

IMPROVING LEGAL REPRESENTATION FOR OLDER AMERICANS

HEARING
BEFORE THE
SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE
NINETY-FOURTH CONGRESS
SECOND SESSION

PART 4—WASHINGTON, D.C.

SEPTEMBER 29, 1976



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Improving Legal Representation for Older Americans :

- Part 1. Los Angeles, Calif., June 14, 1974.
- Part 2. Boston, Mass., August 30, 1976.
- Part 3. Washington, D.C., September 28, 1976.
- Part 4. Washington, D.C., September 29, 1976.

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IMPROVING LEGAL REPRESENTATION FOR OLDER AMERICANS

WEDNESDAY, SEPTEMBER 29, 1976

U.S. SENATE,
SPECIAL COMMITTEE ON AGING,
Washington, D.C.

The committee met, pursuant to notice, at 11 a.m., in room 457, Russell Senate Office Building, Hon. Edward M. Kennedy presiding.

Present: Senators Kennedy and Randolph.

Also present: William E. Oriol, staff director; David A. Affeldt, chief counsel; Deborah K. Kilmer, professional staff member; Mark Schneider, legislative assistant to Senator Kennedy; John Guy Miller, minority staff director; Margaret Fayé, minority professional staff member; Patricia G. Oriol, chief clerk; Eugene R. Cummings, printing assistant; and Alison Case, assistant chief clerk.

OPENING STATEMENT BY SENATOR EDWARD M. KENNEDY, PRESIDING

Senator KENNEDY. My apologies for being late.

I know our panel is very much aware of the importance of assuring legal services to our elderly people. There is no group in our society that is affected more by what Federal, local, or State governments, or individuals do than our elderly people. Most are dependent upon social security, or railroad retirement, or other retired income programs. Therefore, their relationship with the Social Security Administration and the rest of the Federal Government is extremely important.

They are constantly in negotiations over the quality of housing, the raising of rents, and other very important consumer issues. One of the most exciting aspects of both the Legal Services Corporation and the Older Americans Act has been their contribution of assuring the elderly their full opportunities and full rights under the Constitution.

We have a strong program in my own State of Massachusetts. Its only weakness is the greatness of the need. There are thousands of elderly whom it is not able to assist.

We are very interested in ways to strengthen this kind of program. I will include my entire statement in the record and get on to our witnesses.

[The prepared statement of Senator Kennedy follows:]

PREPARED STATEMENT OF SENATOR EDWARD M. KENNEDY

Today, the Committee on Aging continues its hearings on "Improving Legal Representation for Older Americans."

Earlier committee hearings—in St. Louis, Boston, and Los Angeles—have made it abundantly clear that many older Americans now find themselves in an impossible situation when a legal problem arises.

This is particularly true for moderate-income elderly persons. Their income may be too high to qualify for legal services, but they still cannot afford a private attorney.

This issue received close attention when the Congress enacted the Older Americans amendments last year. Several provisions in the 1975 amendments—measures which I helped advance—are designed to make legal representation more readily available for the elderly.

One example is the expansion of title IV to authorize funding to train lawyers and paraprofessionals. Last month I heard firsthand, in Boston, about the valuable assistance elderly paraprofessionals from the Council of Elders Legal Services program provide other seniors on many issues: Social security, medicare, housing, food stamps, supplemental security income, and other Federal benefit programs.

But they are too few. Their funding is too little. And they are not part of a comprehensive network of legal resources linking the private bar, research centers, and law schools. More must be done.

The 1975 Older Americans Amendments also made legal counseling a priority service for funding under title III.

Our leadoff witness this morning, Commissioner Flemming, of the Administration on Aging and a former Secretary of HEW, will have more to say about the implementation of the legal representation provisions in the 1975 amendments. The committee will seek answers to other questions as well:

What steps has the Administration on Aging taken to make the law schools, the private bar, and legal services attorneys more sensitive to the legal problems of the elderly?

How much funding under title II is directed at improving legal representation for older Americans, and what roles will the new State legal services offices fulfill?

Have the 11 model projects funded under section 308 yielded any innovative ideas for meeting the legal needs of older Americans?

How many attorneys and paraprofessionals does the Administration on Aging plan to train with title IV funds?

And what are AoA's long-range plans for insuring that local offices on aging are responsive to the many legal problems now confronting the elderly?

I see no reason why there could not be a systematic effort to establish legal services outreach centers at every large elderly housing project. Attorneys do not always have to be at the site. But they could have scheduled hours of service. For the elderly, we have meals-on-wheels, but we should start thinking about how we could have lawyers along riding shotgun.

Our recent hearing in Boston also emphasized that the elderly are underrepresented in the legal services program.

We shall hear later from Mr. Thomas Ehrlich, president of the Legal Services Corporation, on this matter.

Let me state at the outset that the resources available to the corporation to serve the poor are inadequate generally. The administration proposal to deny the corporation 25 percent of its appropriations through a rescission is totally unacceptable.

But the elderly are a far larger portion of the adult poor than the present distribution of legal services resources indicates.

A Legal Services Corporation survey—and I am well aware it was a very limited survey—revealed that persons 65 or older only accounted for about 7 percent of all clients in the legal services program. Yet, older Americans represent nearly 24 percent of the total poverty population among persons 18 or older.

The committee believes the elderly should be equitably represented in the legal services program. They also have special needs and special problems. We want to insure that their legal problems receive thoughtful, careful, and competent attention. They deserve no less.

Last month's hearing in Boston raised fundamental questions about the responsibility of the private bar to elderly clients. We want to know what is being done now to fulfill this role. And what more should be done?

We are also concerned about impediments to attorneys who want to represent aged clients.

The Boston hearing further underscored the need for law schools to develop courses which can prepare the lawyers of today and tomorrow on issues of direct concern to older Americans.

Most older Americans typically have had very little contact with Government during their preretirement years, except perhaps to pay taxes or perform their military obligation. But upon reaching age 65, they become dependent upon Federal income maintenance programs—social security, railroad retirement, SSI, VA pensions, VA compensation payments, civil service annuities, and others.

Yet, most attorneys have had very little, if any, training concerning legal issues affecting these programs. The net impact is that older Americans are forced to fend for themselves when a legal problem arises—whether it involves litigation, understanding the technicalities of Federal programs, or planning their personal affairs.

They deserve better treatment. And I am hopeful that our hearing this morning can provide the spark for comprehensive and coordinated action on several fronts to make effective representation more readily available for older Americans.

Our final witnesses this morning will be Mr. Paul Nathanson, executive director of the National Senior Citizens Law Center, and Mr. David Marlin, director of Legal Research and Services for the Elderly. They will provide examples on the dimensions of the elderly legal problems and of what can be done when competent representation is available.

[End of prepared statement.]

Senator KENNEDY. We are delighted to have Dr. Arthur Flemming, distinguished Commissioner of the Administration on Aging and HEW Chairman of the Civil Rights Commission. I want to commend you on your extraordinary record of public service. We have always benefited from your testimony. Mr. Thomas Ehrlich is the president of the Legal Services Corporation; and Mr. William Wharton is

from the Memphis and Shelby County Legal Services, Memphis, Tenn.

**STATEMENT OF HON. ARTHUR S. FLEMMING, COMMISSIONER,
ADMINISTRATION ON AGING**

DR. FLEMMING. Senator Kennedy, I appreciate very much the opportunity to testify. I would like to say, as Chairman of the Commission on Civil Rights, I sure hope you win on the matter that you have been working on and that delayed your appearance here.

In the interest of conserving time, I will not go into the history of the concern on the part of the Congress for legal service as reflected in the development of the Older Americans Act, but I will come right down to 1975-76.

When the Senate considered the 1975 Labor-HEW appropriations bill, a \$9 million increase for the title III program for funding State and community services programs was added. This increase was agreed to by the House of Representatives.

LEGAL SERVICES MODEL PROJECTS

The Labor-HEW Appropriations Subcommittee of the Senate made clear that it intended that \$1 million of this additional funding for title III should be used for model projects to strengthen legal representation for older Americans. Once these funds were appropriated, the Administration on Aging took steps to implement the clear congressional intent.

In July 1975, 11 legal services model projects were funded at a total level of \$1.2 million to foster the improvement of legal service programs for the elderly by increasing the capability of State and area agencies on aging to increase the availability of legal services and to improve the quality of those services.

I will submit for the record a listing of these individual projects and the level of funding of each project.¹

The overall objectives of these Administration on Aging legal service projects were to inaugurate a process which will hopefully lead to a decision on the part of area agencies on aging to include, subject to the approval of the State agencies, a legal service component in their annual plans and budget, and to initiate a process which will help insure that such legal services activities designed to meet the needs of older persons will have available adequately trained professional and paraprofessional personnel.

Up to now the primary focus of most of the legal service grantees has been the provision of technical assistance to State and area agencies on aging.

LEGAL SERVICES: A PRIORITY CONSIDERATION

At the same time that these legal service model projects were being implemented, further consideration was being given by the Congress to this area in connection with its consideration of the 1975 amendments to the Older Americans Act. Legal assistance was identified as

¹ See appendix 1, item 3, p. 346.

one of the four areas which are to be given priority consideration by State and area agencies. States must spend a minimum of 20 percent of their title III allotment in one or more of these four priority areas.

To assist and encourage the States to develop legal service programs for older persons, the Administration on Aging has given each State the opportunity to establish, during fiscal year 1977, a legal service model project. States that request funds for this purpose will be expected to develop a statewide program that will support the area agencies on aging in strengthening of legal service activities on behalf of older persons at the community level.

The State agency on aging in developing this program will obtain counsel and advice from, among others: Other components of State government, local legal services organizations, legal aid societies, State and local bar associations, voluntary organizations, community services organizations, law schools, and other educational institutions.

