EFFECTIVE SOCIAL SERVICES DELIVERY SYSTEM

A. America's Elderly Face Basic Needs Which Are Not Being Met

1. Real People Have Real Needs - Older Americans frequently need legal assistance in order to secure fundamental rights and benefits to which they are entitled. A few examples are illustrative:

-- 81-year old Ms. K was transferred from a nursing home in Connecticut, where she had lived for nearly two years, to a nearby hospital because of "a possible stroke." Later, the physical examination and medical tests performed by the hospital showed no medical conditions requiring hospitalization. Meanwhile, Ms. K, a medicaid recipient, could not regain her room and bed which the nursing home had given to a privately paying resident. She was only able to regain her nursing home bed through a court order after representation by legal services.

-- A second, similar incident happened shortly thereafter at the same home. Another successful suit was filed by a legal services attorney. Subsequent to these two lawsuits, the state of Connecticut enacted legislation requiring nursing homes to reserve beds of residents in acute care hospitals for a certain period of time. The legal services attorney who had litigated the cases at the request of the state assisted in drafting the legislation.

-- Mr. and Mrs. R worked their farm in Virginia together for a number of years. After Mr. R had suffered three heart attacks, Mrs. R took over virtually all of the work, including planting, weeding, and harvesting. Mr. R did occasional bookkeeping. The Social Security Administration ruled that Mrs. R was not entitled to receive retirement benefits on her own account because the business was her husband's, not hers. With the assistance of a legal services attorney, Mrs. R successfully argued to the court that the earnings during the years after her husband's disability were hers. She has thus been found eligible to receive Social Security benefits.

-- Mr. T, a pensioner, received a letter in his mail stating that he had become a ward of the California county where he resided, and that his monthly pension income would be administered by the Public Guardian of the County. The letter indicated that he had become a public ward under court order, although Mr. T had received no notice of any court proceedings. He contacted a legal services lawyer, who ascertained that Mr. T had not been personally served with notice of the guardianship proceedings; that no evidentiary hearing had occurred; and that the guardianship had been ordered on the basis of a hearsay statement that Mr. T spent part of his monthly pension checks on restaurant meals near his boarding house. Through his attorney Mr. T had the guardianship vacated. Mr. T continued to live independently thereafter, and to enjoy occasional meals in restaurants of his choice.

-- A Social Security office in rural Alabama repeatedly failed to provide case reviews to numerous older Americans who had requested them. Delays occurred up to three months in length, all without an explanation from the federal agency. The elderly claimants secured the assistance of a legal advocate who contacted a higher-up in the Social Security office and negotiated immediate and favorable action for his clients.

- Mrs. A resided in a nursing home in a Western state. Although 94 years old, legally blind, and dependent on a walker, she was mentally alert and very anxious to return to her home. However, her daughter and doctor believed she was not competent to make this decision. Through a neighbor, Mrs. A contacted a law office funded under the Older Americans Act. Through legal counsel Mrs. A regained control of her financial records and belongings and moved into independent quarters.
- Mr. L went to his local Social Security office in Washington, D.C. to apply for husband benefits on his wife's Social Security account. He told the caseworker to whom he was assigned that he read about a recent Supreme Court decision which said that husbands did not have to be dependent on their wives in order to qualify for husband benefits. The caseworker told him that he was wrong, that Social Security did not go by what newspapers print, and that he was not eligible for husband benefits. When Mr. L returned to Social Security on a friend's advice, he was told by the office supervisor that in fact he was eligible for benefits when he first came to the Social Security office; that the law regarding husband benefits had recently changed; and that he no longer qualified for husband benefits. A legal services office was able to obtain husband benefits for Mr. L after a year-and-a-half and a federal court decision.
- A local Ombudsman in Maryland learned that there was possible mis-treatment of residents in a boarding home. The Ombudsman met with one resident and determined that his case was serious enough to warrant consulting an attorney. In order to visit five of the residents the attorney had to secure a summons, but upon entering the building found the residents all locked in their rooms. They were rescued from the facility by police and were given lodging in a local community center until they could secure residence in more humane facilities. Meanwhile, the boarding home was closed and the owner was charged with three counts of assault and battery.

2. The Need Is Great and Is Expanding - Every citizen is surrounded by a complex of laws, regulations, agencies, officials, and procedures covering most aspects of a person's life. He or she must deal with it daily. This world of rules confronts the elderly as much as any age group in the United States. It produces overwhelming needs among the elderly which go unmet at several levels.

First, there are immediate and perceived needs which are not being addressed and which require a general expansion of services. Older Americans encounter traditional legal problems similar to those which individuals encounter throughout society. These include such matters as tenancy, home ownership, consumer contracts, vehicle accidents, income tax, and insurance policies. In addition to these traditional cases, however, the elderly confront substantially different and more complex legal problems. Frequently these problems derive from rights which the elderly have earned over a lifetime of work, or rights which derive from explicit Congressional entitlement. Among these are protections against age discrimination and entitlements to Social Security, decent health care in old age, and basic nutrition.

Second, there is an equally large volume of legal needs among the elderly which are not perceived by the elderly as legal in their nature. An older person, for example, may confront pressure to enter a nursing home, because he or she cannot fully provide self care. Although homemaker chore assistance might enable that person to remain in independent living quarters, the availability of homemaker assistance or the steps to secure it may not be known. Thus outreach and educational programs are vitally important in assuring that the elderly are fully informed about all possible solutions to very human and non-legalistic decisions in their lives.

Third, future legal needs among older Americans must be addressed. We are living in a time of limited national resources for the elderly as well as for the general population. The elderly can expect further limits on money and services available to them in crucial areas such as health care, nutrition, and housing. As these services begin to compete among themselves for increasingly scarce resources, legal advocacy rises in importance as a means to secure these services to older individuals. On an abstract level, legal representation may seem less important to the elderly than food, shelter or medicine; on a practical level, however, legal representation is often essential if basics like food, shelter or medicine are going to be available.

The elderly understand their potential to articulate their own interests. They will therefore become aware of additional ways in which law can assist them. The rights of the institutionalized, of persons facing condominium conversion, of those seeking in-home care, of victims of elderly abuse, all reflect a growing consciousness among the elderly of daily problems which may require legal recourse.

3. The Elderly Themselves, and Their Representatives, Recognize the Need for Legal Services - An overwhelming need for legal services still confronts older Americans. In view of this, it is hardly surprising that existing legal advocates for the elderly average over 500 cases yearly, or that 90 percent of this work involves individual case representation. Nonetheless, vast unmet needs continue to pose a major challenge to the entire aging community.

For example, 65 percent of the Area Agencies on Aging (AAAs) report that the need for legal services is relatively important, or is among the most important, of elderly needs. Three out of four state Legal Services Development Specialists believe that the elderly need for legal services is not being met. (Preliminary report prepared for the AoA by the Contract Research Corporation, December, 1980 (CRC Report)).

Equally significant are the responses of leaders of local senior organizations. An overwhelming majority of these leaders (90 percent) agreed that the elderly do have special legal needs. Similarly, 90 percent believe that legal services is most or relatively important among all social services. Most of these leaders (65 percent) indicated that only a part of that need is currently being addressed in their state.

These findings make it clear that legal services is a critical component in the delivery of services to older Americans. While funding of legal services is effective, the need for such services remains greatly unmet. Projects funded under both the Legal Services Corporation and the Older Americans Act continue to lack adequate resources to address properly the needs of an increasing aging population.

B. Legal Assistance Is Vital in Assuring the Access Of Older Americans to the Full Range of Social Services

Major barriers that keep the elderly from obtaining adequate social services are the complexities of the laws and the bureaucracies which deal with those services. Organizations of the elderly know of countless examples of problems that older persons have with red tape, and the indignities they suffer in dealing with bureaucrats. What begins as an older person's modest quest for homemaker help, or for adequate food or for a place to live, all too often ends up as a problem with a rule or the official who decides the rule.

To serve these needs one must understand the laws which govern a service problem; know how to bring the problem to the proper agency; compile the complete and relevant facts about the problem; discuss the problem in a clear and compelling manner, and negotiate. The elderly person requires a representative skilled both in law and in negotiation.

Thus, legal providers are an integral component of the aging service network. Legal advocates can participate in case management with a variety of other service providers; and they can provide an irreplaceable service by assisting elders in their efforts to live independently and with dignity.

Problems of entitlement, procedure, contractual obligation, and simply pushing through the red tape of a bureaucracy, are matters on which legal services can be of great help to the elderly. A legal representative has the skills and knowledge to understand and seek a range of remedies, to secure full access to social services for older Americans.

II. LEGAL SERVICES PROGRAMS, THE PRIVATE BAR AND THE AGING NETWORK TOGETHER OFFER THE POTENTIAL TO ADDRESS THE UNMET LEGAL NEEDS OF THE ELDERLY.

Legal assistance to older Americans turns on a working partnership of legal services programs, the private bar, and the aging network. This partnership is effective and with a proper infusion of additional resources, it can meet the future legal needs of older Americans. Each of these components makes a unique contribution.

Programs funded by the Legal Services Corporation (LSC) and under Title IIIB of the Older Americans Act (OAA) are the most extensive source of professional representation to the elderly. Program lawyers and paralegals are experts, trained in specific substantive areas having the most impact on older Americans and the poor. Services and facilities are widely available to elderly clients and often are delivered through outreach to senior centers, nutrition sites, and other locations frequented by the elderly. The resources permit extended representation of clients in protracted or complex cases, for which the private practitioner may lack resources and the aging network may lack expertise.

Private attorneys can play an important supplemental role in these programs. In addition, they can be important in urban neighborhoods or in rural areas where resources do not allow for a publicly funded office. Private lawyers command a knowledge about wills, probate, and landlord-tenant law which are especially pertinent to the elderly. They often have contacts with elderly individuals through business, church and social organization. A private lawyer can participate usefully in a case as co-counsel with a legal services lawyer when, for example, the former provides procedural and tactical advice to complement the latter's substantive specialty.

The delivery of all legal services in the United States has been changed by the use of non-lawyers. In large law firms serving corporate clients, in government, and in social services thousands of trained non-lawyers now work side by side with lawyers. These people who are directly employed by lawyers are called "paralegals." In addition, there are non-lawyer representatives or community service advisers who are staff members of social services agencies trained to help people with legal problems. They function mainly in the area of government benefit programs, where non-lawyers are specifically permitted to assist and represent clients.

The aging network, with its array of lay advocates, service providers, and senior organizations has more extensive contact with elderly individuals than do legal services programs or the private bar. The aging network provides a unique outreach, providing access to legal assistance not otherwise available to many older Americans. With proper training, network members can identify unperceived legal problems of a client and help that client reach the appropriate service or legal resource.

All segments of the present system of legal assistance delivery have a distinctive role to play in that delivery. The magnitude of unmet need is so great that the real challenge ahead is for these components to develop an even closer working relationship.

A. The Legal Services Corporation Act and Title IIIB of the Older Americans Act Are Key Elements in Providing Legal Services to the Elderly

Congress has provided legal services for the elderly under both the Legal Services Corporation Act and the Older Americans Act. At the local level, almost two-thirds of all Title IIIB OAA legal services providers are LSC projects. Over 40 percent of all LSC projects receive Title IIIB funds. In October of 1979 the median Title IIIB funding for an LSC grantee which reported receipt of such funds was \$35,308. The total of Title IIIB funds used for the LSC programs across the nation now approaches \$6 million, approximately half the national total reported by State Agencies on Aging as obligated for all kinds of legal advocacy.

There is a growth of expertise by legal services program lawyers in issues of concern to the elderly. There is also growing contact between the legal services and aging communities, evident in the number of joint advocacy activities affecting seniors. Legal services programs have increased non-lawyer advocacy and client involvement in legal services delivery, and in resolving clients' legal problems.

The improvement of legal services for the elderly during the 1970's has been significantly enhanced by the Legal Services Corporation and its extensive network of field programs and state and national support centers. The Corporation's many contributions to legal services advocacy for older people are the result of varied activities and policies.

The dramatic expansion of legal services for poor people throughout the United States has increased the availability of legal services to many elderly persons subsisting on public assistance or fixed retirement incomes. By the end of 1980, all but a few counties across the country contained some element of a legal services program. The formerly isolated and rural elderly have benefitted enormously through the increased availability of legal services.

1. Programs Under the Legal Services Corporation - The Legal Services Corporation Act makes services available to all low-income people without focussing on any particular group. The Act provides for funding of locally controlled programs which set their own priorities based on program resources and total community needs.

In addition, the Legal Services Corporation Act requires that each grantee program, in setting its priorities, consider the legal needs of clients who have special access difficulties or special unmet legal problems. As a result, LSC programs are becoming increasingly available to the elderly. Programs are becoming physically accessible and are performing outreach by going where the clients are located -- to their homes, churches, senior centers, nutrition sites, and nursing homes.

At the national level, a focus of the Legal Services Corporation on elderly concerns, and its growing bond with elderly organizations and with the Administration on Aging, has been fostered by the National Senior Citizens Law Center. NSCLC is one of seventeen national support centers sponsored by the Corporation. Since 1972 NSCLC has offered litigative and advocacy support to LSC and other advocates working for elderly clients in the field. It has represented elderly clients in the areas of medicare, age discrimination, social security and long-term health care. NSCLC maintains an extensive network among legal services programs and senior organizations through its Washington Weekly newsletter and Nursing Home Law Letter, received by 5,000 organizations and individuals working with the elderly.

Other national support centers in areas of health, consumer issues, energy, housing, economic development, and welfare are involved in issues which confront older people. The National Support Centers, LSC Research Institute and LSC Office of Program Support also have actively developed training for LSC field personnel in issues of concern to the elderly. Long term health care and Medicare advocacy recently have been specifically addressed in national training conferences.

In 1977, the Legal Services Corporation and the Administration on Aging began a joint venture to extend legal services for older persons through the cooperation of both LSC and AoA networks at the national and local levels. The Corporation recruited staff who are experts on aging issues and made them available to the Administration on Aging. The LSC/AoA unit has become an important component in the overall development of legal services for older persons. Most important has been its role in stimulating the efficient use of the limited resources of each agency.

Legal workers in LSC programs are experts in the substantive law affecting the social and economic needs of the elderly. They are practiced in the aggressive advocacy required to assure that the rights and benefits of the elderly are protected and expanded. Relationships have been forged with other advocates for the elderly such as long term care ombudsmen, elderly organizations, area agencies, community-based lay advocates and community service advisors. Considerable benefit to the elderly will derive from this grounding in the community.

The role of the Legal Services Corporation and its programs has been integral to the development of vigorous advocacy for older persons. Its continued vitality is critical toward insuring a decent quality of life for older Americans.

2. The Older Americans Act - No federal attention was paid to the legal needs of the elderly until passage of the Older Americans Act in 1965. Under 1973 OAA regulations legal services was one of fourteen different services that could be funded. This language brought no significant OAA funding of legal representation for older Americans, however. Most representation continued to occur through programs funded by the Legal Services Corporation. The need for further legal assistance to the elderly beyond LSC became increasingly apparent. For one thing, about one quarter of all elderly are "near-poor" and live below 125 percent of the poverty level. Many of the elderly have income above legal services eligibility standards, but below levels which can bear the customary fees charged by lawyers in private practice. In addition, the LSC's capacity is strained by limits on its own resources and by competing demands of other needy clients. Finally, several specific barriers to service exist for the elderly including lack of transportation, physical handicaps, fear of crime and difficulty in communication, which require special outreach efforts that add greater costs of service to the aging.

These considerations, coupled with inadequate funding for legal services, caused Congress to amend the OAA in 1975 by making legal services one of four "priority" services. In 1978, Congress again designated legal services to be a priority service under the OAA and in addition specified that at least 50 percent of funds under Title IIIB of the Act must be spent on priority services and that "some funds" must be spent on each priority service, including legal services. Services are provided through each Area Agency on Aging as a recipient of Title IIIB funds.

While the priority is mandatory, it constitutes a minimal directive on the use of funds by an AAA. The priority leaves both the level and the nature of designated services to the discretion of an AAA, and thus encourages variation and creativity in actual funding. Most commonly, a local AAA funds a local legal services program which then establishes a special unit for the elderly, using both AAA and LSC funds. In some areas a separate legal project may be established to serve only the elderly, separately or through a law school, bar association, AAA staff or other social program.

Congress recognized the risk that immediate and visible social services might be funded to the exclusion of legal services whose results are less immediate and visible. Recognizing that legal services are equally as necessary as other services, Congress designated it one of the four priority areas. Congress' foresight has been confirmed; under this statutory priority the number of older Americans who receive legal services today is twice that of three years ago. However, much remains to be done. Half of the AAAs did not have a legal services provider by the summer of 1980. The full framework for delivery of legal services has appeared only recently. Many states had received waivers of their legal services obligations until September 30, 1980; moreover, OAA standards for legal services providers have been in place only since March 31, 1980.

Legal help to the elderly through the Older Americans Act has complemented representation from existing legal services programs and has produced worthwhile results. First, new elderly law programs have come into existence since 1978 which have increased the number of elders who receive vital assistance. Second, area agencies on aging involve older persons in grant-making and thus in priority setting at the local level. Third, LSC resources are simply inadequate, and OAA funding helps already overburdened programs to expand their caseloads to new population segments. A clear correlation exists between OAA funding and the elderly percentage of a program's clientele. Fourth, the LSC "means test" excludes elders who are slightly over income but who are eligible for OAA services. Fifth, OAA assures that special needs of older persons are addressed realistically and creatively, for example, through outreach to senior centers and to non-ambulatory and institutionalized elders. Finally, OAA funding has involved older persons in the development of a system that is attuned to their needs.

The OAA experience, therefore, is a useful model for increasing the level of legal assistance to the elderly. The OAA funding priority has been an important catalyst in causing most AAAs to overcome their earlier detachment from legal services. This detachment originated in a lack of understanding about legal services as a relatively new concept, a distrust of its adversarial dimensions, and the absence of initial contacts with local attorney and staff providers. Today, however, the AAAs increasingly recognize the severity of unmet legal needs among the elderly.

Regulations under the Older Americans Act provide good standards for a provider of legal services (Section 1321.151(c)(2), 45 Fed.Reg. 21,160 (March 31, 1980)). The regulations set minimum elements for effective advocacy and provide an excellent guide to the basic elements of any program of legal assistance to older Americans. These are set out in the Appendix.

3. Title XX - Title XX of the Social Security Act makes federal funds available for disposition by state governments for a wide variety of public services, including legal services. In a few situations Title XX funds have been a source of support for elderly advocacy. However, proponents of legal services face increasing competition from proponents of other social services for limited Title XX funding.

B. The Private Bar Can Play an Active Role in Providing Legal Services for the Elderly

Over 530,000 attorneys practice in the United States, but only a small fraction work for publicly funded programs. Most are engaged in the private practice of law. The private bar is the keystone of the American legal system. Its energies, expertise, and influence are a substantial resource for the elderly population.

Clearly, the private bar is not a resource which ever can become the primary provider of legal representation to older Americans. Far too many older individuals have incomes so moderate that they cannot afford attorney's fees; private lawyers, in turn, are so constrained by business demands that they ordinarily cannot perform more than occasional pro bono work. Private attorneys generally lack expertise in complex areas of the law in which the rights of the elderly are typically secured. Much litigation on behalf of the elderly is based on federal statutes, is protracted, and consumes more resources than most private practitioners can afford. The private bar cannot usually provide the kind of outreach needed to surmount the mobility problems of the elderly.

Nonetheless, a potential exists for the private bar to supplement existing programs. Congress recognized this potential in the 1978 Amendments to the Older Americans Act by providing that each Area Agency on Aging "attempt to involve the private bar in legal services activities...including groups within the private bar furnishing services to older individuals on a pro bono and reduced fee basis."

The private bar is responding to the legal concerns of older persons, and recognizing its own potential contribution. On a national level in 1978 the American Bar Association created a Commission on Legal Problems of the Elderly, which seeks to stimulate bar association efforts assisting the aged. The ABA Family Law Section, the Section on Real Property, and the Young Lawyers Division all have formed committees on the elderly.

Over 20 state and several local bar associations have committees on the elderly, many of which are actively involved in delivery projects. Four statewide referral systems for the elderly are in operation, as well as state preventive law community education projects for senior citizens. Over a dozen states have sought to enhance the knowledge of bar members by providing continuing legal education sessions on law and aging. Almost 60 local bar projects currently operating or shortly to begin involve volunteer private lawyers, low-fee referral systems, and community education.

However, private bar efforts fall far short of the need among older Americans for legal help. Private attorneys often fail to perceive the many incentives for their fuller participation in elderly representation. Aging advocates should advertise these incentives, including the private attorneys' self-interest in generating goodwill and fee-generating cases; the opportunity to participate in trials and administrative hearing by attorneys who do not do so in their regular practice; and the chance to get substantive training in new areas of law. A means test might assure that older Americans with the greatest economic need will be served. In addition, private bar efforts should be integrated into the totality of legal services delivery in order to use private attorney expertise most economically, e.g., handling wills, estate planning, auto accidents and family law.

Private practitioners and bar associations should expand their role in providing legal resources for the aged by (1) initiating and actively participating in projects to stimulate efforts by the private bar to deliver legal services to the elderly; (2) supporting publicly funded legal service programs for the elderly; and (3) working cooperatively with existing public programs.

1. Initiating and Participating in Projects for the Elderly - In the CRC Report discussed above, 85 percent of private bar leaders agreed that the elderly have special legal needs; 89 percent agreed that legal services are an important component of social services for the elderly. The organized private bar must be encouraged to act on this consensus.

The ABA House of Delegates, for instance, in 1975 resolved that it is "the basic responsibility of each lawyer engaged in the practice of law to provide public interest legal services... without fee or at a substantially reduced fee..." Many attorneys can fulfill this responsibility to the elderly by participating in a pro bono project or reduced fee referral system for the elderly; by giving preventive law educational presentations and law day programs for senior citizens; by volunteering with legal service for the elderly projects; or by pushing for legislative reforms affecting the elderly.

In 1980, the ABA House of Delegates passed a resolution urging lawyer referral services to increase their efforts to reach older persons. Over 320 referral services exist nationwide. These service facilities must be encouraged to increase their outreach to places where the senior citizens live and gather, and to provide training for attorneys interested in serving aged clients. Participating attorneys must be encouraged to visit senior centers, for example, and to provide fee adjustments and pro bono services for the elderly of moderate means. The efforts of the private bar must be motivated. They must be coordinated. And there should be quality control, and provision of backup and technical assistance. Law schools are well suited to enhance private lawyer assistance to the elderly. Law schools must recognize law and aging as an important new field of law, and offer courses to train future lawyers in this field.

2. Supporting Public Legal Service Programs - Private bar efforts to meet the legal needs of the elderly must be accompanied by vigorous support of the public legal service network. This support has historically been forthcoming from the American Bar Association. In 1965, the ABA resolved to "cooperate with the Office of Economic Opportunity and other appropriate groups in the development and implementation of programs for expanding availability of legal services to indigents and persons of low income..." In 1973 the ABA reaffirmed its support for expansion of legal service efforts and for the establishment of the Legal Services Corporation.

The aging network provides an ideal medium through which the ABA's leadership in supporting legal services can be carried to state and local levels. Private lawyers should familiarize themselves with the aging network, support its funding, and contribute their skills and resources to the operation of its programs.

3. Working Cooperatively with Public Legal Programs - The private bar must not only voice support for public programs of legal representation for older persons, but must also work cooperatively with them. Indeed, the best system of legal resources for the elderly will come from their combined efforts.

For instance, in Washington, D.C. a roster of private attorneys and firms serve the elderly through a publicly funded and staffed pro bono program. In Oregon, the needs of local elderly are matched with willing attorneys through pro bono coordinators whose work is made possible because several agencies on aging have made money available to legal aid programs to hire them. In San Francisco, volunteer attorneys work together with staff attorneys to expand service at senior centers.

In many localities, legal service attorneys refer elderly persons needing simple wills to a panel of private attorneys on a pro bono or low fee basis. In some cities, law firms are matched with legal service for the elderly programs to facilitate an exchange of litigation skills and specialized knowledge. Such imaginative, cooperative programs must be expanded and replicated throughout the country to produce adequate legal services for the growing aged population.

C. The Aging Network Plays a Vital Role
In Legal Services to the Elderly

Older people have legal problems not shared by other groups, and they are peculiarly vulnerable and isolated. This makes the case compelling for a separate statutory framework, given the unique interplay between the aging network and legal services for the elderly. The Older Americans Act establishes a network from the grass-roots up to the federal level and anticipates that all parts of it will create leverage on other services benefiting the elderly.

The term "network" is used with two meanings. One refers to the official network created by the Older Americans Act: AOA in Washington, Regional Offices of AOA, State Units on Aging, Area Agencies on Aging, and the various projects funded through this system. A broader definition of "network" includes all organizations interested in the needs of elderly people such as church groups, tenant groups, social clubs, retirement groups, and national organizations. The aging network inclusive of both definitions always has seen itself as an advocate for the rights of older people.

LSC programs and Title III programs have a vital role to play in the traditional legal representation of an individual, but do so as a complement of lawyers and non-lawyers working with the network to engage in a whole spectrum of activity.

One purpose of legal services and advocacy for older people is to enhance the capacity of people to utilize their own knowledge and skills to obtain legal rights and remedies. Thus part of the goal of legal services to the elderly is to expand the number of people with legal knowledge and skills, so that individuals and groups will be able to assert themselves effectively in a variety of forums on a wide range of issues. Elderly people, and indeed any people who are isolated, physically impaired, or reliant on others may succumb to a passive dependency which makes them vulnerable to exploitation or neglect. Informing older people of their legal rights and how to assert them, assisting them as groups, and coordinating legal and social services, allows legal services to help older people gain the confidence and skills needed to address their own legal and social problems. Lawyers, paralegals and advocates can explain the law, help draft documents, advise on government structures, and suggest courses of action. Through this approach legal services activity assists older people to achieve their own goals, and becomes a constituent part of the elderly network.

The elderly network is inter-connected. Planning, coordination and funding are linked from the grass-roots community groups through the area agencies and state agencies to AOA. Legal services operates as one element of this system and is thus an integral and essential part of the network. Conversely, the network affects the legal rights of older people.

Opportunity arises for innovation in the delivery of legal representation to the elderly. A need exists to educate older people about their rights, and to sensitize law students and others to the legal needs of the elderly. Most important is the potential use of paraprofessionals, social workers and others to make the process more efficient.

Training is vital in this preparation. Those dealing with housing need to understand the Energy Assistance laws and weatherization program laws. Those who question whether a state agency is in compliance with federal law in administering a program must know the law, available remedies, and techniques for obtaining rights. Those dealing with nursing home patients should understand the laws governing patients' rights, access to facilities, and rules for medicaid providers. Persons who address long-term care problems need an understanding of state guardianship and commitment laws, and, as well, should have the capacity to counsel older persons on eligibility for SSI, food stamps, Medicaid, and tax benefits.

AOA has funded five Bi-Regional Support Centers for Legal Services and Long-Term Care Advocacy. These Centers work with state and area agencies, with the aging network, and with component parts of the legal services community such as the private bar, Legal Services Corporation, and law schools. Their mission is to give training in law and advocacy, to help the states set up training programs to link lawyers with non-lawyers and agencies, and to provide technical assistance.

Many problems of the elderly can be alleviated if the elderly develop a capacity to understand and utilize the myriad laws which affect them. The premise of the current legal services effort is that individual clients will receive needed legal advice and representation, and that the entire network will have knowledge of appropriate laws, remedies, and advocacy techniques.

CONCLUSION

The provision of legal services is a critical component of any long term system which addresses the needs of older Americans. This provision is absolutely essential if that system is to be comprehensive in its effect, coordinated in its support of other services, and community-based in its work. Legal assistance to older individuals is an important social service in itself. It is equally important in securing all of the other services necessary to a life of dignity and independence.

Legal assistance to the elderly may serve older people, but is a new program itself. This program deserves firm support at the national level, and deserves freedom from tinkering during this important stage in development. An unequivocal national commitment is needed, therefore, which encompasses certain essential efforts on behalf of America's elderly. These efforts are contained in specific recommendations passed by this Conference:

1. Legal services are integral to vindicating the rights of older persons, and to the delivery of social services to the elderly.

2. In order to assure the effective provision of legal services to the elderly, existing efforts must be maintained, and new efforts initiated, with the goal of achieving a full range of legal services to the elderly.

3. Effective legal services to the elderly requires the continued involvement of lawyers, the Legal Services Corporation, other legal services units, the private bar, law schools, paralegals and non-lawyers, and support systems such as those now provided by the Administration on Aging and the Legal Services Corporation. A framework for this comprehensive legal services delivery system should continue to be incorporated into the Older Americans Act.

4. Because constitutional and legal rights are fundamental rights of all citizens, and because the exercise of such rights is frequently necessary to meet other basic needs of life, the Older Americans Act and any similar government program of general services to the elderly should include specialized legal services as an essential component.

5. Congress should reauthorize the Older Americans Act, including the priority for legal services, and the Legal Services Corporation Act, both at the fullest possible level of funding and without restrictions on the availability of legal representation for older Americans.

CONTINUED

1 OF 2

APPENDIX

Grants for State and Community Programs on Aging

45 Fed.Reg. 21,160 (March 31, 1980) (to be codified in
45 C.F.R. 1321.151)

45 C.F.R. 1321.151(c) (Conditions legal services
providers must meet)

(2) The area agency must award funds to the legal
services provider(s) that most fully meet(s) the
following standards. The legal services provider(s) -

(i) Has staff with expertise in specific areas
of law affecting older persons in economic
or social need; for example, public benefits,
institutionalization and alternatives to
institutionalization;

(ii) Demonstrates the capacity to provide
effective administrative and judicial representation
in the areas of law affecting older persons
with social or economic need;

(iii) Demonstrates the capacity to provide
support to other advocacy efforts, for example,
the long-term care ombudsman program;

(iv) Demonstrates the capacity to effectively
deliver legal services to institutionalized,
isolated, and homebound individuals;

(v) Has offices and/or outreach sites which
are convenient and accessible to older persons
in the community;

(vi) Demonstrates the capacity to provide
legal services in a cost effective manner;
and

(vii) Demonstrates the capacity to obtain
other resources to provide legal services to
older persons.