Total funding for these projects, which will begin on January 1, 1977, will be \$1.125 million.

In order to provide the State agencies and, through them, area agencies with adequate technical assistance for this effort, the Administration on Aging will continue support of five national legal services model projects. These model project grantees will provide assistance to State agencies on aging in developing and implementing their legal services programs in their States. These projects are funded at a total level of \$872,918. Six other model projects, designed to test innovative ways of providing legal services to older persons, have also been funded, totaling \$425,505.

The Administration on Aging has just awarded grants under the title IV-A training program for improving the quality of training for attorneys and paraprofessionals on the problems of older persons. Such efforts were recently authorized specifically for legal services by the 1975 amendments to the act. Projects supporting these activities will be funded at a total level of about \$700,000.

WORKING AGREEMENT WITH LEGAL SERVICES CORPORATION

The last of the activities that the Administration on Aging plans to undertake in the area of legal services is the development of an interagency working agreement with the Legal Services Corporation. Staffs of these two entities have been meeting to discuss the terms of the agreement and Mr. Ehrlich and I are confident that we will have an agreement within a matter of a few weeks.

Through the process of negotiation of such an agreement and involvement of the State agencies on aging in any cooperative efforts that result, we hope to identify areas of mutual cooperation and interest to make staff of the Legal Services Corporation aware of the particular needs of older persons for access to legal services and to minimize overlaps and reduce gaps in the availability of legal services for older persons.

Personally, I welcome the opportunity of working with the Congress in this very important area in the field of aging. I am confident that the availability of legal services for older persons will make a significant contribution to making it possible for them to look to the future with hope.

Thank you, Mr. Chairman.

[The prepared statement of Dr. Flemming follows:]

PREPARED STATEMENT OF HON. ARTHUR S. FLEMMING

Mr. Chairman and members of the committee, I am pleased to have the opportunity to appear before you today to discuss the activities of the Administration on Aging in the area of legal services for the elderly.

Previous hearings on this subject by the Senate Special Committee on Aging and the Senate Judiciary Committee were major factors in the development of a climate supportive of increased legal services for older persons.

HISTORICAL DEVELOPMENT

I will discuss with you today the legislative history of the provision of legal services for older persons under the Older Americans Act, and the activities that the Administration on Aging is undertaking in this area.

When the Older Americans Act was enacted in 1965, legal services were not specifically mentioned in the act as one of the services to be provided or goals to be achieved.

The Older Americans Comprehensive Services Amendments of 1973 (Public Law 93-29) called for the implementation of a new approach on the part of the Federal Government to the field of aging.

These amendments called for the establishment of a network of State and area agencies on aging responsible for the development of a system of comprehensive, coordinated services for older persons.

The regulations developed for implementation of the title III program defined, as one type of "social service" that could be provided under title III, "legal services which provide legal advice and counseling to older persons in matters of importance to the individual, including serving as an advocate of older persons who have consumer problems."

As the title III program developed and State and area agency on aging staffs became more familiar with the barriers that older persons confronted and the needs they had, the importance of legal services became increasingly apparent.

Older persons were faced with mandatory retirement policies, forced retirement, and age discrimination in employment; the need to understand the provisions of and establish eligibility for social security, supplemental security income, medicare, pension benefits, and other benefit programs; in some instances, loss of ability to completely manage their own affairs without assistance; lack of protection or concern for individual rights of persons living in institutional settings; difficulty in getting drivers licenses, health insurance, life insurance, and other necessary protection because of age; increased vulnerability to deceptive consumer practices.

However, there were few places that older persons could go for assistance with these problems.

Even programs that were established specifically to provide legal services to low-income persons, including older persons, had very low participation rates by the elderly.

It was estimated in 1971, for example, that despite the high percentage of older persons who have low incomes, older persons comprised only 6 percent of the clients served by OEO legal services programs. It has been estimated that in 1975, 11.6 percent of the funds in this program were allocated to the elderly.

As recognition of the need for legal services grew, more State and area agencies on aging began to provide support for legal services for older persons.

During fiscal year 1974, 33 States provided some legal services, and a total of 4 percent of the area planning and social service funds available to State agencies on aging was spent on legal services and counseling.

This can be compared to 20 percent for transportation, 9 percent for in-home services, 13 percent for information and referral services, and 10 percent for outreach services.

When the Senate considered the 1975 Labor-HEW appropriations bill (September 1974), a \$9 million increase for the title III program of funding for State and community services programs was added, and this increase was agreed to by the House of Representatives.

The Labor-HEW Appropriations Subcommittee of the Senate made clear that it intended that \$1 million of this additional funding for title III shall be used for model projects to strengthen legal representation for older Americans.

Once these funds were appropriated, the Administration on Aging took steps to implement the congressional intent.

In July 1975, 11 legal services model projects were funded, at a total level of \$1.2 million, to foster the improvement of legal service programs for the elderly by increasing the capability of State and area agencies on aging to increase the availability of legal services and to raise the quality of those services.

I will submit for the record a listing of these individual projects and the level of funding of each project.¹

The overall objectives of these AoA legal services projects were:

(a) To inaugurate a process which will hopefully lead to a decision on the part of area agencies on aging to include, subject to the approval of the State agencies, a legal services component in their annual plans and budgets.

(b) To initiate a process which will help insure that such legal services activities designed to meet the needs of older persons will have available adequately trained professional and paraprofessional personnel.

Up to now the primary focus of most of the legal service grantees has been the provision of technical assistance to State and area agencies on aging.

At the same time that these legal services model projects were being implemented, further consideration was being given by the Congress to this area in connection with its consideration of the 1975 amendments to the Older Americans Act.

Legal assistance was identified as one of the four areas which are to be given priority consideration by State and area agencies.

States must spend a minimum of 20 percent of their title III allotment in these four priority areas.

To assist and encourage the States to develop legal service programs for older persons, AoA has given each State the opportunity to establish, during fiscal year 1977, a legal services model project.

States that request funds for this purpose will be expected to develop a statewide program that will support the area agencies on aging in strengthening of legal services activities on behalf of older persons at the community level.

The State agency on aging, in developing this program, obtains counsel and advice from, among others: Other components of State government, local legal services organizations, legal aid societies, State and local bar associations, voluntary organizations, community services organizations, law schools, and other educational institutions.

Total funding for these projects, which will begin on January 1, 1977, will be \$1.125 million.

In order to provide the State agencies, and through them area agencies, with adequate technical assistance for this effort, the Administration on Aging will continue support of five national legal services model projects.

These model project grantees will provide assistance to State agencies on aging in developing and implementing their legal services programs in their States.

These projects are funded at a total level of \$872,918.

Six other model projects designed to test innovative ways of providing legal services to older persons have also been funded totaling \$425,505.

The Administration on Aging has just awarded grants under the title IV-A training program for improving the quality of training for attorneys and paraprofessionals on the problems of older persons.

Such efforts were recently authorized specifically for legal services by the 1975 amendments to the act.

Projects supporting these activities will be funded at a total level of \$705,741.

The last of the activities that the Administration on Aging plans to undertake in the area of legal services is the development of an interagency working agreement with the Legal Services Corporation. Staff of the two entities has been meeting to discuss the terms of this agreement, and hope to have a draft prepared in a few weeks.

Through the process of negotiation of such an agreement and involvement of the State agencies on aging in any cooperative efforts that result, we hope

¹ See appendix 1, item 3, p. 346.

to identify areas of mutual cooperation and interest, to make staff of the Legal Services Corporation aware of the particular needs of older persons for access to legal services, and to minimize overlaps in and reduce gaps in the availability of legal services for older persons.

The Administration on Aging welcomes the opportunity of working with the Congress in this very important area in the field of aging.

I am confident that the availability of legal services for older persons will make a significant contribution to making it possible for them to look to the future with hope.

Senator KENNEDY. Thank you, commissioner.

I also am pleased to welcome Thomas Ehrlich, president of the Legal Services Corp. He has been in the job for some 9 months and now understands the difficulty we had and the frustration of several vetoes before we obtained approval on the independent Legal Services Corp. I understand one of your first communiques from OMB was a request to ask for fewer funds and one of your latest was the request to Congress from the White House for a rescission on nearly 25 percent of the funds Congress appropriated.

Before taking this position, Mr. Ehrlich was professor of law and dean of Stanford Law School, although that Western bias is eased somewhat by knowing that he is a graduate of Harvard Law School. It is a pleasure to welcome him before this committee.

STATEMENT OF THOMAS EHRLICH, PRESIDENT, LEGAL SERVICES CORPORATION, WASHINGTON, D.C.

Mr. EHRLICH. Senator, I have submitted for the record a prepared statement¹ that discusses the activities of the corporation with regard to legal services for the elderly in some detail. With your permission I would like to focus on a few key points. With me today is Mr. A. C. Wharton who directs Memphis and Shelby County legal services in Tennessee. I know he will be pleased to answer any of your questions about legal services for the elderly from his vantage point in the field.

As you know, we have a somewhat different perspective than Commissioner Flemming. The purpose of the Legal Services Corp. is to provide legal services—that is our only purpose. Our mission is to provide those services not just to the elderly but to all who are poor, regardless of age, regardless of race, regardless of geographic area. We do very much share the committee's particular concerns about the needs of the elderly for legal assistance and the extent to which those needs are unmet.

Sometimes the elderly face special needs for legal services. The pension area is one example. But our experience generally shows that the usual categories of legal issues faced by the elderly are those faced by other people who are poor. Most often they are in the areas of public benefits, housing, consumer law, family law, health law. Although the areas of concern are not usually different in legal terms, much more often they are matters of basic survival for the elderly poor.

PROBLEMS IN PROVIDING LEGAL SERVICES TO ELDERLY

Generally there are particular problems in providing legal services to the elderly, problems that create an added cost. Those problems

¹ See p. 260.

can be overcome but usually that takes added resources, particularly for outreach activities and for transportation. As you well know, Senator, for 5 hard years legal services fought a battle for survival, while costs spiraled. As a result of that burden of inadequate funding the poor generally, and the elderly poor in particular, too often suffered and suffered severely.

We now have no accurate statistics on the relative number of elderly poor that legal services programs funded by the corporation are reaching. We are now developing a project reporting system that will provide that information. In the meantime, the results of informal surveys, including one we did for this committee some months ago, suggests that the percentages vary from as little as 5 percent to as much as 15 to 20 percent. We ought not look, however, at the extent of legal services activities solely in terms of percentages of caseloads. That is very misleading.

As you know, Senator, Legal Services Corporation has been the leader in the efforts to assure legal rights through specialized litigation. It has been in areas such as food stamps, welfare, public housing, and consumer fraud, and much of that litigation has had substantial impact on the elderly. You will hear later this morning, I understand, from Paul Nathanson, director of the National Senior Citizens Law Center, a corporation-funded project that concentrates exclusively and on a national basis on the legal problems of the elderly.

Our other national litigation projects do devote a very significant amount of their time to senior citizens problems and much of their specialized work has a direct impact on the elderly. I discussed that work in some detail in my prepared statement, particularly in terms of the center for social welfare policy and law in New York, the national health law project in Los Angeles, the employment law center in New York, which has just voted to make pension law a priority for the next year, and the national housing law project in Berkeley—four concrete examples of major impact litigation centers throughout the country supported by the corporation.

I do not suggest for a minute that we are doing all we should for poor persons who are elderly. We must do a good deal more for them and for all who are poor.

“CRITICAL QUESTION IS MONEY”

As the committee pointed out in this year's "Developments in Aging" report, the critical question is money. The corporation requested \$140.3 million from the Congress for fiscal year 1977 to begin a 4-year plan to strengthen and expand legal assistance for the poor. President Ford pressed for a reduction to \$80 million. Despite that, the Congress has approved \$125 million to begin the effort and has agreed with the corporation that the proposed rescission of the additional funding has no merit. We intend to come back to the Congress to ask for increased support in fiscal year 1978, and in the years to come, so that by the end of 1980 legal service programs funded at minimum adequate levels will be accessible to all of the poor, including the elderly poor.

Although there is no total solution without additional money, we are taking a number of steps that focus particularly on the elderly

poor. Our proposed eligibility guidelines, for example, take special account of such factors as age, physical condition, and high medical costs. In the area of training we are confident we can improve the capability of our programs to deal with the needs of the elderly. We are working with all of our support centers to design specific training programs for staff attorneys and are concentrating particularly on the training of paralegals. As you know, use of paralegals under the supervision of program attorneys is one of the most effective ways to increase access to legal services for the elderly.

We are also working with the Administration on Aging to assure that our mutual resources are utilized as effectively as possible. Some 56 legal services programs now do receive about \$1.7 million through State and area aging agencies to improve their capabilities to serve the elderly. Those funds make a vitally important contribution. In some places, like the program in Camden that you heard about yesterday, these funds have made possible special units for the elderly. Other programs funded by the corporation include services to the elderly as a part of the regular activities of their offices.

Some programs have reported particular difficulties in persuading area agencies to undertake legal services activities. I expect that Mr. Wharton could elaborate on that point. But in all events, as Commissioner Flemming said, we are going to work with his organization at the national and regional levels to the end of more effective efforts for the elderly in local communities.

We are also very pleased that legal services development specialists will be provided for each State; they can be a critically important factor in these efforts. We do have some concern about the emphasis on placement of those specialists within State aging agencies and the limitations on their activities, which may reduce their potential effectiveness. In our view, if it makes sense to place those specialists within a legal services program, the States should have the flexibility to do so.

We are also convinced that the effectiveness of those specialists can be enhanced if they are sometimes involved in support activities. Commissioner Flemming has indicated that we are working with the Administration on Aging on just those issues. The corporation and the Administration are developing a joint agreement that will result in improved and strengthened cooperation and coordination.

One final word, if I may. We commend you very much for your leadership in this area and we look forward to working with the whole committee and with you, Senator Kennedy, as a member of the Committee on Labor and Public Welfare, toward providing quality legal assistance to all elderly persons who are poor and who need legal assistance that they cannot now find.

I am delighted to be here, and I will be pleased to answer your questions.

[The prepared statement of Mr. Ehrlich follows:]

PREPARED STATEMENT OF THOMAS EHRLICH

On behalf of the Legal Services Corporation, I am pleased to accept this committee's invitation to testify on delivering legal services to the elderly. The corporation brings a perspective to these hearings that may be different than

that of other witnesses. We are not an organization established to deal exclusively with elderly Americans; we cannot undertake to support legal services to all who are elderly. Rather, our concern with the problems being considered by this committee stems from our congressional mandate to insure equal access to justice for all persons who presently do not have that access, concentrating upon those who are least able to afford legal assistance.

The Legal Services Corporation is a private corporation established and funded by Congress to provide legal assistance to the poor. It began operations 1 year ago, in October 1975. There are approximately 29 million poor people in the United States, persons whose income and resources are below subsistence levels. For all but a very few of those people—whatever their age, race, or background—the predominant issue in their lives is survival.

It was once a commonly held notion that poor people had less need for lawyers than persons of means. We now know that precisely the contrary is true. Poor people are forced to rely upon law and the legal system to obtain basic necessities such as food, shelter, clothing, medical care, a job, and an education. The result has been that poor people have more encounters with the legal system than others, and the stakes involved in those encounters are much higher.

A recent study by the Bureau of Social Science Research estimates that 23 percent of the Nation's poor, or roughly 7 million persons, face legal problems each year. Legal services programs funded by the corporation are currently able to handle only about 1 million of those problems. Even that level of services is possible only by extensive use of paralegals and other mass delivery techniques, and by caseloads that range as high as 500 cases per year for an individual attorney. Despite these efforts, there remain nearly 12 million poor people who live in areas that are not served by legal services programs, and another 10.5 million who have only token access to such programs.

The inevitable conclusion from these statistics is that present resources are grossly inadequate to do the job. For 5 years, from 1970 through 1974, those resources actually diminished because appropriations for legal services were frozen despite high inflation. The outlook for the future is fortunately brighter. For fiscal year 1977, the Congress approved an appropriation of \$125 million to the Legal Services Corporation—a \$33 million increase over the appropriation for the current year. Of necessity, however, much of this increase will be used to restore the capabilities of existing programs that were eroded during the period when legal services appropriations were frozen. The corporation is now planning the first significant expansion of legal services coverage in more than a decade, but its resources are far short of enabling it to fulfill the congressional mandate to provide equal access to justice for all of the Nation's poor people.

It is against this background—a mandate to provide legal assistance to all poor people regardless of age, race, or background, and a history of inadequate resources to do the job—that the performance of the Legal Services Corporation and the programs it supports must be evaluated. We do not suggest that our performance in providing services to the elderly poor has been better than our performance in delivering services to all eligible poor persons. There are suggestions that it has been worse. The statistics sometimes cited are from an informal survey apparently made by the OEO Office of Legal Services in 1969, which suggested that the elderly constitute only 6 percent of legal services clients, although they account for a larger percentage of the Nation's poor.

We do not know how those figures were developed, nor whether they were correct in 1969. More important, we do not know whether those figures are accurate today. As members of this committee are well aware, the energies of the legal services community during the early and mid 1970's were focused primarily on opposing efforts to destroy the program entirely, and on ensuring its future independence from partisan politics. It simply was not possible to conduct detailed analyses of the caseloads of programs and other aspects of their work.

Now that establishment of the Legal Services Corporation has made survival certain, we are conducting such an analysis. The corporation is in the process of designing and implementing a project reporting system that will provide information on each matter handled by each project funded by the corporation. This system will tell us a good deal about our programs and the clients that they serve. We are also undertaking a study of alternative and supplemental methods of delivering legal services that should provide additional information

on how to deliver legal services more effectively and efficiently and to reach groups that we have had difficulty reaching in the past.

At this point, our best estimate is that legal services programs funded by the corporation probably do somewhat more specialized work in areas that affect the elderly than population statistics would indicate, but somewhat less general work for individual elderly clients. Within the area of specialized work, the disparity is probably due to the large number of government programs that affect the elderly. Within the area of general assistance, the disparity probably results from the reality that many elderly persons are hesitant or unable to use legal services, and programs have not had sufficient funds to engage in aggressive outreach efforts.

Beyond this general estimate, it may be helpful to the committee to have a description in some detail of the actual activities of both the general and the specialized programs relating to the elderly. I will focus first on field programs generally and then on the specialized work.

Although there has been no systematic analysis of the caseloads of all legal services programs funded by the corporation, we have estimates of caseload statistics from some programs. At the request of this committee, we recently received estimates of the number of elderly clients served from nine programs operating in the States of Nebraska, Iowa, and South Dakota. The estimates of clients over 65 ranged between 5 percent and 20 percent. In most of those programs, the percentage of elderly clients was less than the percentage of the eligible population that is elderly. The program directors believe that this is due mainly to the transportation difficulties that poor elderly people have, especially in rural areas. In addition, they stated that some elderly persons are less aware of the fact that legal services are available to them and do not understand how the programs can be helpful. The programs in those States that served a relatively high proportion of elderly clients were ones that are able to and do engage in aggressive outreach efforts, such as making presentations in senior citizens centers and nursing homes.