Senator GRASSLEY. Yes.

Mr. FRETZ. Thank you, Mr. Chairman.

Just one other thought: The Administration on Aging, about 2 years ago, did commission an independent survey of legal needs and ways of meeting them. I believe that Mr. Moore alluded to that survey briefly. We have set out in our statement some excerpts of findings from the survey. To paraphrase that I would simply say that the need for legal assistance was recognized overwhelmingly by State level developers, by area agency personnel who were surveyed, and by leaders of local senior organizations.

In fact, of the senior leaders who were surveyed and who had no proprietary interest in this, over 90 percent of them stated that legal needs were either the most important or were relatively important in the whole scheme of things, and I think that tells a lot. Therefore, when we are talking about meeting the legal needs of the elderly we are really talking about assisting them through the complex of programs and rules that get them income to health care, to adequate nutrition, and to the many things that matter on a day-to-day basis.

Thank you again, Mr. Chairman, for allowing this opportunity.

Senator GRASSLEY. Thank you, Mr. Fretz.

Mr. Fried?

Mr. FRIED. Mr. Chairman, I won't make a statement. I think our statement suffices, and Mr. Fretz has summarized that. I am available to answer questions.

Senator GRASSLEY. OK. I know that your statement comes from both of you.

[The joint prepared statement of Mr. Fretz and Mr. Fried follows:]

PREPARED STATEMENT OF BURTON D. FRETZ AND BRUCE M. FRIED, NATIONAL SENIOR
CITIZENS LAW CENTER

Mr. Chairman and Members of the Committee:

My name is Burton Fretz and with me is Bruce Fried of the National Senior Citizens Law Center. We appreciate the kind invitation which you have extended to testify before the Subcommittee on the special legal problems of the elderly in America.

The National Senior Citizens Law Center is a non-profit corporation under the laws of California which has provided a national focus for the legal problems of the elderly poor since its formation in 1972. The Center maintains a staff of ten professionals located in its two offices in Los Angeles and Washington, D.C.

Our major purpose is the collection of expertise in areas of the law that frequently affect the elderly poor. We make that expertise available to local representatives of older persons on a daily basis. In the past 12 months, for example, the NSCLC staff has assisted in an estimated 3,000 individual cases. Areas of expertise include guardianships, protective services, Medicare and Medicaid, Social Security retirement and disability benefits, Supplemental Security Income, public and private pensions, rights of nursing home residents and age discrimination. The daily contact between Center staff and local representatives for the elderly, including representatives of legal assistance components funded under Title IIIB of the Older Americans Act, places us in a peculiarly advantageous position to comment on the effectiveness of the program.

It is a sad reminder to us all that older persons in this country are disproportionately concentrated at the lower end of the income scale. Indeed, fully one-quarter of older Americans, or about 6 million people, have income so low to be classified as poor or near-poor. The median income of persons above the age of 65 is less than half that for persons under the age of 65. In the last full reporting year, 1979, six of seven single elderly individuals 65 and older had an income of less than \$10,000. During that same period, the percentage of older people in poverty increased, after having been stable for several years.

The Legal Needs of the Elderly. The low-income status of many older persons, coupled with the complexity of laws, rules and procedures which affect so many aspects of an older person's life, results in a serious continuing need for legal help by many older Americans. The legal needs of older Americans appear in several contexts.

First, older people encounter traditional legal problems similar to those which other individuals throughout society encounter. These include matters relating to landlord-tenant

relations, home ownership, consumer contracts, traffic accidents, tax questions, and insurance policies. Older persons, like everyone else, often need legal help on such issues. Indeed, "routine" cases, including family law, housing and consumer matters, make up over half of all cases involving low-income persons over the age of 60.

Older people of limited means depend on highly complex federal/state programs for income security and adequate health care. As health and income security programs have evolved, so too, new legal issues and problems have arisen. The Social Security programs (OASDI, SSDI and SSI) and ERISA are among the federal programs having an objective of income security for older Americans. Health security is the objective of Medicare and Medicaid programs. These programs and their bureaucracies are among the most complex and confusing in our society. Access to legal assistance is essential in assuring that the elderly receive the benefits to which they are entitled.

Third, many problems which older persons face are not immediately recognized as legal in nature. An example is the frail older person, confined to a nursing home, who is suddenly subjected to the trauma of being transferred from one facility to another, or who is denied access to a nursing home without adequate explanation. Only through legal counseling might the person discover that he or she has been victimized by an institution's discrimination against Medicaid recipients in favor of private paying patients, and that such discrimination may be legally remediable.

Meeting the Legal Needs of Older Persons. In the general population there are at least 14 attorneys for every 10,000 persons. If the same proportion were applied to the limited income elderly population in the country, the population would require more than 8,000 lawyers alone to service their individual legal needs. In fact, of course, the number of such lawyers actually available to low-income elderly is a negligible fraction of such a figure.

Since 1981, the resources available to address the unmet legal needs of older people, and poor people generally, have eroded. With respect to the Legal Services Corporation, Congress has reduced funding by 25 percent, a reduction of \$80 million. The consequence of this funding reduction was the loss of 1,773 attorneys and the closing of more than 300 local offices.

In human terms, the reduction in LSC funding resulted in fewer low-income older persons receiving legal aid, notwithstanding the fact that the number of older people served increased as a percentage of all LSC clients. (In FY 1981, 158,990 persons, 60 and over, were served, 12.9 percent of all LSC clients. In FY 1982, 154,751 older persons were served, 14 percent of all LSC clients.) Due to the closing of many local offices, it has become more difficult for many older persons with legal needs to gain access to legal representation.

Similarly, Older Americans Act, Title IIIB funding was cut by four percent between FY 1981 and FY 1982. This overall reduction in Title IIIB funding was ultimately felt by Area Agencies on Aging and by their legal services providers, further limiting the ability to meet the legal needs of older people. In addition to the reduction in available OAA funding, the Administration on Aging substantially decreased its support of and emphasis on the OAA legal services system. AoA, for the first time, allowed states to employ as "Legal Services Developers" persons who were not attorneys, thereby decreasing the level and kinds of support available to local AoA legal service providers. Though AoA has historically provided funds to train legal service providers, no such funding has been provided for this fiscal year. And in other respects, AoA has generally reduced its support for local legal representatives.

The bottom line is that the availability of legal service providers, skilled in addressing the complex legal needs of low-income older Americans, has decreased since 1981. As more and more Americans reach the upper age brackets the recent trend is that those who can not purchase legal counsel will find fewer and fewer legal representatives available to assist them.

The elderly themselves and their representatives clearly recognize the overwhelming need for legal assistance that confronts older Americans. In a comprehensive survey by independent consultants for the Administration on Aging in 1981, two-thirds of Area Agencies on Aging reported that the need for legal services is relatively important or is among the most important of elderly needs. Three out of four state legal services development specialists indicated that elderly needs for legal services was not being met.

Equally significant are the responses of leaders of local senior organizations. An overwhelming majority of these leaders (90 percent) indicated that legal services is most or relatively important among all social services available to older persons. Two-thirds of these leaders indicated that only a part of that need was currently being addressed in their state.

Delegates to the White House Conference on Aging (WHCOA) in November of 1981 strongly endorsed the need to provide legal assistance to the elderly. At least six of the 14 conference committees passed resolutions calling for continued efforts at all levels to meet the legal needs of older people. Those resolutions specifically called for the continuation of Legal Services Corporation delivery and for the continuation of legal services as a mandated funding priority under the Older Americans Act.

WHCOA Recommendation No. 334 specifically provided:

Legal services must be provided for older Americans delivered at affordable prices, meeting high standards of quality, and representing diversified services from both private and public bars. The Older Americans Act should be amended to define legal services as a mandated priority in the provision of social services to the older Americans. Continue provision of legal services through the Legal Services Corporation, as well as fostering the active involvement of the private bar, law schools and paralegals in serving the elderly. (Emphasis added) (sic)

The Importance of Title IIIB. Retention in Title IIIB of the Older Americans Act of the mandate for legal services is essential to meet the existing needs of older people of limited income. In 1978 Congress reaffirmed legal services as a priority service under the Act and specified that at least 50 percent of funds under Title IIIB of the Act must be spent on priority services and that "some funds" must be spent on each priority service, including legal services. In 1981 Congress required that "an adequate proportion" (in place of "at least 50 percent") of area funds be spent on priority services, and retained the mandate for legal services funding, noting in the conference report that funding that is de minimus was not to be allowed. Congress' foresight has been confirmed. Under the statutory priority first included in 1978, the number of older Americans receiving legal services under the Act doubled by 1981.

Some may argue that the mere existence of Legal Services Corporation-funded programs nationwide is enough to assure adequate legal representation for older persons of limited means. Such an argument is, simply wrong. Many older persons have income above legal services eligibility standards -- 125 percent of the Federal poverty guideline -- but income which is below the levels which can bear customary fees charged by lawyers in private practice. Moreover, the Legal Services Corporation is not currently funded to provide even minimum access to legal assistance to poor persons generally. "Minimum access" as the Congress has defined it, is a modest goal of two attorneys per 10,000 poor persons. In most states there are now but one, rather than two attorneys, per 10,000 poor persons under current LSC funding. Over one of three LSC-funded programs is staffed at levels of less than half of this minimum access standard.

In addition, many older persons face specific barriers to service such as the lack of transportation, physical handicaps, fear of crime, and difficulty in communication which often require special outreach efforts, a problem exacerbated by the forced closing of hundreds of local offices.

Legal representation on a superficial level may seem less important to older persons than common necessities such as food, shelter or medicine. In the real world, however, legal representation for the elderly poor is far more than mere access to a lawyer. As legal services providers throughout the country have demonstrated, access to legal assistance means access to food, shelter and medicine. Funding under Title IIIB of the Older Americans Act has done much to make legal assistance available to people who need it most. The system clearly must be maintained and strengthened.

We thank the Committee for making available this opportunity to share observations on legal problems of older persons.

Senator GRASSLEY. Mr. Weiss, could you elaborate on the circumstances surrounding your loss of Administration on Aging funding?

Mr. WEISS. Yes. The Administration on Aging originally funded a number of projects on a type of, I guess, experimental basis. At the end of that period—we were one of the projects so funded—they asked that we submit an application for a regional type of backup center that would be involved with what they called an aging network.

We submitted a proposal, along with a large number of letters from various community groups, et cetera, and law schools. We are turned down with no apparent reason. I made a lot of inquiries. A lot of people made inquiries. We never got a satisfactory answer.

Once, after about a year, I believe—I am not sure of the exact amount of time—I went to a debriefing where they showed me the summary of how they had arrived at some sort of grades, none of which in my opinion made much sense. They said to submit another application. We submitted that, and have been unable even through the Freedom of Information Act to get any more information as to what happened.

It is now approaching ancient history, but I would say my experience with them was that we did not, in my opinion, receive an appropriate consideration or evaluation, and the rejection I think did not make sense and was never properly explained or justified. I would say the whole experience left me with a rather negative attitude toward the Administration on Aging's handling all of these grant proposals and the way in which they fund such projects.

Senator GRASSLEY. Did you have any reason to feel it was politically motivated?

Mr. WEISS. That was the impression I received when I talked to the people. I was informed that it had become a politically hot issue around the agency, and that is the impression I also received from Congressmen and Senators who made inquiry as to why, after running the program with universal or I would say near-universal acclaim in the New York and New Jersey area, it was suddenly, completely terminated with no substitute real funding in that area, though there was a grant given to cover the New York-New Jersey area where we had been.

Therefore, I got the distinct impression that the decision wasn't made in an objective way, on the merits. One point: I retained an attorney friend of mine here in Washington to pursue it and he has had trouble getting information from the Administration on Aging as to what happened. I don't know what the status of that is now because he did it on a pro bono basis and hasn't had a chance to pursue it as much as, perhaps, it could be.

Senator GRASSLEY. You suspect that there was a political litmus test of some sort or another?

Mr. WEISS. I am confident it wasn't done on the merits, and I suspect it was something that happened that distorted the objectivity of the evaluations and the dispensing of funds at that time.

Senator GRASSLEY. As you may know, this morning there was strong evidence presented at the hearings we had on the Legal Services Corp., that national and State support centers, technical assistance and training were favored by senior Legal Services Corp. staff when it came time for cutbacks. This was because of the

greater political clout these programs provided. Does your experience bear out the fact that these programs are more politically motivated and less dedicated to providing direct services to clients than programs in the field?

Mr. WEISS. I cannot possibly generalize about all the support centers, but the ones with which we worked have done excellent work in our opinion and have been dedicated to making sure that the clients who are represented by legal services lawyers get adequate representation. We have had extensive dealings with Mr. Fretz's office and it has all been uniformly excellent.

I do not know, and this is the first time I heard there was some sort of favoritism in the funding of these programs, and the idea they had political clout. I believe that what is needed is careful evaluation of legal services offices throughout the country, both the neighborhood offices and the support programs. I think some could use considerable improvement; I think some do a commendable job.

Senator GRASSLEY. Do you agree that the goal of legal services should be to provide direct client services to as many elderly poor individuals as possible and as effectively as possible, as opposed to representing organizations or groups or seeking political goals?

Mr. WEISS. Well, to distinguish the various subjects, I wouldn't say it is only elderly; I would say it is the eligible clients. I think the elderly are—as Mr. Fretz has indicated, and everybody else has—are particularly enmeshed in legal problems and rapidly becoming poor, if they are not poor already when they become elderly. Therefore, there is a great need for that and I think there is a great need for direct representation.

I don't think any lawyer should ever have his own views interfere with representation of a client, and I think that you now have some lawyers who represent the elderly who do their very best for them. Therefore, I would say yes, that is a primary underlying goal.

Now there may be times when, in the representation of clients, the assistance of groups is helpful. I mean if you have, for example, a dispute with a landlord, it often is useful to use the housing groups and organize the tenants to protect the rights of the individual tenants. There are times when the involvement of other groups is helpful for your direct representation, so I would say they are not incompatible. However, the primary job of legal services is to provide lawyers who do their best to represent their clients in their legal matters.

Senator GRASSLEY. I had some more questions I wanted to ask you but we are not going to have time, so I am going to submit some in writing to each of you. However, I do have a few more than I want to ask orally. Therefore, if you could respond to some questions that we will give to you in writing, I would appreciate it.

Mr. Moore, your program concentrates on providing direct services for older Americans. At least, providing direct services is your goal—is that right?

Mr. MOORE. Yes, that is our goal, but we do it both on a local and a national level.

Senator GRASSLEY. Do you agree that that should be the goal of legal services?