Every legal services program operates within a set of eligibility guidelines prepared in accordance with corporation regulations. Those regulations—still in proposed form to insure full public comment—meet a number of specific concerns often raised regarding the ability of local legal services programs to serve the elderly. It has been suggested, for example, that eligibility standards that use an "assets" test discriminate against the elderly, who frequently own their own homes or have small savings accounts. An income test, it has been argued, would take into account the circumstances of the elderly in a more realistic manner.

Under the corporation's proposed regulations, the critical factor in determining eligibility is the applicant's income, and local programs are authorized to set the upper limit as high as 125 percent of the national poverty level. Even persons who have income above that limit may be eligible for service if their income is derived from governmental programs for the poor, or if they are unable to afford legal assistance due to age or physical infirmity, high medical expenses, or substantial debts. The regulations do not penalize an applicant who owns a home. They are, we believe, flexible enough to accommodate the special needs of the elderly poor.

In addition to the assistance provided for the elderly by legal services programs generally, the corporation funds the National Senior Citizens Law Center in Los Angeles, the Council of Elders in Boston, Legal Services for the Elderly Poor in New York, and the Senior Citizens Project of California Rural Legal Assistance in San Francisco. These programs, which have a combined budget of nearly \$1 million, are devoted exclusively to legal services for the elderly poor. Their activities range from providing representation and assistance in important litigation involving elderly clients—the role of the National Senior Citizens Law Center—to concentrating on providing general legal services directly to elderly clients.

Many legal services programs funded by the corporation, although not devoted solely to serving elderly persons, have units or individual specialists that concentrate upon such service. We do not know the exact number of such programs. We do know that 55 of our programs have received approximately \$1.5 million in funds available under title III of the Older American Act to provide legal services to the elderly poor. Other programs have been unable to obtain title III funds, but have used funds from sources such as revenue sharing for similar purposes.

Funds used to provide legal services exclusively for elderly persons often have a multiplier effect. In some programs, for example, title III money is used to hire paralegals to perform aggressive outreach work and to provide advice and counsel to elderly clients. Because paralegals must be supervised by attorneys, and because attorneys and other paralegals will necessarily handle many of the cases produced by outreach efforts, the result is that a larger amount of the program's resources is directed toward providing service to elderly clients. Similarly, the availability of research and technical assistance from sources such as the National Senior Citizens Law Center is an incentive for programs to bring significant litigation on behalf of elderly clients.

One measure of a legal services program's performance in delivering legal services is its effect upon the client community as a whole. The fact that too few resources are available to provide assistance to all poor people makes it essential for legal services programs to set priorities and undertake projects that affect the largest number of people possible. Such "impact" work frequently provides benefits to large numbers of persons and groups regardless of whether they are actually clients of a legal services program.

Legal services programs funded by the corporation and its predecessors have done a considerable amount of work that has had an impact upon elderly people as a group. For the reasons discussed previously, it is not possible to give accurate statistics on these activities, such as major litigation, legislative advocacy, community education, and so forth. I will, however, describe for the committee various areas of the law that have received attention from legal services programs and that, in our view, address problems widely shared by the elderly poor.

PUBLIC BENEFITS

Many elderly people are unable to work and are forced to rely upon public and private benefits programs in order to survive. Legal services programs have been leaders in ensuring that those programs are administered fairly, are responsive to the needs of recipients, and that the recipients receive all to which they are entitled.

Virtually all of the work that has been done regarding the supplemental security income program (SSI)—a national program begun in 1974 that includes the elderly as one of its primary beneficiaries—has been done by legal services lawyers. The Center on Social Welfare Policy and Law, a national support center funded by the corporation that specializes in public benefit law, reports that a substantial number of programs are bringing administrative and judicial proceedings regarding various aspects of the SSI program. According to the center, a major portion of its practice is now devoted to SSI. It has, among other things, published an *SSI Advocates Handbook* for use in administrative proceedings. The National Senior Citizens Law Center, which is also active in the SSI area, has published a similar manual for attorneys. Both of these support centers, as well as legal services programs generally, have done substantial work regarding social security benefits and procedures.

In addition to work in areas of unique concern to the elderly and a few other groups, legal services programs have become specialists regarding general benefit programs in which the elderly participate. Issues related to the medicaid program, for example, are of considerable concern to the Center on Social Welfare Policy and Law and the programs that it helps. Until a few years ago—its Food Research Center became an independent operation—the Social Welfare Center was also involved in a substantial amount of food stamp litigation, and that program still provides some of its caseload.

A third example of a benefit program that affects elderly people is the local general assistance programs. For a person under 65 who has no dependent children and is not disabled, such programs may provide the only available source of income. The Social Welfare Center and many other legal services programs have devoted a substantial amount of their efforts in the public benefits area to rationalizing those programs.

Finally, legal services programs have done impact work in some areas of public benefits law that, although not directly affecting elderly people, have affected the administration of programs in which they participate. The aid to families with dependent children program, for example, rarely provides direct benefits to elderly persons, but litigation concerning that program has resulted in procedures for notice and hearing prior to termination of benefits being

instituted in medicaid, social security, and SSI. In a very real sense, elderly people were served by the legal services programs bringing those actions.

More generally, the use of trained paraprofessionals to provide counsel and representation in administrative proceedings has greatly expanded the delivery of legal services in the area of public benefits. Legal services programs have pioneered this development. In addition to recruiting and training paraprofessionals on the local level, the National Paralegal Institute—until recently a support center funded by the corporation and its predecessors—provided training and materials for paralegals, much of which concerned SSI and other public benefit programs. The corporation is now making plans to train considerably more paralegals for this type of work through its office of program support.

HEALTH

Elderly people have a disproportionate number of medical problems and must rely upon health benefit programs to a greater extent than other poor people. Legal services programs have been leaders in developing the law relating to such programs, particularly in pioneering the view that they create judicially enforceable entitlements to health care and in policing benefit programs to ensure that they are administered fairly.

In addition to the work done in this area by local programs, the corporation funds the National Health Law Project in Los Angeles to provide specialized help to legal services programs on health law issues. The center devotes a substantial portion of its practice to programs specifically designed to aid the elderly, such as the medicare and home health care programs. The project represents several groups of elderly people, and estimates that approximately 20 percent of its litigation time involves elderly clients directly.

In addition, the project engages in a substantial amount of work regarding general health care programs that have a substantial impact upon elderly people. In this category are the Hill-Burton program, which requires that federally funded hospitals provide a minimum amount of free health care, the medicaid program, and prepaid health plans. Other legal services programs funded by the corporation, most notably the National Senior Citizens Law Center, have concentrated upon issues relating to nursing homes, guardianship, and custodial care.

HOUSING

Elderly people living on fixed incomes often cannot afford to pay the rents prevailing in the private housing market, and therefore must live in public housing projects or other types of subsidized housing. Those elderly persons who own their own homes are often unable to keep them in good repair or even to pay the taxes and utilities.

Programs funded by the Legal Services Corporation have undertaken impact work in all of these areas. The National Housing Law Project in Berkeley, Calif., devotes a substantial portion of its practice to public housing issues, and helped to pioneer the concept that there is an entitlement to public housing. This work is especially significant for elderly persons; one recent estimate is that two-thirds of all new construction in public housing is for the elderly. The housing law project also devotes a great deal of time to ensuring that the relocation provisions of urban renewal laws are observed and administered fairly. Again, this is an effort that particularly affects older persons, whose lack of mobility and resources often makes them unable to find decent housing outside of decaying urban neighborhoods.

The housing law project does a considerable amount of work regarding problems of home ownership—problems that affect the elderly more than any other identifiable group of poor people. Specifically, the project devotes a large amount of its practice to the areas of mortgage foreclosure and construction programs such as those administered by the Farmers Home Administration. It has also done work in the area of foreclosure for nonpayment of taxes, and ensuring that provisions for waiving property taxes in federally subsidized housing are followed.

Other legal services programs have addressed themselves to different housing problems that affect the elderly. The National Consumer Law Center in Boston, for example, has done a substantial amount of work regarding home improvement frauds, a problem frequently encountered by elderly persons desiring to keep their houses in good repair. The consumer center has also undertaken activities in the utilities area, attempting to hold rates down and prevent erroneous termination of service.

EMPLOYMENT

Elderly persons who are still able to work frequently find their ability to do so impeded by non-job-related age requirements. With the exception of the National Senior Citizens Law Center, few legal services programs have concentrated on the area of age discrimination directly. A great deal of the work they have done regarding race and sex discrimination, however, has had a substantial impact in age discrimination litigation. The standard of proof in such cases is perhaps the most obvious example. Legal services programs, particularly the National Employment Law Center in New York, have been leaders in establishing the requirement that an employer justify statistical disparities in the numbers of women and minorities employed. That standard is also applied by courts dealing with charges of age discrimination in hiring and promotion.

A second cluster of employment-related issues that concern the elderly relate to pensions. The fact that many employers' promises of financial security following retirement are often illusory has been well documented. Very little work, in legal services or elsewhere, has been done regarding pension law. The Senior Citizens Law Center, however, is recognized by the Labor Department and others as the expert in that area, and the board of directors of the Employment Law Center has recently made pension issues a priority for that program in the coming year.

This summary does not exhaust the specialized activities undertaken by legal services programs that have an effect upon the elderly poor. The Consumer Law Center, for example, has been participating in the development of proposed Federal Trade Commission regulations regarding funeral homes and hearing aids, and plans to become active in those areas when the regulations go into effect. More generally, elderly consumers benefit when a legal services program wins a major truth-in-lending case, and elderly tenants benefit when the courts require landlords to adhere to a warranty of habitability. The point is clear: A great deal of work done by programs funded by the Legal Services Corporation has a direct and substantial impact upon elderly persons, regardless of whether they also receive service as individual clients. For this reason no statistics can reflect accurately the extent to which legal services programs serve the elderly.

Nonetheless, we do not suggest that we are presently meeting the needs of the elderly poor for legal services. There are too few resources devoted to ensuring equal access to justice for the elderly, just as there are for poor people in general. With respect to the elderly, however, the problems of too few programs are compounded by lack of physical access to legal services. Many elderly people are less mobile than other members of the population and may be less well informed regarding the availability of free legal services and the ways that such services can help them. Access may be particularly difficult for persons who became poor late in life and live many miles from the ghetto areas in which legal services offices are typically located.

What can be done to overcome these problems? At this point, the corporation plans two steps and we hope the Congress will adopt this committee's recommendation concerning a third. Other proposals will almost certainly emerge after the project reporting system is implemented and the delivery study is completed.

First, the corporation will work to coordinate the expertise of legal services programs in delivering legal services to poor people with that of organizations and agencies that have experience regarding the particular problems of the elderly. The most obvious example is the Administration on Aging, which has made the provision of legal services a priority for its programs. The corporation and AoA should not duplicate activities such as training attorneys and paralegals in areas of the law that affect the elderly. The development of outreach programs and sensitizing service providers to the problems of working with elderly people on a personal basis are other areas that lend themselves to cooperation between the two organizations. Ways should be found to ensure that title III grants to fund elderly specialists will continue to legal services programs that currently receive them, and be available to those programs that have been unable to obtain them.

Several measures have already been begun to achieve that cooperation. Persons from the corporation's office of program support and the AoA staff are meeting to discuss training needs and explore the possibility of coordinated training programs. The corporation and AoA have exchanged proposals for an

agreement that would ensure cooperation in several specific respects on the national, regional, State and local levels. We intend to continue these activities in the future, and to identify other agencies and organizations that can help us deliver legal services to the elderly.

The second step is more training of service providers, particularly paralegals, in areas that concern the elderly. Our office of program support is currently making plans to train more attorneys and paralegals for legal services work—including many areas that affect the elderly—than has ever been done before on a national level. The need for lawyer training is obvious. But paralegals have also been of immeasurable value in expanding the ability of our programs to deliver legal services efficiently and effectively, though they are not the answer to all delivery problems. Each paralegal must work under the supervision of an attorney in order to ensure the quality of work and avoid the unauthorized practice of law. A legal services program can utilize paralegals only to the extent that it has the resources to maintain proper supervision.

Finally, we urge the Congress as a whole to adopt this committee's recommendation that increased funding for the Legal Services Corporation is essential. The specialized outreach and educational programs necessary to give the elderly access to legal services are costly, and the cost of providing individual service to such persons is therefore higher. Although legal services programs are sensitive to the necessity for such efforts, the financial realities of the last 6 years have precluded needed special efforts. Operating on frozen budgets during a period of high inflation, legal services programs could undertake extensive outreach only at the expense of other clients.

The increases in the Legal Services Corporation's appropriation for fiscal year 1977 will help but not solve the problem. We will not be able to restore the programs to their pre-1970 capabilities, much less enable them to implement the types of projects necessary to reach more of the elderly poor. It is only by substantially increasing the Legal Services Corporation's budget that our present programs will have the resources to make those efforts and that we will be able to establish new programs to serve areas that presently have no access to legal services at all.

We do not recommend that funds be earmarked to provide specialized services to the elderly. The corporation's mandate is to provide service to all of the poor, concentrating only upon those least able to afford such service. Earmarking funds for any group would inevitably mean less efficiency in working toward that goal. It would mean that other clients or groups would be denied access to the legal system altogether. Such trade-offs should not be necessary when the sound solution is to provide the corporation with sufficient resources to perform the job for which Congress established it.

In sum, the Legal Services Corporation is concerned with the problem of delivering legal services to the elderly poor, just as we are with all groups of poor people. We believe we have made progress in that direction. But we are aware of the problems in reaching the elderly poor, and agree that more must be done in the future. Given adequate resources, we can do the job.

Senator KENNEDY. Thank you very much.

Mr. Wharton, would you like to make a comment?

STATEMENT OF A. C. WHARTON, MEMPHIS AND SHELBY COUNTY LEGAL SERVICES, MEMPHIS, TENN.

Mr. WHARTON. The only comment I would have would be to emphasize President Ehrlich's comment about the lack of data base as to how many senior citizens are presently being served in legal service programs. In my own program, however, we do have figures based on 6 months of service.

Now based on that 6 months experience we were able to determine that at least 79 percent of those senior citizens who were served were persons who were faced with problems which, had it not been for the special outreach components and these legal services programs, would simply have suffered with those problems and allowed them to bother them for a longer period of time.

HOUSE CALLS FOR THE ELDERLY

One other interesting statistic is the fact that 59 percent of those served were served at locations other than central offices. We have a program pursuant to which the attorneys actually made house calls, if necessary, and during our first 6 months of operation, approximately 60 percent of the clients were served in their homes at places other than the downtown locations, not simply by choice but by necessity because of handicap or other inability to obtain transportation.

Senator KENNEDY. I think both Mr. Ehrlich and Mr. Wharton anticipated the first question—that is the degree of commitment of the corporation to providing services for the elderly. It seems to me that most governmental programs do not sufficiently involve the elderly.

I think this is true, in general, of health and manpower training programs. The elderly end up participating minimally in these kind of programs.

USE OF INCREASED FUNDS

I would like to know what plans there are for the money that was threatened with rescission this year.

Also, what programs do you have that are geared to serving the legal needs of the elderly? How are we going to be able to measure their effectiveness?

Mr. EHRLICH. Those funds are to be used, Senator, in two major ways. One is to increase the capabilities of existing programs, which have had, as you know—including the ones in Boston and others in Massachusetts—frozen budgets for 5 hard years. Those programs will be able to strengthen their capability to serve the poor, to begin particularly the kinds of outreach efforts that you are interested in that can deal with the needs of the elderly in ways that particularly are important for them.

The second major area is to provide service in at least some parts of the country where there now is no access to justice at all, where the elderly and nonelderly poor are totally outside the legal system.

Senator KENNEDY. Is this rural as well as inner-city?

Mr. EHRLICH. Sadly, it is both urban and rural in much of the country—the South and the Southwest particularly—where there are no legal services programs at all. This coming year, because the Congress has appropriated \$125 million, and in the next 3 years, if we are successful in reaching our goal, we will provide service throughout the country. We are not now doing that and at the end of this year there will still be some areas of the country, including some where a good many elderly people live, who have no service.

RESPONDING TO NEEDS OF ELDERLY

Senator KENNEDY. Can you give us an idea as to how you are going to assure that there will be adequate commitments to the needs of the elderly?

You stated earlier that percentages of individuals using legal services was not an appropriate measurement. How will the elderly be able to judge that there is a strong commitment to their legal

needs? How are we going to know then that you are measuring up to those standards?

Mr. EHRlich. Our commitment is clear and the test, of course, will be the performance on that commitment. In our view, training is probably the single most important factor involved—training of lawyers and training of paralegals. We must be sure that both in the substantive law, particularly related to the elderly, and in other areas where the legal problems of the elderly poor are the same as those of others who are poor, legal services staffs are well trained.

WHAT ARE LAW SCHOOLS DOING?

Senator KENNEDY. What are the law schools doing? What is Stanford doing?

Mr. EHRlich. The short answer is: Not enough. Stanford does, as it happens, have a seminar that deals on a clinical basis with legal problems of the elderly, in conjunction with a program there that the Administration on Aging supports. But in most law schools, including my own, that field has been too often neglected.

The corporation has its own training programs, designed especially for legal services lawyers, to provide training in areas that relate particularly to the elderly and other areas, such as administrative benefits. Our training programs also try to give some sense of the special problems that those who are elderly face when they come up against the law.

The second area of training deals with paralegals. We can do more than we have done in terms of training paralegals. Very often paralegals come from the very community where they will be working. If they are elderly as well, that is an additional advantage in working with the elderly.

Senator KENNEDY. Would it be useful if we had a letter from you and Dr. Flemming to the bar association urging them to urge the law schools to develop these kinds of programs? Perhaps we could ask the bar examiners to include questions on these areas of the law. Would you work with us on this?

Mr. EHRlich. We would be delighted to work with you and your staff in encouraging the bar to help provide legal services to the elderly poor. We might think in terms of prodding the law schools as well.

Senator KENNEDY. I hope that next year we will be able to find out what is being allocated and what is being committed to legal services for the elderly so that we can more accurately assess their impact.

This is important as there is a very strong impression that legal services for the elderly has not been as strong as other areas. We want to be fair, both to you in terms of judging performance and to the elderly, in assuring them that their needs are being responded to.

I think they are entitled to have a clear understanding of what resources are being devoted to their needs.

I ask that we try to work that out with the staff.

I have some other questions which I will submit to the witnesses. I would like to know what is being done in rural areas to extend the outreach programs.

MODEL LEGAL SERVICES PROGRAMS

Dr. Flemming, the section 308 model legal services programs have finished their first year of operation. How successful have they been? What is your evaluation of them and what can be done to assure their success?

Dr. FLEMMING. May I say, first of all, that as far as the grants that were made to the organizations that in turn have been rendering technical assistance to State and area agencies, I feel that the organizations have done a good job. This is why we have renewed most of those grants.

When it comes to some of the more specialized model projects, I have taken note, for example, of the work done by the Legal Services for the Elderly Poor in New York City. They have been able to obtain statewide injunctions in New York and New Jersey to prevent massive transfers of residents out of nursing homes pursuant to utilization reviews under medicare. Under these injunctions, residents may be transferred only after they have been given the opportunity to exercise their rights to a hearing. This injunction has prevented the transfer of about a thousand residents and thereby significantly reduced the negative aspects of transfer trauma.