Mr. MOORE. Direct representation?

Senator GRASSLEY. Yes.

Mr. MOORE. Well, I think that it has to be a total representation. I think the same kind of representation is required that private attorneys give to their clients. Often, and certainly this is the case with existing legal services programs, direct representation involves hundreds and hundreds of small cases. But at times efficiency dictates that a problem that affects a lot of people be addressed in one case. I think the courts appreciate the efficiencies that this achieves.

I think that some other issues have to be addressed by other techniques. For instance, I am a great believer in trying to avoid problems before they happen. Therefore, I believe that legal services and title III programs should get out into the community and speak with people, tell them their rights, develop networks and relationships with social service agencies, community groups, and so on to educate them about their legal rights and help them achieve those rights. Therefore, there are a lot of different ways to achieve the goal of representation.

I would like to address something Mr. Weiss referred to. In all fairness to the Administration on Aging, I don't want there to be an impression that the competition he referred to, was totally politically motivated. I and many others were involved in that process although we were in a different region of the country than Mr. Weiss. This requires some historical background. Prior to the proposal Mr. Weiss referred to, the Administration on Aging had funded national activities. They decided to change this to a regional focus, and they wanted to establish a center in each region to perform five very different activities.

They issued a competitive request for proposals. I know that Mr. Weiss' program is excellent and he is an excellent attorney. However the product sought by that request for proposal was different than they funded in the past. I felt that generally, the proposal review process was satisfactory, at least that was the case in our region. And that was the impression I got from other regions. There may have been a peculiar situation in Mr. Weiss' region but I don't think the process, in general, was politically motivated.

Senator GRASSLEY. Mr. Fretz, does your organization participate in lobbying activities?

Mr. FRETZ. I would say only to the fairly limited extent that it is permitted by operative law. When we use a word like "lobbying" it is important to keep in mind just what we mean. Lobbying to many of us can conjure up notions of fairly broad-based, grassroots lobbying in terms of mass mailings intended to influence the passage or the defeat of pending legislation. That, of course, is an activity which is not within the range of permissible activities under our operative statute.

The continuing resolution passed by Congress last, Public Law 97-377, does permit informational responses on request to Members of Congress or legislatures, and consistent with our resources we have attempted to be responsive where we have received those requests.

Senator GRASSLEY. Well, let me read to you from an evaluation report on your organization written by Alan Houseman of the legal services staff, which was dated November 1981. I quote: "The

NSCLC was created in 1972 as a legal services support center with a primary purpose of enabling older Americans to live their lives in dignity and free from poverty. NSCLC pursues this goal by engaging in litigation and legislative and administrative advocacy." Then, skipping just a little bit, it says: "During the last several years NSCLC has shifted resources toward more legislative and administrative representation."

After reading that, let me ask you both a more specific question: Was your organization part of a nationwide coalition formed in late 1980 to lobby for the preservation of the Legal Services Corporation?

Mr. FRETZ. I think it would be helpful to have a little clarification. I guess the quick answer, Senator, is no, I am not aware of the existence of a coalition formed to lobby for the existence of the Legal Services Corporation, other than the independent Coalition for Legal Services, a separate organization.

Senator GRASSLEY. Well, I would like to read to you from a document found in the files of the Legal Services Corporation by committee staff. It is from Alan Houseman of the Corporation staff. It is dated November 26, 1980, and it is entitled "Initial Tasks To Be Done on Survival." It lists a series of coalition tasks. Item 11 reads:

Communications network: getting messages out and back; improving existing external network; using regional office capabilities:

It refers to them as our own capabilities:

Planning long-term external network, independent of Legal Services Corporation. Regional meetings soon. Must have management system for this. Ties to local base built: bar, politics, clients. Private bar at regional meetings. Legislative info. Building, diversifying local base.

Among the names assigned to carry out these tasks is Burt Fretz. Did you engage in those activities?

Mr. FRETZ. I would have to refresh myself by looking at that memorandum. I will try to respond to your question, Senator. I would preface this by saying that we came prepared to respond to the committee's invitation to discuss the nationwide legal problems of the elderly. There was no indication that there were to be specific questions asked about particular activities of members of the center, so that I will have to respond rather cold to the question. Within the—

Senator GRASSLEY. Well, let me respond to that before you finish answering. As you know, the manner in which the resources of the Legal Services Corporation are used, especially whether or not any of them are used for lobbying or for any sort of activity beyond just legal representation of the poor, has a great deal to do with whether or not the people who are needing legal representation are getting it. Therefore, I guess I would not accept the basis for your assertion. The question I am asking is, if there is a diversion of resources that ought to go to legal resources to represent the poor, I think it is an important part of the whole hearing that we are having here, particularly if you think of it in conjunction with what we learned this morning.

Go ahead.

Mr. FRETZ. Nonetheless, Senator, that was not indicated to be within the realm of inquiry, either in the letter which we received

from the committee or in the telephone conversations which we had. I would reemphasize that we will be happy to try to respond directly to any questions, no matter how particular.

The memo to which the Chair refers, I believe the Chair said, was dated November 1980. Frankly, I am a little at a loss as to why or how my name is connected with the memorandum. I did not come to the National Senior Citizens Law Center until January 1981. It may have been in anticipation of this that my name was included. As a result, I have no specific recollection of the matters contained therein.

With respect generally to the topic of the memorandum, I glean it from the Senator's paraphrasing, the topic had to do with possible future threats to the continued structure of the Legal Services Corporation following 1980. Certainly we have seen—whether one would characterize the discussion as threats or the discussion as suggestions for alternatives—we have seen a great deal of discussion since that time about alternative forms of legal services delivery and suggestions for abolition of some existing forms of legal services delivery.

Where consistent with operative statutes, certainly there has been some information provided publicly about developments pursuant to those discussions, particularly with our Washington weekly newsletter. However, I believe that has been carried out consistent with our obligations as contractors with the corporation or with any other contracting entity.

Senator GRASSLEY. I have a second document. It consists of notes from a regional directors' meeting held March 9, 1982, found in the files of Bucky Askew, who was Assistant Director of Field Services at LSC. Under the hearing "Coalition," is the following: "Confirmation," and in brackets it has Burt Fretz. It then says: "Looking into backgrounds of all nominees. Focused on five people—Olson, Parris, Sandstrom, Harvey, and Stubbs." Can you tell me what the purpose of that background check might have been?

Mr. FRETZ. I am, again, a bit at a loss as to the nature of the memorandum.

Senator GRASSLEY. Well, then I guess—

Mr. FRETZ. Apparently this was not a memorandum either addressed to me or written by me, and I am not—

Senator GRASSLEY [continuing]. Well, we will provide the document for you.

Mr. FRETZ. That would be fine, and I would be happy to respond to a specific question.

Senator GRASSLEY. Thank you. Do you consider it proper for staff members of an organization funded by the Legal Services Corporation to participate in coalition-building and lobbying activities?

Mr. FRETZ. I believe that I have already addressed the Senator's question with respect to lobbying activities.

Senator GRASSLEY. Fine.

Mr. FRETZ. As to coalition-building, there seems to be a pretty fine line between satisfaction of obligations of legal services recipients under the authorizing statute, to engage in community education and otherwise to advise clients, including client groups, of their rights or responsibilities under statutes and regulations affecting them. To that extent, community education is proper and

what may be perceived as coalition-building by some may in fact constitute no more than a proper discharge of obligations under the act.

Senator GRASSLEY. Well, I think if you give in writing the answer to the question I had, it would take care of another followup question I had on one of the points that we raised. I guess I would just simply say that section 1007(a)(6) requires attorneys engaged in legal assistance activities supported by the act to refrain from any political activity, and I guess what we have to do is just remind each person of that.

To both Mr. Fretz and Mr. Fried, would your organization cooperate with an investigation by this committee to determine the extent to which your organization participated in lobbying and coalition-building efforts between November 1980 and the beginning of this year? Also, would you cooperate with such an investigation by the Legal Services Corporation's staff?

Mr. FRETZ. Unequivocally so.

Senator GRASSLEY. Fine. I appreciate that very much, and I want to make clear that I am not following a line of inquiry for any purpose other than just to emphasize the real mission of the Legal Services Corporation which obviously is to help with legal advice for those who are in need. Particularly in the case of this committee, as we have demonstrated, the elderly have a significant need because a large number of them fall in the category of those below the poverty guidelines.

Well, I want to thank you for your testimony, your answering questions, and I want to thank each of you as you follow up on questions that we will submit in writing. Particularly I want to compliment all four of you for the candor that you expressed here at this hearing. This panel has made a very beneficial contribution. Thank you all very much.

Mr. WEISS. Thank you.

[Questions and responses follow:]

QUESTIONS FOR JONATHAN WEISS FROM SENATOR CHARLES GRASSLEY

1. HOW CAN LEGAL SERVICES BE RESTRUCTURED OR IMPROVED TO PROVIDE DIRECT CLIENT SERVICES TO THE ELDERLY POOR?
2. SHOULD SUPPORT CENTERS BE ELIMINATED OR THEIR FUNCTIONS BE REABSORBED BY THE CORPORATION?

1) Legal services programs in urban areas should be required to establish circuit riders to various senior citizen centers:- available for a couple of hours once a week to meet with the senior citizens there. In rural areas they should be required to set up a telephone hotline, widely advertised, for senior citizens. The Corporation should distribute interview checklists for the lawyers to interview elderly clients and have specific training materials for attorneys handling elderly clients. Each program should also be forced to issue periodic reports about how they publicize their availability to the elderly and offer safe and secure access to their services provided in a courteous, knowledgeable way. Evaluations should be conducted with groups which include lawyers who know the problems of the elderly. Neighborhood legal services programs should be evaluated on their effectiveness in handling the legal problems of the elderly. In some situations it may be essential to generate an elderly specialist in an office and sensitivity training should be given to all staff.

2) I would divide support centers into two classes: (1) Those areas where your neighborhood law practitioner should be proficient, i.e. Landlord/Tenant, Welfare, Consumer Sales and Family Court; (2) areas which are important to segments of the poverty community but not encountered in the normal neighborhood practice. These include health, Indians in urban areas, education, etc. For the first category the function should be to disseminate all materials to keep the neighborhood lawyer up to date on the current status and content of the law. The support centers now in place should be modified, at least, to provide this function.

For the second category the support centers should not only distribute materials, but engage in training of lawyers on how to spot the issues in the area, how to interview in the area and provide them with annotated correspondence, annotated pleadings, and brief banks.

Since the support centers do not always appear either to fulfill these functions and only these functions, and, in my opinion, they vary in quality and worth, I think it is important to have an evaluation whose objectivity cannot be questioned by the adherents or detractors of the support system which operates under a clear statement of the criteria utilized in the evaluation. After an evaluation, the ultimate question you address would be answered completely.

QUESTIONS FOR WAYNE MOORE FROM SENATOR CHARLES GRASSLEY

1. WHAT PERCENT OF YOUR FUNDING COMES FROM THE LEGAL SERVICES CORPORATION? WHAT PERCENTAGE FROM THE ADMINISTRATION ON AGING?
2. IN YOUR EXPERIENCE, ARE THESE PROGRAMS PROVIDING ADEQUATE LEGAL SERVICES TO OLDER AMERICANS?
3. HOW DO YOU FEEL THESE PROGRAMS CAN BE IMPROVED?

ANSWERS FROM WAYNE MOORE

1. What percent of your funding comes from the Legal Services Corporation? What percentage from the Administration on Aging?

Legal Services Corporation	-	14%
Administration on Aging	-	9%
D.C. Office on Aging	-	23%
(State Agency)		46%

2. In your experience, are these programs providing adequate legal services to older Americans?

Generally, yes. Projects funded by the Legal Services Corporation have made dramatic progress in the past four years in their representation of older people. In 1978, only 6.5% of their clients were older Americans compared to about 14% in 1982. Furthermore, LSC funded projects have always specialized in the areas of law that most affect low income older people, namely: Social Security, Medicaid, SSI, food stamps, landlord-tenant, certain consumer issues and public housing. In recent years these programs have begun to develop expertise in age discrimination, protective services law, nursing home law and Medicare.

There has been a dramatic growth in Title III funded projects as well. In FY'77 only about 4 million in Title III dollars were spent on legal services; in FY'82 this figure was 13 million. There is still room for improvement. Ten states spend less than 3% of their Title III B money on legal services; 22 states spend less than 5%. This is far less than the states spend on the other priority services mandated by the Older Americans Act. In recent years, the Administration on Aging has substantially withdrawn their funding for the national support of legal services. In FY'80 nearly 2 million went to national legal services organizations. In FY'83 this was cut to \$150,000. This 92.5% reduction in funding is far greater than the 59% cutback Title III funds over the same period. However Congress has just affirmed their belief in this support by mandating that AoA spend 5 million on legal services support including more than two million for National Legal Services Organizations.

3. How do you feel these programs can be improved?

I feel that these programs can be improved in several ways. First some Area Agencies have used their limited

funds to create new legal services entities or fund entities that have not provided legal services to low income people in the past. This is wasteful and duplicative. Too much of this money is spent on the overhead costs indigenous to the operation of a new and separate organization. Furthermore a new project is less efficient until the requisite expertise and experience has been developed. The money would be better spent by using it to leverage the resources of existing programs, primarily existing legal services or legal aid programs. When existing legal services programs have been funded, which fortunately has been the situation in two-thirds of the cases, needless overhead has been avoided and greater resources have been leveraged in the form of cash matches by the programs.

Some existing legal services projects need to make changes as well. Many existing providers are unwilling to involve other potential resources in their service delivery. For instance some LSC funded projects are reluctant to draw upon the pro bono and other resources of the private bar. Some do not coordinate with local community organizations which could assist with outreach and referral. Finally most do not draw upon the available volunteer resources of older people who can be trained as paralegals.

More self-help methods must be implemented so that older people can learn to handle some of the simpler legal matters themselves. Finally LSC funded programs need to do more outreach as older people are often reluctant or unable to find legal help on their own, especially when they do not know the people who operate the local legal program.

QUESTIONS FOR BURTON FRETZ FROM SENATOR CHARLES GRASSLEY

1. AS I INDICATED AT THE HEARING, THE FIRST DOCUMENT SEEMS TO INDICATE THAT N.S.C.L.C. DEVOTES A SIGNIFICANT AMOUNT OF ITS RESOURCES TO LEGISLATIVE ADVOCACY. WHILE IT IS TRUE THAT THE EVALUATION REPORT RECITES THAT THOSE CONTACTS ARE IN RESPONSE TO LEGISLATIVE REQUESTS, THERE ARE A NUMBER OF REFERENCES WHICH SEEM TO EXCEED THE SCOPE OF ANY POSSIBLE SUCH REQUEST. IN FACT, THE DOCUMENT SEEMS TO INDICATE A POLICY OF CONTINUOUS LEGISLATIVE INVOLVEMENT WHICH COULD NOT BE THE SUBJECT OF A LEGISLATIVE REQUEST. COULD YOU EXPLAIN YOUR COMPLIANCE POLICY WITH RESPECT TO LEGISLATIVE ADVOCACY?
2. THE SECOND AND THIRD DOCUMENTS SEEM TO INDICATE THAT YOU PERSONALLY PARTICIPATED IN THE FOLLOWING ACTIVITIES: a. A WIDESPREAD COALITION TO LOBBY FOR THE PRESERVATION OF LEGAL SERVICES (ALAN HOUSEMAN'S MEMO ENTITLED "INITIAL TASKS TO BE DONE FOR SURVIVAL"); b. ENGAGED IN A BACKGROUND CHECK CONCERNING ON PRESIDENT REAGAN'S MOST CONSERVATIVE NOMINEES (BUCKY ASKEW'S NOTES FROM A REGIONAL DIRECTOR'S MEETING MARCH 9). DID YOU PARTICIPATE IN THESE ACTIVITIES, AND WERE YOU OUTSIDE THE ACT'S RESTRICTIONS IN DOING SO? EVEN IF YOU WERE LITERALLY WITHIN THE ACT, DO YOU FEEL THAT THESE ACTIONS WERE IN ANY WAY IMPROPER?
3. WHAT PERCENTAGE OF YOUR FUNDING COMES FROM LEGAL SERVICES CORPORATION?
4. CAN YOU LIST FOR THE COMMITTEE THE GROUPS OR ORGANIZATIONS YOUR CENTER REPRESENTS DIRECTLY AS CLIENTS?
5. ALTHOUGH PAST LEGAL SERVICES CORPORATION STAFFS HAVE APPROVED THE REPRESENTATION OF GROUPS AND ORGANIZATIONS WHICH PARTICIPATE IN ADVOCACY FOR THE ELDERLY POOR, DO YOU FEEL THAT CONGRESS INTENDED THAT SORT OF EXPENDITURE OF FUNDS WHEN IT SET UP THE LEGAL SERVICES CORPORATION?

ANSWERS FROM BURTON FRETZ

1. You ask whether the "legislative involvement" described in an evaluation report of the Center dated June 18 and July 8, 1981 exceeds mere responses to legislative requests and thus needs an explanation of our compliance policy with respect to legislative advocacy.

Section 1007(a)(5) of the Legal Services Act, the operative statute in 1981, permits legislative representation in three circumstances: (1) on request of a legislative body or member, (2) on behalf of clients, or (3) on measures directly affecting recipients of the Corporation. It is only the Continuing Resolution for FY 1983, P.L. 97-377, which limits legislative activity to responses to legislative requests during the 1983 LSC contract year. We have been in compliance with the applicable law in this regard at all times.

You will note that the discussion of legislative representation, beginning at page 11 of the Center's evaluation, focusses on our hiring a full-time legislative coordinator to conduct legislative work. However, that position was abolished late in 1982 because of future restrictions on legislative representation. This fact has been communicated explicitly in writing to the Legal Services Corporation.

Comments from the Chair at the July 12 hearing suggested that all legislative activities are barred by the prohibition on "political activities" under section 1007(a)(6) of the LSC Act. That provision, however, treats "political activities" as partisan office-seeking, and stand entirely apart from the Act's provisions for legislative representation by recipients. This is reflected clearly in the LSC regulations implementing that section and in the legislative history. Conference Report on H.R. 7824, 93rd Cong., 2nd Sess., p. 23.

2. You ask about lobbying activity with respect to two memoranda from the files of LSC.

The first question arises from what is described as an Alan Houseman memo dated November 26, 1980 entitled "Initial Tasks to Be Done for Survival," and which discusses a "communications network." As I indicated at the hearing, I was not hired by the Center until December of 1980 and began as Executive Director in January of 1981. Neither myself nor anyone with the Center became part of a "communications network."

The absence of a "network" must not obscure the existence of the Center's weekly newsletter which, since 1974, has become a preeminent periodical in the aging community. The newsletter provides timely information on developments in the area of law and the aging of which developments affecting the Legal Services Corporation are an important part. This information is conveyed in a professional and objective manner consistent with the Center's obligations under the Act.

The second matter is your suggestion that I "engaged in a background check concentrating on President Reagan's most conservative nominees" referenced in Bucky Askew's notes from a regional directors' meeting of March 9. The question presumably refers to nominees to the LSC Board of Directors. It arises from your interpretation of what appears to be Mr. Askew's interpretation of what appears to be a presentation by another person ("Bari") at a regional directors meeting. Questions based on triple hearsay are precarious and in this case the inference is not correct, as it projects a modest and proper action into an inaccurate extreme.

The Director of a legal services program has an ethical and managerial responsibility to carry out the purposes of the Legal Services Corporation Act. These purposes are reflected in the standards set forth by the Senate in the legislative history that all nominees to the LSC Board of Directors be persons who are committed to a Corporation free from political control, to the role of legal assistance attorneys, and to the underlying principle of the Act. S. 93-495, 93rd Cong., 1st Sess., pp. 9-10. These standards become especially important in light of the Reagan effort to abolish the LSC completely.

The location of the Center's office in Los Angeles exposed me to information from other programs regarding LSC nominees from California. The information of greatest concern, and which I passed along, involved serious conflicts of interest posed by the nomination to the Board of Mark Sandstrom in 1982. This information showed that Mr. Sandstrom held employment in a business involved in litigation adverse to many low-income persons in Southern California, including low-income elderly persons and legal services clients. Mr. Sandstrom withdrew his candidacy for the Board after this information became public.

You should note that section 1007(a)(5) of the Act refers to limitations to influence the passage or defeat of any legislation... Confirmation activity falls outside this definition. Moreover, even if confirmation activity were considered "legislation," which it is not, the Act clearly anticipates and permits activities which involve a measure directly affecting the recipient or the Corporation pursuant to section 1007(a)(5)(B)(ii).

The provision of quality legal representation to low-income persons in this country is a matter of broad national interest. Any Presidential nomination to the LSC Board will draw widespread public scrutiny from the many Americans who support the reality of equal access to justice. Information bearing on that scrutiny will arise from many quarters, including legal services programs, and where such information reveals a nominee to have interests contrary to those of LSC clients, or otherwise in conflict with the LSC Act, such information must be made public.

3. You ask what percentage of the Center's funding comes from the Legal Services Corporation. Approximately 83 percent of the Center's 1983 funding comes from LSC.

4. You ask for a list of the groups or organizations which the Center represents directly as clients. I am including a list of client organizations represented in litigation as reflected in the Center's activity report for the six-month period ending March 31, 1983:

Coalition of Senior Adults, Inc., Tampa, Florida

Massachusetts Association of Older Americans,
Boston, Massachusetts

Gray Panthers, Philadelphia, Pennsylvania

Action Alliance of Senior Citizens, Philadelphia,
Pennsylvania

Regulations of the Legal Services Corporation, promulgated in 1978, provide exclusively for representation to a group or association under defined eligibility standards. Title 45 C.F.R. 1611.5(c).

5. You ask additionally whether "Congress intended that sort of expenditure of funds when it set up the Legal Services Corporation." The legislative history of the original Act specifies this intention. The Report of the House Committee on Education and Labor, H.R. 93-247, 93rd Cong., 1st Sess., p. 8, calls on the Corporation to establish eligibility standards for both "persons and groups." The Report of the Senate Committee on Labor and Public Welfare anticipates eligibility criteria for a "person or group of persons." S. 93-495, 93rd Cong., 1st Sess., p. 14-15. LSC regulations have always contained guidelines on group eligibility. 45 C.F.R. 1611.5(c).

If you will permit an observation, it seems that the Subcommittee had to rely rather heavily on a relatively new and impermanent staff at the LSC for background information in preparation for the July 13 hearings. If so, that information appears to rest on some critical misunderstandings of the Act, the Continuing Resolution, pertinent legislative history, and their combined effects on program activities. These misunderstandings are reflected in confusion over "political" and "legislative" activity, over legislative activity permitted before 1983 and during 1983, over "confirmation" versus "legislative" activity, and over Congressional expectations of group representation by programs. The Subcommittee may wish to minimize such difficulties in the future by seeking technical assistance informally from other sources and, if asked, the Center will be happy to assist.

Senator GRASSLEY. Our final panel consists of representatives of the private bar who are concerned with legal problems of the elderly. Nancy Coleman chairs the American Bar Association's Special Commission on the Legal Problems of the Elderly. Prof. Daniel Power is the faculty adviser and director of the Drake University Law School Legal Clinic, which serve elderly clients under a title III-B contract.

We are delighted to have you both as our final panel today, and look forward to your remarks as to how the private bar is serving elderly individuals. I would ask you, as I have asked others, to summarize as much as possible. Your full statement will be included in the record, and I would ask that you proceed in the order that I introduced you.

STATEMENT OF NANCY COLEMAN, STAFF DIRECTOR, COMMISSION ON LEGAL PROBLEMS OF THE ELDERLY, AMERICAN BAR ASSOCIATION

Ms. COLEMAN. Thank you, Senator Grassley.

I am Nancy Coleman, and I am representing the American Bar Association's Commission on Legal Problems of the Elderly today. I would like my statement entered into the record and I will try and summarize it as quickly as possible.

The commission was created by the American Bar Association a number of years ago in order to focus attention within the bar on the legal issues affecting the elderly. It began a task force, an interdisciplinary task force, and then as a full commission given a life of 5 years. When created the commission was given by the ABA House of Delegates six substantive areas of the law to look at—or five substantive areas and one delivery area—at the involvement and the provision of legal services by involving the private bar to the elderly. I will come back to that in a moment.

Since its inception, the commission has received grants from a variety of sources—and I think it is important that we talk about this up front—these include the Administration on Aging, as well as from a number of foundations and corporations, as well as from other Government entities.

The commission has looked at, and has been very involved in, the role of the private bar in the delivery of legal services to the elderly. The ABA as a whole with its 300,000-plus members has taken a position, in 1971, to support the Legal Services Corporation. In 1981, with the reauthorization of the Older Americans Act, there was a resolution by the Board of Governors of the American Bar Association to support the need for legal services for the elderly in the Older Americans Act, specifically looking at title III and title IV of the act.

To that end, the ABA as a whole and the commission in specific has looked at the roles in which the private bar might participate. No one today has spoken about one aspect of delivery, so let me just say briefly that the Legal Services Corporation Board 1½ or 2 years ago decided that there should be a 10-percent set-aside—this is with an additional 25-percent cut—to the corporation grantees to involve the private bar in delivery of legal services. The commission and the ABA as a whole have worked around the country,

through three leadership conferences to provide technical assistance to help LSC grantees develop private bar involvement.

Some of the programs have involved pro bono projects. Some of the projects have been continuing legal education projects, and others have been the private bar providing other kinds of assistance such as litigation backup and training. We have also monitored the Older Americans Act, both in 1978 and in 1981, specifically regarding the provisions on legal services. The commission submitted comments on the regulations for the 1978 and 1981 amendments.

I think it is really very important to discuss the requirement in the Older Americans Act that area agencies provide and work with the private bar. In that requirement, although they are required to work with the private bar, they are not required to use any of their funds to provide direct services through the private bar. In essence, a program—an area agency and thus a legal services program—might provide a continuing legal education program; they might in fact provide a community education program where private attorneys go out to senior centers and give talks. They might provide wills; they might provide direct legal services, depending upon what the area agency and the legal services provider have worked out, but it is not a requirement that the funds or the program be a direct delivery program.

I think it is very important—as we have developed expertise around the country and worked with a variety of area agencies and legal service providers—that staff-based legal services programs are essential. The Commission, under a grant that we received from the Administration on Aging, helped to develop private bar involvement programs. That has given us access to the legal services developers and to the title III grantees, a fair amount of contact, and we have worked with grantees to develop a variety of programs. Some involve pamphlets on the legal rights of older people that the bar has done. There are 32-odd State bar committees or the local committees on the elderly which may work with State legal services developers and/or local area agencies on aging to develop projects.

It has been our feeling—and the feeling not just of the Commission—that staff based legal service programs who provide technical assistance to private bar projects are the most effective. Let me give you a few examples of what we think are some of the better programs around the country, and show you the kinds of things that people have done and can do.

In northwest Missouri, in an 18-county area, the title III money and the 10-percent money from the Legal Services Corporation program, have been combined to provide a rural delivery program. Now what happens here is that the senior center as well as the nutrition site directors have been trained by the legal services provider—which in this case is this combination program, a title III-LSC program—to identify people who have legal problems. A phone call is then made to a private attorney, who then represents that person. The attorney, the private attorney, has already had the expertise, then, of the legal services provider and the trained volunteer—in this case the nutrition site director—in identifying what the legal problems are. In fact, the private attorney then has the

resources of the legal services program to help him provide the legal services to the older person. I think that screening and backup are critical issues in the provision of legal services by private attorneys.

The Aetna Life & Casualty program which I describe in more detail in my written testimony is a corporate law department of a major corporation. There, the corporation has made a commitment to providing legal services to older people in the Hartford metropolitan area. It is a unique program. There are no others like it in the country, and there are no other corporations who have made the kind of commitment that Aetna has.

However, Aetna's program is limited. Even though attorneys in that program have release time—that is, up to 10 percent of their time each day or month, whatever cumulatively they might take—that they are allowed to use in order to provide legal services. The general counsel of the corporation has encouraged them to do it. However, with this encouragement, only 100-plus people have been served in the 18 months. Hartford is a much larger area than that. Aetna works in conjunction with the title III-funded legal services, the Legal Services Corporation, and with the Legal Aid Society. Training and the development of manuals was done by Legal Services. Still, Aetna cannot provide and fulfill the need which exists in Hartford.

I think that is a critical issue: The largest program in the country with the most amount of money cannot fulfill the need. In addition, when Legal Services money was cut 25 percent last year, the general counsel of Aetna Life & Casualty understood the real need for legal services in that State and gave \$100,000 out of Aetna's corporate contributions to Legal Services of Connecticut.

Wayne Moore described his program to you a little earlier. There are three or four others like that in the country, perhaps not quite as successful since Wayne's was the first, but in Boston, Mass., and in Los Angeles, Calif., the legal services volunteer lawyers programs also provide legal services to older people through volunteer attorneys. A program in Memphis/Shelby County, Tenn., with a small grant that we were able to give them several years ago, now utilizes 40 percent of the attorneys in the community, in Memphis/Shelby County, who volunteer to serve the elderly on a pro bono basis. Again, it doesn't fulfill the need.

Other statewide programs such as in Arkansas and New Mexico, where the Legal Services Corporation in conjunction with the bar associations and the title III providers have come together to serve the elderly, either on a lawyer referral basis or on a pro bono basis, are just getting off the ground. Each of these programs has had seed money. Each of these programs has been attempting to put together their statewide programs, in New Mexico for nearly 2 years and in Arkansas for well over a year. These projects take a long time in coming.

I think that from both Mr. Moore's description earlier and from part of what Mr. Fretz said earlier, there is a great need for legal services to the elderly population, even with the contributions that the private bar is making, and I think that the contributions are great. We have seen since the Commission's existence, for instance, a myriad of programs throughout the country develop. It is only a

small number, and it does not meet or entirely meet the legal needs of older people.