The legal research services for the elderly here in Washington has developed a law and aging manual to assist the area agencies in developing resources for the elderly and this manual has been widely distributed. Likewise, it has assisted the State agency on aging for West Virginia in obtaining a grant under title XX to establish a paralegal services program consisting of 30 trained paralegals who are senior citizens to visit sites where elderly are congregated in an effort to identify and resolve their legal problems or to refer them to an appropriate legal service. The first job that has been done is one consistent with our desire to build up the capacity and capability of State and area agencies.

Paul Nathanson, in connection with his work growing out of the center in southern California, has performed a similar service for the States in the West and also some in the Middle West.

So I would say, just looking back at just 1 year's operation, that the grants that we have made have helped to move us forward.

Now as I indicated in my opening statement, we are going to try to build on that by institutionalizing this operation at the State level.

Senator Kennedy, one of the things I have tried to keep in mind in connection with the legal services operation is to do everything possible to make it a meaningful and integral part of the operation of the national network on aging.

You were responsible for providing very effective leadership in making it possible for us over the period of the last 2½ years to put this national network into place. It is in place and it is working. I feel it is very important for us to relate legal services to that network. We are very anxious to develop a capacity and capability at the State level which will provide leadership at the area level and the community level and move us forward in this area.

One of the things that we are going to do in order to get a fix on this is to find out within the next 30 to 60 days how many older persons are or have been served through legal services programs in

a given geographical area. Then we are going to ask for an estimate as to the number that will be served by the end of this fiscal year. Then we will be doing the same thing as far as 1978 is concerned.

It is interesting to note that even though the network is new, and we are just getting underway, that at the present time there are about 100 local legal service projects for older persons which are financed in whole or in part by area agencies. They are using somewhere between \$2 and \$2.5 million of their money for that particular purpose. That is in addition, of course, to the money that we have allocated at the national level.

SPECIAL LEGAL SERVICES TRAINING TITLE

Senator KENNEDY. Would it be useful to have a special title in the Older Americans Act for legal services training?

Dr. FLEMMING. As far as the Older Americans Act is concerned you have given us a clear legislative history on it in terms of using some of our IV-A training funds for this particular purpose. I have indicated we are in the process of doing that. This is the second time this has been done. Personally, I rather like that approach as contrasted with putting in a separate title. If we begin to put in special titles for specific areas we could be opening up a Pandora's box. But we are delighted to have the Congress give us a clear indication of intent and then delighted to move in and implement that intent.

Mr. EHRLICH. The Legal Services Corporation does want to see as much focus on legal services as is possible. In this area, we care less on the particular mechanism, whether it is a separate title or the clear mandate to do the kinds of things we have been talking about today under the Administration on Aging, and the necessary funding. If it can be done best through a separate title, that would be fine—that would be the very clear indication of the importance of legal services to the elderly. In all events, we do hope to have that indication.

Senator KENNEDY. Thank you very much.

Mr. EHRLICH. Thank you, sir.

Dr. FLEMMING. Thank you.

Senator KENNEDY. We will be looking forward to seeing you sometime next year.

Mr. EHRLICH. We look forward to working with you.

Dr. FLEMMING. Very much.

Senator KENNEDY. Mr. F. William McCalpin, assistant secretary of the American Bar Association, formerly served as chairperson of the special committee on prepaid legal services and the standing committee on legal aid and indigent defendants. He is also a practicing attorney in St. Louis with Lewis, Tucker, Rice, Allen, & Chubb.

Mr. McCalpin, we are going to have a short recess and then my colleague, Senator Randolph, is going to be here to continue with the hearing.

We will recess.

Mr. McCALPIN. Thank you, Senator.

[Whereupon, a short recess was taken.]

AFTER RECESS

Senator RANDOLPH [presiding]. The committee is privileged to hear William McCalpin, who is the assistant secretary of the American Bar Association.

Mr. McCalpin formerly served as—I will just say chairman, not chairperson—of the special committee on prepaid legal services and the standing committee on legal aid and indigent defendants. He is also a practicing attorney in St. Louis with Lewis, Tucker, Rice, Allen, & Chubb.

We welcome you, Mr. McCalpin, as we welcome, of course, all witnesses. We regret the delay, the situations that are now complicating hearings such as this.

Would you proceed, please?

STATEMENT OF F. WILLIAM McCALPIN, ST. LOUIS, MO., ASSISTANT SECRETARY, AMERICAN BAR ASSOCIATION.

Mr. McCALPIN. Thank you very much, Senator. It is a distinct pleasure for me to be here this morning in response to the committee's invitation. Justin A. Stanley, president of the American Bar Association, is today in London for the opening of the fall term of the courts of Great Britain.

I am joined here this morning by Mr. Daniel J. Piliero of the District of Columbia, who is the chairman of the young lawyers section of the American Bar Association, and Mr. William S. Greenberg of Trenton, N.J., chairman of the committee on delivery of legal services to the elderly of the young lawyers section, about whose activities I shall have more to say in just a moment.

Senator RANDOLPH. We welcome your colleagues to the witness table.

Mr. McCALPIN. Thank you, sir.

I have submitted a prepared statement. In the interest of conserving the time of the committee—I know you have a couple of other witnesses who are here—I shall not read that statement but merely ask that it be included in the record and I should like, if I may, simply to supplement a few of the points which are made in the prepared statement with some additional remarks.

Senator RANDOLPH. The statement in full will be included in the record.

Mr. McCALPIN. Thank you.

[The prepared statement of Mr. McCalpin follows:]

PREPARED STATEMENT OF F. WILLIAM McCALPIN

Mr. Chairman and members of the committee, My name is F. William McCalpin, a practicing attorney from St. Louis, Mo., and assistant secretary of the American Bar Association. I appear here today on behalf of the American Bar Association at the request of our president, Justin E. Stanley. It may be useful for you to know, in view of your consideration today of the legal problems of the elderly, that I am the immediate past chairman of the association's standing committee on legal aid and indigent defendants and have also previously served as chairman of ABA's special committee on prepaid legal services and the special committee on availability of legal services.

In preparing for my appearance here today, I was reminded that the first hearing held by your committee on the subject of the legal problems of the elderly was held in my hometown of St. Louis in conjunction with the American Bar Association's annual meeting in 1970. So it is a particular pleasure to renew the dialog between your committee and the ABA on this important issue.

Our association has had a long history of interest and concern with making legal services available to those who do not have traditional means of access to these services. Historically, our major efforts in this regard have been focused upon the indigent. Lawyers in New York established the first legal aid program exactly 100 years ago. Continuing efforts by the organized bar and other groups to try to make such services universally available have led to the establishment of significant Federal initiatives in this area, most notably the Legal Services Corporation.

With respect to the nonindigent members of society, our early efforts focused on the concept of lawyer referral programs by which members of the public could receive from a State or local bar association the names of qualified attorneys in the client's locale. Generally, through an agreement between the participating attorneys and the bar association, the client would be charged only a nominal fee for an initial consultation. There are now 261 such referral programs serving well over half a million people annually.

In recent years, however, the ABA has become heavily involved in a variety of efforts oriented toward improving the delivery of legal services: prepaid legal service plans, paralegals, specialization, advertising, surveying the legal needs and problems of middle-income citizens, legal clinics, pro bono activities, and the like. There are seven committees of the association that are involved so intensively and directly in this area that we have created a coordinating committee, the consortium on legal services and the public, to focus these efforts.

I have briefly mentioned these efforts to indicate that the association has recently undertaken a number of programs which, while not directed exclusively at the legal problems of the elderly, will have positive impacts on the delivery of legal services to this group. Our involvement to date with the specific needs of the elderly has been limited to the work of three constituent groups within the association.

THE YOUNG LAWYERS SECTION

A committee on legal services to the elderly of the young lawyers section is engaged in seeking to have State and local bar associations establish programs to provide legal services to the elderly. Your chief counsel, David Affeldt, met with this group at a conference held in June. The committee has put together a package of materials for use by State and local bars and is seeking to have programs for the elderly implemented by these groups.

At least one project has already been started as a result of the committee's efforts. The New Jersey State Bar Association has begun a lawyer referral program for the elderly as an extension of its existing referral service. When elderly persons seek legal counsel through the bar association, their names are referred to a panel of lawyers, currently 38 in number, who have an interest and expertise in this area. The lawyers perform the work for the clients at reduced cost or, in some instances, at no cost to the client. The program is just getting underway but has good support among the attorney participants.

THE FAMILY LAW SECTION

The association's house of delegates, the policymaking body of the association, adopted in August 1975 at the request of the family law section, the following resolution:

"Resolved, that the American Bar Association approve the support of a program to establish, in cooperation with local and State bar associations, panels of retired attorneys to provide legal assistance on a *pro bono* basis to elderly persons financially unable to obtain counsel in their communities."

The section has initiated efforts to establish such programs, but the movement is really in its infant stages at this point. The Older Americans Legal Action Center in Dallas, Tex., is one of the first such programs. This effort combines a core of four staff attorneys, whose salaries are paid from Older Americans Act funds, and a panel of over 60 retired attorneys who provide volunteer services in perhaps three to eight cases each per year. One interesting feature of this program is the use of a van as a "mobile office" by which an

attorney and a paralegal travel to senior citizens centers to talk to elderly people about their legal problems. Both the State Bar of Texas and the Dallas Bar Association are participating in this effort.