I hope that as you look in the next year or so at the reauthorization of the Older Americans Act that you will keep this in mind. Private bar efforts to serve the elderly have increased. I think that through our efforts to work with title III providers, the legal services developers in many States, the commission has had an entree that didn't exist prior to that mandated in the Older Americans Act and by the LSC board. I think the expansion of private bar projects and the requirement in the OAA and by LSC go hand in hand.

I thank you, Senator. My written statement will be submitted.
[The prepared statement of Ms. Coleman follows:]

STATEMENT OF NANCY COLEMAN ON BEHALF OF THE AMERICAN BAR ASSOCIATION,
COMMISSION ON LEGAL PROBLEMS OF THE ELDERLY

Mr. Chairman and members of the Committee:

I am Nancy Coleman, Staff Director of the American Bar Association Commission on Legal Problems of the Elderly. I appear here today on behalf of the American Bar Association at the request of our President, Morris Harrell, to present our views on the subject you are considering today, Judicial Access and the Elderly.

In 1977, the then President of the American Bar Association determined to add the concerns of senior citizens to the ABA's roster of public service priorities. He designated a special "task force" to examine the status of legal problems and needs confronting our elderly population, to determine whether indeed the ABA could play a constructive role, and to suggest what structure and broad priorities for an ABA program seemed most promising. With the nation's elderly population rising, and increasingly severe strains on the aged's economic and social status being imposed by inflation, bureaucracy, resource scarcity and benefit program squeezes, this appeared to be a pressing area for public service attention.

The Task Force reported out in mid-1978, affirming the value of an ABA initiative, suggesting that this might be best implemented through an interdisciplinary Commission of the Association and identifying priority areas of concern. The Task Force report was favorably received, and the Board of Governors established a 15-member interdisciplinary Commission on Legal Problems of the Elderly in August, 1978. This initiative brought together an outstanding group of practicing attorneys, legal educators, "elderly law" specialists, and non-lawyer experts on problems of the aging, including gerontologists, federal officials and national organization leaders.

The Commission has established six priority areas: the provision of legal services to the elderly, long term care, age discrimination, Social Security, housing, and simplification of regulations. The Commission seeks to promote the development of legal resources for older persons generally, and in particular to involve the private bar in responding to the needs of the aged. Thus, we have great interest in the ways in which older Americans receive and have access to legal services.

Legal services are important because they help older needy persons — who may often be vulnerable, frail, or with limited mobility — to secure access to other services, and to basic rights and benefits to which they are entitled. The elderly are often confronted by complex, rapidly changing laws and regulations which govern their quest for food, housing, and decent health care. Moreover, they want and deserve to enjoy the benefits for which they have been working and paying taxes all their lives. If they are unfairly excluded from such benefits, they may need a representative who knows the laws, knows how to present problems to the proper person or agency, and knows how to compile the facts, discuss the problem persuasively, and negotiate a solution. Thus, legal assistance is an integral and necessary component of a social service system for needy older Americans. The Final Report of the White House Mini-Conference on Legal Services for the Elderly (January 29-30, 1981) observed:

"Problems of entitlement, procedure, contractual obligation, and simply pushing through the red tape of a bureaucracy, are matters on which legal services can be of great help to the elderly. A legal representative has the skills and knowledge to understand and seek a range of remedies, to secure full access to social services for older Americans.... By reaffirming that an individual does have rights, legal services particularly promote the individual's self-respect and dignity."

Given, then, that legal services are vital in assuring needy older persons their basic rights and full range of other services, how can they best be provided? The ABA submits that a combination of public and private resources, including Title III-B legal programs, the Legal Services Corporation, and the private bar, is the best approach.

The role of the private bar. In the legal arena, about 600,000 attorneys practice in the United States. Only a small fraction work for publicly funded programs. Most are engaged in the private practice of law. Their energies, expertise and influence can be a substantial resource for the aged population.

The ABA Commission on Legal Problems of the Elderly contends that the private bar has considerable potential to enhance legal services to the aged, by supplementing the efforts of existing public programs. Congress recognized this potential in the 1978 Amendments of the Older Americans Act by providing that each area agency on aging "attempt to involve the private bar in legal services activities...including groups within the private bar furnishing services to older individuals on a pro bono and reduced-fee basis."

The Administration on Aging has also recognized the potential role of the private bar by supporting efforts of our Commission on Legal Problems of the Elderly to generate the development of bar-sponsored lawyer referral, pro bono, and community education projects, throughout the nation. State and local bar associations are beginning to respond. Over 28 state and several local bar associations have committees on the elderly, many of which are actively involved in delivery projects. Several statewide referral systems for the elderly are in operation, as well as several state preventive law community education projects for senior citizens. Over a dozen states

have sought to enhance the knowledge of bar members by providing continuing legal education sessions on law and aging. Over 60 local bar projects currently operating or shortly to begin involve volunteer private lawyers, low-fee referral systems, and community education.

However, private bar efforts alone fall far short in providing for the needs of older Americans for legal help. Far too many elderly cannot afford attorneys' fees and not enough private lawyers are available to fill the gap by pro bono work. One reason for this is that private attorneys generally lack expertise and time for becoming skilled in the complex statutory and administrative areas of the law which affect many elderly. Private bar efforts should be integrated into a full legal services delivery system in order to provide private expertise where it is most available -- for instance, in handling wills, estate planning, real estate, family law, and consumer matters. Public attorneys who spend much of their time representing clients with legal problems involving social security, medicare, medicaid, public benefits, and the like, can then devote their efforts to these highly technical fields to which the private bar has limited exposure.

There are numerous areas in which private lawyers provide pro bono work, and the legal problems of the elderly are a relatively small element in the sizeable demands made upon limited time available for pro bono civil legal needs of the poor. Other areas in which lawyers are significantly involved on a pro bono basis include indigent criminal representation, public interest litigation such as civil rights and environmental matters, representation of non-profit organizations, and efforts to improve the administration of justice.

The private bar must work in concert with public legal services programs — both those funded by the Legal Services Corporation and those funded through the Older Americans Act. For instance, in Washington a roster of private attorneys and firms serve the elderly through a publicly funded and staffed pro bono program. In Oregon, several agencies on aging have made money available to legal aid programs to hire pro bono coordinators who match the needs of local elderly with volunteer attorneys. In San Francisco, volunteer attorneys work together with staff attorneys to expand legal services at senior centers. In Hartford, Connecticut attorneys at the Aetna Life and Casualty, Company provide free legal services to the elderly. Although the Aetna staff are given up to 10% of their time to do pro bono work in their first two years of operation fewer than 100 older persons have been served. The Aetna attorneys were trained by legal services attorneys and work in conjunction with the Title III-B funded program. In many localities, legal service attorneys refer elderly persons needing simple wills to a panel of private attorneys who will draft the document on a pro bono or low-fee basis. In some cities, law firms are matched with legal services for the elderly programs to facilitate an exchange of litigation skills and specialized knowledge. Without the publicly-funded staff programs, it is very difficult to match pro bono contributions of services with needy clients and to stimulate additional contributions. Staff support is essential to provide for necessary training and technical assistance in the law and aging field; screen and identify legal problems; follow up to assure consistent service and client satisfaction; make referrals to non-legal resources, and act as a continuing liaison with service providers for the aged; and provide emergency services.

The Legal Services Corporation. Developing and expanding imaginative, cooperative programs involving both public and private attorneys depends on the continuing existence of an effective Legal Services Corporation, with its locally controlled field projects and its support resources. Recent figures show that Legal Services Corporation programs represented close to 160,000 persons over 60 years of age in the twelve-month period ending September 30, 1981; and the national average of Legal Services Corporation programs clientele over 60 years of age is more than 13 percent of total caseload. LSC attorneys have developed expertise in many areas of law affecting the elderly, such as SSI and Medicaid. This can be paired with private attorney experience in property, probate, and estate matters and in consumer and debt problems, as well as with private attorney litigation skills. Invaluable training and back-up assistance are available through the LSC's National Senior Citizens Law Center, National Health Law Project, National Economic Development Law Center, National Housing Law Center, National Consumer Law Center, and National Veterans Legal Services Project. This assistance can benefit all attorneys and paralegals assisting older persons with their legal problems, and increase the quality and quantity of legal representation available to the elderly.

The American Bar Association called for the establishment of an independent Legal Services Corporation in 1971 and has consistently supported the concept of an independent, well-funded corporation since then. In April 1981 then ABA president William Reece Smith, Jr., called together state and local bar leaders from throughout the nation to demonstrate their support for the Corporation's program, and stated:

"In 1965, under the leadership of our then-president, now Justice, Lewis F. Powell, Jr., the American Bar Association and other bar leaders, supported the creation of a federal legal services program. That program has made great strides toward meeting the legal needs of the poor. Corporation-funded local programs handled over 1.5 million cases a year — helping these individuals resolve housing problems, consumer disputes, family law matters and other similar legal problems. Most of these problems tend to be simple routine legal issues but to many of these individuals they are of critical importance in their lives. This is all done at a cost of just over \$10 per poor person, and an administrative overhead rate of less than 3 percent of the Corporation's budget, making this program one of the most cost-effective federal programs.

"In addition, the voluntary efforts of the private bar have continued and increased. And these efforts together with those of the Corporation have for the first time brought this nation close to making a reality of the promise of equal justice for all our citizens. In this way, the Corporation has been a unique and remarkable example of government and the private sector working together to solve society's problems."

The LSC Board initiated a program in late 1981 to have each LSC project set aside ten percent (10%) of its funding to be used for private bar involvement. Joint efforts between local legal services programs and bar associations have led to much greater private bar involvement. It is clear after nearly a year of implementation of the 10% directive that these efforts have fostered more private attorney involvement. Almost all of the efforts depend upon a staff attorney-based program, whether the programs are pro bono or provide minimal reimbursement to the private attorney. The ABA has strongly supported the 10% project by co-sponsoring three national leadership conferences in 1982 with LSC for LSC attorneys and the private bar and by participating in local, state, and national training events on private attorney involvement in the delivery of legal services to the poor.

In addition the ABA has strongly supported the reauthorization of the Legal Services Corporation and supports the notion that a staff-based legal services project is needed to serve the legal needs of the nation's poor. The ABA's commitment can be seen in an effort begun in 1979 to establish a National Pro Bono Activation Project designed to encourage and support high quality, staff based pro bono activities of every segment of the private bar.

Older Americans Act legal services. Congress wisely built on the efforts of the Legal Services Corporation and its predecessors by providing for the development of legal services programs for the elderly through the Older Americans Act. This has enabled attorneys and paralegals to do the kind of substantial, regular outreach needed to surmount the transportation, mobility and communication problems of many elderly; and develop expertise in areas of law specifically affecting the aged, such as Social Security, Medicare, pensions, and age discrimination. Moreover, about one-quarter of all elderly are "near-poor," and live below 125 percent of the poverty level. Many of these elderly have incomes above Legal Service Corporation eligibility standards, yet cannot afford the customary fees charged by private attorneys. Title IIIB programs, focused on those "in greatest social or economic need," have begun to fill this service gap.

Many Title IIIB legal programs work closely with private bar programs. For example, in Sussex County, New Jersey, the Senior Legal Resource Center has initiated a referral component through which private attorneys give free one-half hour consultations and draft low-cost wills. In Missouri, the St. Louis Title III program joined with the Committee on Aging of the Young Lawyers Section of the Bar Association of Metropolitan St. Louis to produce an outstanding, easy-to-read, large type Senior Citizens Handbook concerning

laws and programs affecting senior citizens in the state. In Memphis, Tennessee, the Title III program and the Young Lawyers Section of the bar have developed a pro bono program through which private attorneys volunteer their services to the aged. More than 40% of the bar now participate in this program. As mentioned before, in Hartford, Connecticut the Title III program is providing training and assistance to attorneys in the General Counsel's office of the Aetna Life and Casualty who are giving regular pro bono assistance to senior citizens. The ABA Commission on Legal Problems of the Elderly is seeking to foster such effective private-public sector partnerships throughout the country.

In 1978, Congress designated legal services as one of three priority services under the Older Americans Act, specifying that at least 50% of Title IIIB funds must be spent on priority services, and that "some funds" must be spent on each priority service. This federal directive is a minimal one. It leaves both the nature and level of services to the discretion of the area agency on aging, thus encouraging variety and creativity in funding and programming. In FY 80, about 6% of Title IIIB social services funds at the local level went for legal services. This enabled tens of thousands of older persons to receive legal assistance from approximately 500 specialized legal service projects for the elderly throughout the country. Most of this assistance consists of legal representation and advice to individuals followed by information and referral, outreach, and community education.

In enacting the priority, Congress recognized that area agencies often may have perceived legal services as less important to the elderly than food, shelter, medicine or transportation, which are more immediately visible. Yet legal services are often essential to make food, shelter, medicine, and

transportation available. This Congressional recognition has been effective. The statutory priority has been a crucial catalyst in increasing legal resources for older Americans. Without the priority, it is likely that many areas may terminate or substantially cut back their elderly legal service projects. This, coupled with the loss of or severe cutbacks in LSC programs, will leave a significant number of older Americans substantially without legal services — and without an opportunity to enforce their rights under our legal system.

In April, 1981, our Board of Governors adopted a resolution urging that the Older Americans Act of 1965, as amended, be reauthorized and that it continue to place a high priority on the delivery of legal services to the needy elderly.

The ABA maintains that Congress should continue some form of federal directive which would recognize the significance of legal services, and cause area agencies on aging to closely examine local legal needs and ways to meet them. Congress should also encourage the continuation of the national support center to provide valuable training and technical assistance to the public and private bar, and to the aging network.

In conclusion, legal services enable older needy Americans to secure fundamental rights to which they are entitled. Legal services open doors for the needy elderly to other services. Legal services enhance the independence and dignity of needy older individuals. The ABA maintains that the most effective approach for providing adequate legal representation and advice for needy older persons is through the combined efforts of a continuing Legal Services Corporation, an effective Older Americans Act program, and the private bar.

Senator GRASSLEY. Thank you.
Professor Power?

**STATEMENT OF DANIEL L. POWER, DIRECTOR, DRAKE
UNIVERSITY LAW SCHOOL LEGAL CLINIC**

Mr. POWER. Yes, Senator. Thank you very much. I will try to be as brief as I can, and I must start out by saying I always recall an adage that my dear father gave me. It was simply this: that the head cannot absorb what the seat cannot endure. I know it has been a long day for you and everyone here, so I will be as brief as I possibly can, and I would ask that my prepared statement be entered into the record.

Senator GRASSLEY. It will be.

Mr. POWER. The program of which I speak, Senator, I hope can possibly be a prototype system for the effective and efficient delivery of quality legal services for the elderly. Much has been said and written about the level of competency of attorneys both in the courtroom and outside, by such commentators as the Chief Justice of the United States and many others. Also, much has been said and written that members of the legal profession don't begin to do enough pro bono work for those persons in need of legal services and unable to afford it, such as our elderly, the physically and mentally impaired, and members of ethnic minorities. Still more has been charged that our law schools are not adequately preparing law students to handle the rigors of professional responsibility competently, and that would include serving our elderly citizens.

Because of the interest and action of this committee and others concerning our senior citizens, I suspect much will be said and written in the near future about the substantial and critical need for quality legal services for our cherished elderly citizens. I would like to pose the overriding question, I suspect at this point, to be this: What action can we take to change things and to make a real difference for our elderly citizens?

The type of program of educational action which I am proposing to you today, I respectfully submit, strikes at these four conditions, the core of these four conditions, simultaneously, and does so both in an effective and hopefully economical way. The specific program is a law school clinical program which was developed and is run by the Drake University Law School. It is called the senior citizens legal services program.

The purpose of my remarks today is to share with you the possible use of this program as a prototype, a model that can be used throughout the country. More bang for the buck is an imperative on all of us in these times of economic hardship. The senior citizens legal services program possesses the prospect of effecting quality legal services for the elderly at the least cost.

In getting into this, I would like to briefly comment on clinical programs in law schools, what they are and what their significance is, because that is the vehicle here. The legal clinic component of a law school curriculum is designed to do the same thing for the law student that the medical clinic does for the medical student. No one here would permit a surgeon to perform an operation on himself or herself if that surgeon had not had extensive clinical experi-

ence. The courtroom is to the trial attorney and the general practitioner what the operating room is to the surgeon.

In sum, the main function and purpose of legal clinics can be characterized by the old adage and familiar saying, "It is one thing to load the gun, but it is another thing to actually fire it." That is what clinical legal education does. It attempts to take the law student from pure theory and help them to apply it and then develop proficiency.

The senior citizens legal services program is an advanced-level clinical course of the Drake University Law School which provides quality legal services for the elderly citizens in the eight-county area of central Iowa. All the persons eligible for these legal services are members of groups who have been traditionally under-represented. Obviously, they are elderly citizens under the Older Americans Act. A substantial majority are women. In addition, many from the Polk County area—which encompasses Des Moines, as you know—are also of a minority background. Finally, due to the impairment of failing health, some are also handicapped.

The law students who staff the program, as I said, are advanced-level students. They have distinguished themselves already out of our basic clinical program in client representation and litigation. From an educational perspective, there are four principal objectives in this program.

The first, obviously, is to develop further each student's proficiencies in basic lawyering skills. However, second, it is to inculcate the pro bono component of a lawyer's professional responsibility to assist the disadvantaged and the poor, by requiring the student to contribute a percentage of time over and above that for which compensation can be received in the program. Third is to instill in each student a heightened sense of true self-esteem as a potentially practicing lawyer, and fourth, to educate each student in the developing substantive area of law and the elderly.

There has been much said here today as to what kind of cases are handled, so I will skip that portion, Senator. I would like to say a brief word as to how this has been funded and where we are. In May 1981 the Area Agency on Aging—which is now known as Crossroads of Iowa, Inc., provided the law school with approximately \$8,300 for an experimental 5-month project. That obviously was very successful. We have been in the program now 2 years, and in our current fiscal year the budget for the program is \$44,000; \$24,000 of that is coming from Crossroads of Iowa, Inc., and also \$20,000 from the Polk County Board of Supervisors.

We also have at present an application for a grant from the Office of Education for an additional \$25,000 for this senior citizens program. We don't know yet whether we are going to be funded, but we hope we are. If we are successful, that will give us sufficient money to hire an additional faculty member. It is critical to concentrate on this program.

As I say, it is imperative that we receive and obtain additional outside funding for the program for it to continue. Simply put, clinical legal education is costly, just as medical clinics, because the supervising attorney must be experienced, must be an experienced trial attorney in order to do the job right, and the ratio of law students to faculty members must remain low to assure quality super-

vision. Unless we secure additional nonuniversity funds, we will be forced to close our program down. It is that critical.

Jumping ahead, I would like to make, for the benefit of the Senator and the committee, some general observations from the experience of our program over the 2 years. First and foremost—it is a theme you have heard time and time again today—from our experience the first and most important is that the unmet needs of the elderly are far greater than we ever expected. Since I must maintain the educational focus of our program as opposed to the service aspect, we have to refuse a substantial number of elderly seeking our assistance and at times, Senator, it honestly is depressing. There is a critical need for greater legal assistance for these citizens, citizens who have for so many years carried their civic responsibilities as taxpaying citizens.

Second, we have noticed that one of the biggest obstacles to senior citizens seeking legal services from private attorneys is their fear of the cost. It is a prevailing fear.

Third—and this is a very important point, I think, for the committee—we have heard much talk about pro bono. I respectfully submit that it is unrealistic to think and to expect that the private bar can take up the slack and provide the balance of legal services needed from the pro bono mechanism. The economic reality of the demands of private practice precludes the members of the private bar from having the time to handle any substantial portion of these unmet needs for legal services. Here, Senator, the major culprit is time needed for research. The private bar just doesn't have it.

Fourth, as a group the elderly relate to law students in a surprising fashion. They open up to law students in a manner that I don't think they do to the members of the practicing bar. I think this is due to the fact that probably the law students are at the same age level as their grandchildren, and they can more easily relate to them. It is a beautiful thing to see.

Fifth, the resolution of legal problems of the elderly often alleviates a medical condition. There is a relationship that has surprised us. Worry, as you know, is virtually a rampant condition with our elderly citizens. They worry about everything. We have noticed that resolution of their worry about legal problems, when those are resolved there is a concomitant improvement in their general health condition. One of the major areas is high blood pressure.

There are a few more, but one major one I want to finish with, Senator, is simply this: The longer our program is in existence, we are discovering situations—and these are very disturbing—in which we have uncovered fraudulent practices perpetrated on the elderly. I would like to share with you just one brief example. I had many others, but I will skip those. This will show the type of activity that is being worked upon unsuspecting senior citizens.

One of the finest students I have had come through the program is a student by the name of Dennis Eaton from Atlantic, Iowa. He recently had a client in our Boone County office. She was 78 years old and a widow. She had lived alone for several years. For several months she had been receiving billings from a company in East Orange, N.J., that I will nickname "The Torch." The billings were for a modest amount—cleverly so—under \$10. The face of the bill-

ing slips stated that they were for a sponge mop and other cleaning supplies.

Since our client could not remember having ordered such—and indeed she had not—she ignored the billings. She felt the billings were a mistake and that the company would soon correct its error. She then received a notice from "The Torch" that her debt was being assigned to a collection agency and unless her payment was forthcoming, legal action would be taken.

Dennis requested an itemized statement concerning the time and manner of the sales orders and information about "The Torch" and the collection agency. "The Torch" responded and stated that our client had been "inadvertently billed for some light bulbs"—they didn't even have that fact straight—and her account "had been corrected." The letter from "The Torch" was a mass-produced form letter with Dennis' name and address and our legal clinic typed in.

While we have successfully resolved our client's particular problem, our growing concern is for other elderly people in Iowa and elsewhere who may be routinely paying such companies for bogus bills which they did not owe, especially in light of the nominal amount involved. Obviously we have forwarded this information to the attorney general for the State of Iowa for further action. However, Senator, there are other cases and examples I could give you in that respect.

Finally, one of the major areas, too, that has surprised us is the interest this program has generated among law students about specializing in the area of the elderly and their rights.

In closing I would like to mention this: I have mentioned the conditions earlier that have a strong bearing on providing quality legal services for our senior citizens in the most economical and effective way. My principal recommendation to you members of this Senate committee concerns providing financial means so that law schools throughout the Nation can implement clinical programs similar to Drake's.

By such a course of action, here is what would happen simultaneously: First, concerning the unmet needs of our elderly citizens, by virtue of such a national program a far greater portion of the elderly's needs for quality legal services would be met.

Second, concerning pro bono representation, I am recommending as part of each school's project that law schools in the various States could develop for the private bar research materials on the most frequently occurring legal problems of the elderly. Then in this way pro bono representation by the private bar could be increased substantially.

Third, concerning quality legal education that prepares students for private practice, by instituting this kind of program nationwide you would enable law schools to do for their students what medical schools have done for decades for medical students. What is needed is the economic assistance to reduce the high cost of clinical education.

Fourth, concerning the level of competency of lawyers, law students who have come through these programs are years ahead of law students that don't. They are far more competent and prepared for private practice.

Senator, title IX of the Higher Education Act of 1965 provides the statutory authority for the law school clinical experience program. The maximum authorization level for this program is \$10 million; that much has never been appropriated, obviously. What I am recommending to you members of this Senate committee is to look at this program, the title IX, as a further vehicle to provide at least in part greater representation for our senior citizens.

Title IX already includes clinical programs for the elderly as among the types which can receive funding. With the appropriation level at \$10 million, a greater number of senior citizens legal services programs similar to Drake University's could be funded, along with other types of effective and beneficial clinical programs.

Above all, the primary beneficiaries of such action by Congress would be the persons who most deserve it, in my estimation—our cherished elders who have contributed so much over their many years to the country that they love and their fellow citizens. Your action obviously would also enhance the cause of quality legal education throughout our country and ultimately improve the level of competency in the legal profession. I submit that that would be a delightful example of efficiency and economy.

I must ask you to permit me a personal note: Any lawyer worth his salt and who is true to his professional self wants and seeks to make a difference, to make his or her life truly count as a lawyer—in sum, to be an instrument in the cause of justice, to live and work for a cause bigger than ourselves. I want to personally thank you, as my Senator from Iowa, for having this type of hearing on this subject matter. It delights me to be able to support two of the callings and the causes most true and dear to my heart—legal services for citizens who otherwise would go without them, our elderly citizens, and also quality legal education through clinical programs.

I know the words "honor" and "privilege" are used rather loosely in this town, but I want you to know it is truly an honor and a precious privilege to be here today, to hear what has gone on and to be a part of it. Thank you very much.

[The prepared statement of Mr. Power and responses to questions of Senator Grassley follow:]

PREPARED STATEMENT

of

PROFESSOR DANIEL L. POWER
Director, Drake University Law School
Legal Clinic
Des Moines, Iowa

(This paper constitutes the prepared testimony of the witness to be given on July 12, 1983, before the Senate Committee on Labor and Human Resources on the subject of "Judicial Access and the Elderly".)

DRAKE UNIVERSITY LAW SCHOOL'S SENIOR CITIZENS LEGAL
SERVICES PROGRAM---A PROTOTYPE SYSTEM FOR THE
EFFECTIVE AND EFFICIENT DELIVERY OF QUALITY LEGAL
SERVICES FOR THE ELDERLY.

Introduction.

Much has been said and written about the level of competency of attorneys both in the courtroom and outside by such commentators as the Chief Justice of the United States Supreme Court and many others. Much also has been said and written that the members of the legal profession don't begin to do enough pro bono work for those persons in need of legal services and unable to afford it such as our elderly, the physically and mentally impaired, and members of ethnic minorities. And still more has been charged that our law schools are not adequately preparing law students to handle the rigors of professional responsibility competently.

Because of the interest and action of the members of the

Senate Committee on Labor and Human Resources and others concerning our senior citizens, much will be said and written in the near future about the substantial and critical need for quality legal services for our cherished elderly citizens.

The overriding concern in the minds of the members of this Committee at this point, I suspect, is "What action can we take to change things--and make a real difference for our elderly?"

The program of educational action which this speaker proposes strikes at the core of these four conditions simultaneously--and does so both in an effective and economical way. The specific program is a law school clinical course which is run by the Drake University Law School and is called the Senior Citizens Legal Services Program.

The purpose of my remarks today is to share with those senators present the possible use of this program as a prototype--a model that can be used throughout the country.

"More bang for the buck" is an imperative on all of us in these times of economic hardship. The Senior Citizens Legal Services Program possesses the prospect of effecting quality legal services for the elderly at the least cost.

What the Senior Citizens Legal Services Program Is.

Before describing what the Senior Citizens Legal Ser-

vices Program is, I want to share with you what legal clinics are and what their significance is in legal education in America today.

The legal clinic component of a law school curriculum is designed to do the same thing for the law student that the medical clinic does for the medical student. No one would permit a surgeon to perform an operation on himself or herself if that surgeon had not had extensive clinical experience. The courtroom is to the trial attorney what the operating room is to the surgeon.

In sum, the main function and purpose of legal clinics can be characterized by the old and familiar saying, "It is one thing to load the gun, it is another thing to fire it."

The Senior Citizens Legal Services Program (SCLS) is an advanced-level clinical course of the Drake University Law School which provides quality legal services to the elderly citizens in the eight-county area of Central Iowa. All of the persons eligible for these legal services are members of groups who have been traditionally underrepresented:

- (1) All clients are elderly citizens as defined in the Older Americans Act;
- (2) A substantial majority are women;
- (3) Many from Polk County (encompassing the metropolitan area of Des Moines) are also of a minority background; and
- (4) Due to the impairments of failing health, some are also handicapped.

The law students who staff the program are advanced-level students--they have distinguished themselves in the Basic Client Representation and Litigation Program.

From an educational perspective, the principal educational objectives of the SCLS Program are:

- (1) To develop further each student's proficiency and skills in all aspects of client representation and litigation--interviewing, counselling, case preparation, drafting, office practice and procedure, negotiations and all aspects of effective trial preparation and practice;
- (2) To inculcate the pro bono component of a lawyer's professional responsibility to assist the disadvantaged and the poor by requiring the student to contribute a percentage of time over and above that for which compensation is received;
- (3) To instill in each student a heightened sense of true self-esteem and confidence in his or her professional abilities and performance;
- (4) To educate each student in the developing substantive area of Law and the Elderly.

Typical legal problem areas which the senior citizens constantly encounter and which the clinical students must resolve are:

- (1) entitlement aspects of Social Security, Medicare, and Medicaid;
- (2) some problems connected with real estate;
- (3) extensive areas of consumer law;
- (4) landlord-tenant disputes;
- (5) income tax problems; and
- (6) simple misdemeanors.

Also, questions arise frequently concerning wills and

testamentary dispositions of property. While we do not permit the students to draft wills, we do permit them to analyze a person's potential problem areas (screening) and the client is encouraged to seek the assistance of private counsel.

How The Program Is Funded.

In May 1981, the Area Agency on Aging, which is now known as CrossRoads of Iowa, Inc., provided the Law School with approximately \$8,300 for a 5-month experimental project. The Area Agency on Aging had contracted with two different Legal Aid offices in Central Iowa as the legal services provider during the two preceding years and was not satisfied with either one.

For Fiscal Year 1983-1984, our total appropriated funding is \$44,000--\$24,000 from CrossRoads and \$20,000 from the Polk County Board of Supervisors. We presently have a grant application pending in the Department of Education under the Clinical Legal Education Act program (Title IX of the Higher Education Act) for \$25,000. If we are successful with the Federal grant application, we will be able to hire an additional clinical faculty member to concentrate his or her efforts on the elderly program.

It is imperative that we obtain additional outside funding for the program for it to continue. Clinical legal education is

costly, just as medical clinics, because the supervising attorneys must be experienced trial attorneys in order to do the job right and the ratio of law students to faculty member must remain low to insure quality supervision. Unless we secure additional non-University funds, we will be forced to close our program down.