REAL PROPERTY, PROBATE, AND TRUST SECTION

The real property, probate, and trust section's committee on the legal problems of the aged has taken a two-pronged approach in this area. In 1974, it conducted a survey to determine which States had fulfilled the mandate of the 1971 White House Conference on Aging by establishing State agencies to coordinate and monitor State services for the elderly and to promote such services. The survey results were published in the section's journal, thereby providing the 21,000 members of the section an awareness of and guide to the programs and services available in their States.

The other activity of the committee has been an attempt to increase the expertise of probate and trust lawyers to deal with problems of the elderly. Various articles have been written by members of the committee on specific topics relating to the legal needs of the elderly and published in the section's journal. Currently, the committee is preparing such an article on the use of powers of attorney in these cases.

A number of State and local bars have also instituted similar programs.

The Nevada State Bar, in conjunction with the Clark County legal services program and the State supreme court, has instituted a project by which a panel of lawyers volunteers to handle overflow cases from the legal services program on a *pro bono* basis. While the project provides free legal services to a wide variety of clients and not just the elderly, it has resulted in more than 175 hours of free legal services being provided annually by the private bar to the elderly.

In Louisiana, the State Bar Association and at least three local bar associations have worked with public and private agencies to establish a lawyer referral service for the elderly which combines training of the participating attorneys in the legal problems of the elderly, publicity about the program through newspapers and through organizations of the elderly, and low cost legal services to the elderly.

Virginia's two statewide bar associations combined efforts last year to conduct a 2-day seminar on the legal problems of the aged. One hundred twenty-five Virginia lawyers attended the seminar, and their registration fees paid for the cost of the seminar and for the publication of a resource manual in this area.

These are examples of the sort of activity now going on in the organized bar. More, of course, needs to be done to extend such programs into areas not now served. The president of the ABA and I have discussed the possibility of our establishing an association committee or task force to work in this area and foster the spread of similar programs. Exploratory conversations have been had with at least one foundation on the subject of financing such efforts. While no decision has been made on this score, I know that President Stanley is most interested in the subject.

What could such a task force accomplish? What sorts of initiatives could it encourage? As an initial agenda, the task force might explore any or all of the following ideas:

(1) Encouraging lawyer referral programs, now operated by virtually every State and major local bar association, to establish distinct panels of lawyers who have expertise in this area.

(2) Compiling existing materials on the legal problems of the elderly, developing new materials as necessary, and "packaging" these materials for use by State and local bars in connection with programs they may operate for the elderly.

(3) Conducting continuing legal education programs on this subject.

(4) Establishing panels of volunteer lawyers to provide legal services to the elderly who are unable to afford private counsel.

(5) Developing prepaid legal service plans specifically for the elderly. One common problem with respect to improving the expertise of the private bar in a particular area of the law is the lack of a sufficient volume of cases in that area to permit the practitioner to devote himself intensively to it. Prepaid programs, apart from their many other merits, would help to stimulate the necessary volume of cases.

(6) Working to obtain simplification of legal processes, particularly administrative agency procedures. Many problems of the elderly could be resolved by the elderly person himself, or with minimal assistance of counsel, if the legal processes were less complex and intimidating. Particularly with respect to administrative agency proceedings, I have the impression that it is the citizen, and not his administrative remedies, which generally becomes exhausted first. Bar associations are making efforts to simplify many legal procedures in sound and responsible ways, and such efforts should be encouraged with respect to areas of the law in which the elderly citizens are commonly involved.

(7) Encouraging each of the ABA's sections to establish a committee on the legal problems of the elderly. Our organization has 25 "mini-bar associations," called sections, composed of lawyers with interests in a particular field of law, such as tax law, family law, and administrative law. A committee of such a section could substantially increase both the sensitivity of its members about the legal problems of the elderly and their expertise in this field.

(8) Working to encourage government agencies to be more willing to allow citizens, including the elderly, to be represented by counsel in administrative proceedings. Historically, certain agencies have prohibited attorney participation or made it difficult for individuals to be represented by attorneys. The Veterans' Administration, for example, still prohibits attorneys from being paid more than \$10 for representing a client in a VA proceeding. Such arbitrary and unreasonable limitations seriously impair the ability of a citizen to protect his rights and should be eliminated.

I think these and other measures are ones which can and should be taken by the organized bar. The percentage of our total population which is over 65 years of age now exceeds 10 percent, and that figure is growing each year. There are special and definable legal problems experienced by many members of this group. The bar has begun to address itself to those unique legal problems and needs, and these efforts should be strengthened and expanded.

Thank you for this opportunity to appear before you and present my views and those of the American Bar Association.

Mr. McCALPIN. As the prepared statement indicates, the American Bar Association has long maintained an interest in the delivery of legal services to diverse groups of American citizens. Historically, and going back exactly 100 years, our interest has focused upon the indigent. More recently, and particularly within the last 10 years, that interest has broadened out to include numerous other groups of American citizens.

In addition to the activities which are recited in my prepared statement, the standing committee on legal aid and indigent defendants in the last few years has taken particular pains to identify constituencies of indigent persons, subgroups within that categorization, if you will, who are particularly to be considered in the provision of legal services.

Those constituencies include juveniles, native Americans, prisoners, the elderly, ethnic minorities, and the like.

LEGAL SERVICES FOR THE HANDICAPPED

Senator RANDOLPH. I wish you would add the handicapped also.

Mr. McCALPIN. Yes, sir, we have. As a matter of fact, just at the annual meeting in Atlanta, the house of delegates passed a resolution respecting the handicapped citizens of the United States.

Senator RANDOLPH. There is a very substantial number of handicapped persons in our population, but they are also individuals who can be in the mainstream of American life and be very productive in our society.

Mr. McCALPIN. There is not any question about that, Senator. They

are particularly deserving of the really minimal assistance which we can give them to bring them into, as you say, the mainstream and to cause them to bring their undoubted talents into the productive life of the United States.

The family law section of the American Bar Association was really responsible for the 1970 hearing which Senator Williams referred to in his opening remarks yesterday. Mr. Norman Kalcheim, of Philadelphia, the chairman of the committee within that section, caused a hearing of this committee to be held in St. Louis 6 years ago.

As the remarks indicate, the real property, probate, and trust sections dealing as they do with matters of estates, and trusts, and real property, has taken a particular lead in exploring how legal services might be brought to elderly citizens in manners which I have described in the prepared remarks.

Senator RANDOLPH. The Committee on Aging held the hearing in St. Louis.

Mr. McCALPIN. I believe you attended.

Senator RANDOLPH. I did attend. I can't pinpoint the date, but I believe it was in 1970.

Mr. McCALPIN. August 1970, in conjunction with the annual meeting of the American Bar Association in our city at that time.

Senator RANDOLPH. I think this is further proof of what you said earlier. Is it correct that the American Bar Association has a continuing desire to address itself to this very important problem?

Mr. McCALPIN. Yes, sir. That is exactly correct, and the family law section has taken up the endeavor in the interim as well as the real property section. They have engaged in the activities described in the prepared remarks.

YOUNG LAWYERS INTERESTED IN ELDERLYS' LEGAL PROBLEMS

Of more immediate interest, I think, is the activity of the young lawyers section and the two representatives who have joined me here today. I think it is a matter of interest that it is the young lawyers who are particularly interested in the problems of legal services for the older citizens of the United States and they seem to have bridged that gap that we hear about so much. It is not the lawyers in between, but the young lawyers who are so interested.

Senator RANDOLPH. On the Salem College campus at Salem, W. Va., which is my alma mater, we have the agent there on the campus. They have an innovative program, which I do not have time to discuss in detail now. There was a belief by many people that the students would resent this group of persons who would possibly mingle with them, at times eat with them, and would be a part of the campus life. Instead, they are prompted by them and helped. I receive letters from the board of trustees and the officials of the college, saying "This has helped the students. It has given them help which they didn't realize. Thank you very much."

Mr. McCALPIN. I think that experience is mirrored and reflected in the bar as well, Senator. In June of this year, the young lawyers section brought together representatives of a number of members of the bar from eight or nine States to a meeting here. Those repre-

sentatives had expressed a particular interest in creating legal services programs for the elderly.

The staff counsel of this committee, Mr. Affeldt, was in attendance at that time. The section is continuing that activity. In a series of five meetings to be held around the country this year, beginning next week in Chicago, representatives of the young bar in all 50 States will be offered five or six programs to be implemented by young lawyers in all 50 States and in communities across the country.

One of these programs will include the development of legal service programs for the elderly. At the meeting in Chicago next week, 68 lawyers have already indicated an interest and an expectation of attendance. They will come from 12 or 14 States. At that time, material such as I have in my hand and were used at the meeting here in June will be offered to those in attendance so that they may return to their States and their local communities and build upon the kinds of ideas which Commissioner Flemming and Tom Ehrlich described here this morning.

Coming from those directions, they can put together programs to provide legal services to the elderly in their States.

As I have said, that meeting at which representatives of 12 or 14 States will be in attendance will be repeated four times throughout the course of this year so that all 50 States will be represented and given an opportunity to participate to inaugurate programs to provide legal services for the elderly.

As is indicated in the prepared statement, building upon these efforts and those of others in the field, the American Bar Association is exploring the possibility of bringing these efforts together under a committee or a task force which might have the charter which is outlined in the prepared statement.

USE OF PARALEGALS TO HELP ELDERLY

I would conclude, I think, with offering just a few additional thoughts for the consideration of the committee. As Tom Ehrlich said a little bit earlier, it seems to us that this area of legal services for the elderly is one which is particularly appropriate for the activities of paraprofessionals, paralegals. It is in large measure an area of problems with administrative agencies where paralegals can much more easily find access to the system than in the courtrooms where the court has the tendency to require a license to practice law as the price of admission.