General Observations About The Need For Legal Services For The Elderly And The Drake Program.

Just from the limited 2-year period in which the Drake Senior Citizens Legal Services Program has been in operation certain observations and conclusions have become obvious.

First, the unmet needs of the elderly are far greater than we had ever expected. Since I must maintain the educational focus in this program as opposed to the service aspect, we must refuse a substantial number of the elderly seeking our assistance. At times, it is depressing. There is a critical need for greater legal assistance for these citizens who have for so many years carried their civic responsibilities as tax-paying citizens.

Second, a great majority of those not seeking the assistance of private counsel act out of a fear that the cost of legal services will be excessively high and that they "well might lose everything."

Third, it is unrealistic to think and to expect that the private bar can "take up the slack" and provide the balance of legal services needed by the pro bone mechanism. The economic reality of the demands of private practice preclude the private bar attorneys from having the time to handle any substantial portion of the unmet needs for legal services. The major culprit is the time needed for research.

Fourth, as a group, the elderly relate to the law students very readily. This enables the law student to inculcate the element of trust that is indispensable in the professional relationship of attorney and client. I suspect this readiness to relate on the part of the elderly is due to the fact that the law student is at the same age level as the client's grandchildren. The clients tend to think of the law student as a person like their own grandchild.

Fifth, the resolution of legal problems of the elderly often alleviates medical problems or conditions. Worry is a virtually rampant condition among the elderly. Excessive worry affects their physical health--e.g., heightened blood pressure and all its consequences. We have seen many cases in which a client worried about the sale of a house. Assisting the client in resolving the problem removes the source of the anxiety and alleviates the medical condition of excessive tension and high blood pressure.

Sixth, the longer our program is in existence we are dis-

covering situations in which we have uncovered fraudulent practices perpetrated on the elderly. One brief example will show you the type of activity that is being worked upon unsuspecting senior citizens. One of the finest students I have seen come through the program, Dennis Eaton, had a client in our Boone County office who is 78 years old and a widow. She has lived alone for several years. For several months, our client had been receiving billings from a company in East Orange, New Jersey, that I will nickname "The Torch." The billings were for a modest amount--under \$10. The face of the billing slips stated that they were for a sponge mop and other cleaning supplies. Since our client could not remember having ordered such items, she ignored the billings. She felt the billings were a mistake and that the company would soon correct it. She then received a notice from The Torch that her debt was being assigned to a collection agency and that unless her payment was forthcoming, legal action would be taken. Dennis requested an itemized statement concerning the time and manner of the sales orders and information about The Torch and the collection agency. The Torch responded and stated that our client had been "inadvertently" billed for some light bulbs and her "account" had been corrected. The letter from The Torch was a mass-produced form letter with Dennis Eaton's name typed in.

While we have successfully resolved our client's particular problem, our growing concern is for other elderly people who

may be routinely paying such companies for bogus bills which they do not owe, especially in light of the nominal amount involved. We have forwarded information about this case to the Consumer Protection Division of the Iowa Attorney General's Office.

Seventh, there is a rapidly developing and evolving subject area of the law that can be characterized as "Law and the Elderly." This is happening in much the same manner as Law and the Juvenile and other areas of specialization. Because of our Senior Citizens Legal Services Program, all of the participating students have become much more knowledgeable of this area of the law and far more sensitive to their need for legal services. One outstanding student, Fred Gay, plans to specialize in this area when he graduates next December. Through our program, Drake University hopes to take an innovative part in refining this area of the law.

What Can Be Done for the Future--A Program of Action for Quality Legal Services for the Elderly.

I mentioned earlier in my testimony the four conditions that have, in my opinion, a strong bearing on providing quality legal services for our senior citizens in the most economical and effective way.

My principal recommendation to you members of the Senate Committee on Labor and Human Resources is that you provide the .

financial means so that other law schools throughout the nation can implement clinical programs similar to Drake University's. By such a course of action, you would simultaneously be achieving the following:

- (1) The unmet need for legal services to the elderly: By virtue of such a national program, a far greater portion of the elderly's need for quality legal services would be met.
- (2) Pro bono representation: As part of each school's project, law schools in the various states could develop for the private bar research materials on the most frequently occurring legal problems of the elderly. In this way, pro bono representation by the private bar could be increased substantially.
- (3) Providing quality legal education that prepares law students to handle the rigors of professional responsibility competently: By instituting this kind of program nationwide, you would enable law schools to do for their students what medical schools have done for decades for medical students. What is needed is the economic assistance to reduce the high cost of clinical education.
- (4) Level of competency of lawyers in general and in the courtroom: Prior to my joining the Drake Law School faculty in 1971, I was a Trial Attorney for the Tax Division of the Department of Justice. The graduates that I have seen who have participated in our Senior Citizens Legal Services Program are, on an average, at least 5 years ahead of where I was when I graduated from law school and of where students are who have not participated in such clinical programs. A national program such as is recommended here would have an impact on the level of competence of the bar overall in time.

Title IX of the Higher Education Act of 1965 provides the statutory authority for the Law School Clinical Experience Program. The maximum authorization level for this program is \$10 million. What I am recommending to the members of the Senate

Committee on Labor and Human Resources is that you look to this program (Title IX) as a vehicle to provide, at least in part, greater legal representation for our senior citizens.

Title IX already includes clinical programs for the elderly as among the type which can receive funding. With the appropriation level at \$10 million, a greater number of Senior Citizens Legal Services Programs similar to Drake University's could be funded along with other types of effective and beneficial clinical programs.

The primary beneficiaries of such action by Congress would be the persons who most deserve it--our cherished elders who have contributed over their many years to their country and fellow citizens. Your action would also enhance the cause of quality legal education throughout our country and, ultimately, assist in improving the level of competency in the legal profession.

Thank you.

Prof. Daniel L. Power
Drake University Law School
Des Moines, Iowa

QUESTIONS FOR DANIEL POWER FROM SENATOR CHARLES GRASSLEY

1. YOUR TESTIMONY AND DESCRIPTION OF YOUR PROGRAM WAS VERY IMPRESSIVE. DO YOU FEEL YOUR CLIENTS BENEFIT FROM THEIR EXPOSURE TO THESE BUDDING YOUNG LAWYERS?
2. DOES THE PROGRAM INCREASE THE UNDERSTANDING THE YOUNG PEOPLE HAVE FOR THE PROBLEMS OF THE ELDERLY?

ANSWERS FROM DANIEL POWER

The first general subject matter concerned how our senior citizen clients benefit from their exposure to the student lawyers in the Senior Citizens Legal Services Program. The primary benefit arises from the fact that most of the student attorneys are of an age group similar to that of clients' grandsons and granddaughters. This enables the student attorney to establish a trust relationship relatively quickly. Many, if not most, elderly are apprehensive about going to an attorney in private practice out of fear of the financial cost. This is not present in our context; hence, many persons are receiving legal assistance who, otherwise, would not have received it.

A second benefit arises from the fact that the elderly worry about legal matters; this anxiety tends to affect their health adversely. Their exposure to the student attorneys in the Senior Citizens Legal Services Program and the consequent legal services they receive tend to alleviate both the adverse effects upon our clients' health and the anxiety that spawns such a condition.

The third major benefit is simply one that arises when a client discovers that his or her attorney has resolved a legal matter and becomes less reluctant to seek further legal assistance. We have a maxim in the Legal Clinic which aims at the student attorney's perspective and attitude: "Treat the patient, and not just the disease." Often what appears as the legal problem is only a threshold one--there are others of a more serious nature and the initial problem is but a symptom of the more serious legal problem. In such cases, since the elderly clients have learned to trust the student attorneys through resolving an initial problem, they are more receptive to having the broader legal problems identified and resolved.

Your second general area of inquiry seeks information on how the Senior Citizens Legal Services Program increases the understanding of the student attorneys concerning the legal problems of the elderly. First, it is important to note that every student that participates in the Program is struck by the fact that there is such a great need for legal services for the elderly and that much of that need is not being met.

Second, the Program increases the understanding of the student attorneys concerning the problems of the elderly simply by having the law students communicate with their various clients over the course of their work in the Program. Also, we have weekly meetings in which each student attorney discusses his or her cases and shares reflections on various aspects of the educational experiences. In addition, each student gives talks at various congregate meal sites on basic legal problem areas and receives considerable comment from the elderly citizens.

Finally, for our part as the faculty responsible for the students' receiving the maximum educational benefit out of their experiences in the Program, we require each student to volunteer a percentage of his or her time in the program as a way of inculcating in each student attorney the professional obligation to provide pro bono legal services for those unable to pay for such services. As you know, many of our clients are living on a Social Security allowance that barely provides for basic subsistence needs; there are no funds with which to pay an attorney for needed legal services. Our pro bono component of the Program is an innovative effort to highlight this professional obligation and to affect the student attorney's disposition toward it.

There are other aspects, but I have endeavored to restrict myself to the more significant ones.

Senator GRASSLEY. Well, thank you for your almost missionary zeal as well.

I have a few questions, some of which I am going to submit to both of you in writing.

I would like to start with you, Nancy, and start with the presumption that a majority of elderly individuals are relatively comfortable, though I know that is a relative thing because a third of our poor or I should say a third of our people below the poverty guidelines are senior citizens. However, isn't it true that the needs of that group who are better off are different from those elderly individuals who are eligible for legal services?

Ms. COLEMAN. For Legal Services Corporation guidelines at 125 percent?

Senator GRASSLEY. Yes.

Ms. COLEMAN. Well, first of all I think that you need to look at what the kinds of problems are that the elderly have. I think that some of the previous speakers have outlined those, but they are for the most part Government benefits problems. Those Government benefits problems—medicare, for instance, is not a means-tested program. Social security, for instance, is not a means-tested program, so that you are looking at people who may receive Government benefits and have problems with those Government benefits, who may need to seek legal advice, who are perhaps just slightly above the Legal Services Corporation guidelines but still would be served under title III-funded legal services. I know that in many of the programs that we have been talking about today, that they are serving those clients, like nursing home clients, with social and economic need under the Older Americans Act definition.

Senator GRASSLEY. Well, I would like to have your view on whether or not the efforts of the bar have been disproportionately focused on the elderly poor.

Ms. COLEMAN. Whether or not the bar efforts—

Senator GRASSLEY. Yes, toward that group who, as I tried to indicate, are relatively better off than those eligible for legal services. I am asking if the bar's efforts might be disproportionately focused on the elderly poor.

Ms. COLEMAN. I think it depends upon which program you look at, sir. I cannot answer that across the board. For instance, the Aetna Life & Casualty program uses a standard for their clients which is above the poverty line but not so that it exceeds that much greater. I know that the Memphis/Shelby County program uses the title III-funded legal services program definition of social and economic need for eligibility for the volunteer attorneys so you would have to look at it on a case-by-case basis, I think.

Senator GRASSLEY. Thank you. Professor Power, I am as impressed with your program as you are honored to be here to testify about it. I think we are mutually trying to help those who have the greatest need. I would like to have you analyze your program as to cost-effectiveness. How does it compare to Legal Services Corporation programs?

Mr. POWER. Senator, I could give you some statistics that perhaps would provide a basis. We did a compilation of hours actually spent by the students and by the supervisors in the program for the fiscal year just ended. The number of legal hours of representation for which students were compensated was a little over 741 hours. The number of pro bono hours that the students put in and for which they did not receive compensation was 225, a little over 225. That total comes to a little over 960 hours. When we add our supervisory time to that, there is over 1,500 hours of legal representation. Our total program budget for this year was \$23,000, so if you divide that into the amount of money we had I think it is a tremendously cost-effective program.

Also, another way of measuring it could be, we were required to handle only 90 actual client cases. In point of fact, we handled 145. Now I cannot equate that with legal services programs because I don't have comparable statistics. Perhaps this could provide a basis for a comparison if statistics were obtained concerning Legal Services programs.

Senator GRASSLEY. Referring back to Mr. Weiss, who testified previously, do programs like yours have a potential for solving the problem he raised of too few lawyers being tuned in to the special problems of the elderly?

Mr. POWER. Well, I would like to respond this way, Senator: I think what our program's potential is, the students coming through it will be educated in the law on the problems that senior citizens have, so we won't have that problem of educating them in private practice. They will already be attuned to it. Does that provide some basis for comparison?

Senator GRASSLEY. Yes, it does. Do you think that experimental programs like yours are getting sufficient attention and support from the private bar?

Mr. POWER. I think I would have to say no, Senator, but it might not entirely be their fault. With hearings such as this, I think programs of this nature as well as others will begin to capture the imagination of the practicing bar, and with the leadership of the

bar giving some direction, prompt them and motivate them to support these types of programs more.

Senator GRASSLEY. Are you getting sufficient attention from Legal Services Corporation and the Administration on Aging, as an example?

Mr. POWER. Senator, I will have to confess I have attempted to get some cooperation with the Legal Services Corp. of Iowa, but until recently it has not been forthcoming. We have received excellent cooperation with the Administration on Aging in this respect: that the area agency in Iowa has been most supportive. In fact, they were the ones that helped us get the program started.

Ms. COLEMAN. Senator Grassley, could I just comment? One of the things that we have been looking at in terms of law school curricula, and I think that it is relevant here, is that it is simply not what is taught in clinics—I think that there are some 15 or so clinics around the country who serve the elderly—but rather what kinds of work also goes on in the classroom. There is one new publication that has come out this year which I hope law schools will become interested in and use. It is a matter of entrepreneurial effort to get faculty interested in teaching these types of courses. It is a chicken and egg game as to whether or not either law school faculty are interested or students are interested, and where that initiation comes from.

Senator GRASSLEY. Well, I thank you. I think you anticipated my last couple of questions, but that is fine and dandy.

Mr. POWER. Oh, I'm sorry.

Senator GRASSLEY. I want to thank you both for your enthusiasm and willingness to strike out into new territory. I want to compliment you for it. I hope that by working with the other people that we have had here, and maybe changing the direction of some organizations a little bit, we can fill this need to a greater extent than we have in the past. At least, that is my hope and desire. It may be a slow process but if we can make a little bit of improvement we are just going to be able to take care of people's needs to a greater extent.

Did you want to present something further?

Ms. COLEMAN. Yes. I just wanted to mention that in yesterday's National Law Journal there was a feature article on "The Aging—A Growing Case Load" where they talk about some of the programs that we have discussed today and look at involvement across the country. I don't know that it is complete but I think it is a little bit of an education. I was wondering if I could—

Senator GRASSLEY. Well, it may be valuable for us to put that in the record as well. It is not too long, is it?

Ms. COLEMAN. It is not too long. In fact, I Xeroxed it myself this morning and did not do a very good job, so let me try to get you a better copy.

Senator GRASSLEY. OK. Thank you very much. Thank you all. The hearing is now completed. I thank everybody for their kind attention.

[Whereupon, at 5:20 p.m., the subcommittee recessed, to reconvene at the call of the Chair.]

END