In addition, the use of paraprofessionals admits of the possibility of using those persons most familiar and concerned with the problems, to wit, the elderly themselves, in a helping way usually with some advice and consultation with lawyers but it seems to us that the use of paralegals, paraprofessionals, is particularly appropriate in this area of the provision of legal services and, indeed, the paralegals help the professionals to expand their opportunity, to expand their area of service.

AGENCY RESTRICTIONS ON LEGAL SERVICES

One problem area that I would draw to the attention of the committee is the area of restrictions really on the provision of legal

services to the elderly, among others, by the practices of certain of the agencies involved.

It is interesting that Senator Randolph is here. I remember about 10 or 11 years ago at a meeting of the West Virginia bar in Charleston, there were representatives there of the Social Security Administration. At that time, that agency had particular restrictions on the compensation of lawyers in the representation of persons with problems before the Social Security Administration. Largely, I must say, because of its own feelings, that agency changed its approach with modest prodding from the bar. It is now possible for attorneys to participate in the solution of problems within the framework of that agency on a modest basis and as a result we have seen a very dramatic increase in the representation of persons with problems before the Social Security Administration. A dramatic increase in the use of lawyers.

Just this past year, there was presented to the house of delegates of the American Bar Association a report and recommendation from the special committee on Federal limitations on attorneys fees. That report drew particular attention to the practice of the Veterans' Administration which has, among other things, a limitation of \$10 on fees which may be paid to an attorney for representing a person with a problem before that agency.

While I am sure that rule was conceived in the hope and the thought that it was in the interest of the veteran that he not have to pay an inordinant fee to have his problem solved, in truth and practice I think that regulation works to the disadvantage of the veteran because, as a practical matter, it means that he cannot get legal representation in the solution of his problem.

I have pulled from the bound book of reports the report and recommendation of that committee which was, as I say, adopted by our house of delegates in Philadelphia in February of this year and I would ask that, together with the very useful appendix which is a compilation of limitations on attorneys fees, be added to the record of this proceeding.

It is my understanding that a few copies of that were handed in to the staff this morning without, I am sorry to say, that compilation at the end of the report which will be submitted to the staff before the day is over.

Mr. AFFELDT [presiding]. We shall make that part of the record.¹

Mr. McCALPIN. Thank you.

PUBLIC INTEREST LEGAL SERVICES

Finally, I would draw the attention of the committee to the resolution of the public interest practices committee, which was adopted by our house of delegates some time ago and it calls upon each lawyer in the United States, as a matter of his basic professional responsibility, to provide public interest legal services. The generic words of that resolution certainly admit of the provision of those legal services to the elderly. That committee is busy at work now drafting specifications for the implementation of that generic resolution and I have no doubt that when completed it will clearly call for the provision of

¹See appendix 1, item 9, p. 361.

legal services to the elderly, among others, as a basic element in the discharge of the professional responsibility of each lawyer under canon 2, to make legal services more readily available.

I would simply finish by saying that the American Bar Association and all State and local bar associations, I think, have become increasingly aware of the obligation to provide legal services to all segments of the community and we welcome the activity of this committee in a particular area among a particularly deserving group of American citizens and we will lead in the field but we will also respond to your lead as we see it developing in the months and years ahead.

We look forward to cooperating not only with this committee, but with the Legal Services Corporation, Commissioner Flemming, and others interested in this vital field.

I thank you. We would be glad to answer any questions on any of our activities.

Mr. AFFELDT. Thank you very much, Mr. McCalpin, for an excellent presentation.

I shall raise a couple of questions and then ask some of the staff members if they would like to pose any questions to you or to the panelists.

First, the American Bar Association adopted a resolution in 1975 which said, and I quote: "It is the basic professional responsibility of each lawyer engaged in the practice of law to provide public interest legal services." What steps has the ABA taken to increase the involvement by private attorneys in providing legal services for the poor, and particularly the elderly poor?

Mr. McCALPIN. Well you, of course, have just quoted from the public interest recommendation of the special committee on public interest practice to which I referred a moment ago. I think I can say several things about what we are doing to implement that.

First, as I have said, the committee that fathered that recommendation is now at work designing the specifications by which the generic resolution will be implemented, and I think you will recognize that the passage of that generic resolution represented something of a milestone because it did advance the concept of basic professional responsibility a good deal.

Second, the gentlemen at my left and my right in the young lawyers section are, as I have said, busy at work energizing the State and local bars all over the United States—particularly the younger members of those bars—to create programs which may participate in the legislation which this committee has sponsored.

Mr. AFFELDT. I believe Mr. Greenberg has undertaken some efforts in New Jersey, and I would appreciate it if he could provide some comments about his activities for the record.

STATEMENT OF WILLIAM S. GREENBERG, TRENTON, N.J., CHAIRMAN, COMMITTEE ON LEGAL SERVICES TO THE ELDERLY, YOUNG LAWYERS SECTION, AMERICAN BAR ASSOCIATION

Mr. GREENBERG. Thank you, Mr. Affeldt.

The importance of the New Jersey project is that it is one example of what can be done in delivering legal services. That is what this program is all about, getting the services to the people who need them.

In New Jersey, particularly, we have a panel of some 38 volunteer lawyers and we have approached it as an extension of a more traditional lawyer referral service with the emphasis on the substance of the problems of senior citizens, the elderly.

Thus, when a senior citizen or a person who is elderly knows to call the New Jersey State Bar Association—at an 800 number, I might add, a toll free number—seeking legal services, that is automatically plugged into or assigned to one of these 38 volunteer lawyers on a regional basis, trying to match up the lawyer with the potential client. It is done on a very low cost or no cost basis to the individual.

I might note that one of the things that the American Bar Association has to be concerned with, and that we in New Jersey have been concerned with, is what do you do about the problem of the elderly when a senior citizen, who is not necessarily poor but needs legal services, is not necessarily indigent but does not know where to go for a lawyer or how to seek legal services, and the question of the fee, and the question of the participation of lawyers?

We in New Jersey have tended to indicate that regardless of economic means it is the problems of the elderly that we are addressing and that will then be followed through on an individual lawyer-client basis. Those who are able to pay, pay; those who aren't will receive the services free.

It is very interesting, and I think you know that very many senior citizens do not want charity, do not want a handout. It is simply a problem of getting together a person in need with a person who has got the wherewithal to supply the need. A very important concept that I have stressed around the country at these regional meetings of the young lawyers section is that this is not necessarily a program of freeing legal services in the sense that only indigent people should be considered. It is a program of delivery of legal services in all of its ramifications and I think that is a very important concept, particularly to our elderly—a refusal to become a part of the program that is merely one more indigent and merely a charitable one.

ROLE OF LAW SCHOOLS

Mr. AFFELDT. I would like to pose this question for all three panelists. This relates to the role of the law schools in training attorneys to be responsive to the legal problems of the elderly. I know from my own personal case when I attended the University of Texas Law School, which I consider to be a top flight law school, that I had very little training at all for the type of work I am doing now. Much of the training was for the traditional attorney-client relationships, business associations, personal injury cases, and so forth.

What, in your judgment, should the law schools do in order to sensitize and prepare the attorneys of tomorrow for the legal issues affecting the elderly?

Mr. McCALPIN. Well, I think that in a little different context and from a little different direction the law schools are moving in directions which will be productive in the terms that you have described. The thrust really has come from the poverty law area and the involvement of law students and clinical programs in cooperation with

local or legal service agencies funded by first OEO and now the Legal Services Corp.

As a result of that, law schools are beginning to pay a lot more attention to consumer law, landlord and tenant law from the tenant's point of view rather than the landlord's point of view, and problems of that sort.

Now this inevitably will have some fallout in substantive problem areas which are of concern to the elderly.

The sensitizing which is going on in that is, I suppose, largely directed at sensitizing law students to the problems of the poor. I suspect we need to add a dimension to that, sensitizing them to the problems of the elderly. All this, of course, is laid on the traditional disciplines and administrative law and procedural law which has gone on, and I think it has added new dimensions to it.

I do believe that maybe what we need to do is to wed more combined sociology courses with legal courses, and there are some efforts in those directions around the country.

Mr. AFFELDT. Very good.

Mr. Piliero, would you like to comment on that for the purpose of our hearing record?

STATEMENT OF DANIEL J. PILIERO II, CHAIRMAN, YOUNG LAWYERS SECTION, AMERICAN BAR ASSOCIATION

Mr. PILIERO. Thank you, Mr. Affeldt.

I would agree with Mr. McCalpin's comments. I think the number of issues which are before the bar, and indeed before the profession, will tend to converge on the solutions to the problems of the elderly in the legal area. We are at the moment, it seems to me, struggling with the concepts of making known the availability of services to people through a reconsideration, I suppose, as an association and as a government, of the respective positions which we might have with respect to advertising availability of services. We are struggling, it seems to me, with the concepts of how legal services may best be delivered and whether we should, as Mr. McCalpin said, spend a number of years exploring through prepaid plans and other varieties and types of programs.

The concept of providing information about the availability of legal services and providing information and accessibility to legal services will have, it seems to me, a very significant impact on the elderly as it will on other generic groups of people as we begin to open those discussions and resolve certain issues.

PINCUS LEGAL EDUCATION PROGRAM

More particularly to the point of whether it would be appropriate in a law school setting to design a specific program or to include in each of the more than 150 law schools programs on legal services training for the elderly, I would suggest to you the Pincus program for clinical legal education.

Bill Pincus has for more than 6 or 7 years supported 120 active clinical programs. He has indeed funded clinical programs of a great variety. I receive his materials and I would be pleased to sup-

ply, at a later time, information on whether there are specifically funded clinical legal programs designed to assist the elderly as a group, and if there are not, I think perhaps that organization might be interested in considering the subject.

Within the context of clinical programs generally, there being more than 100 funded projects across the law school community, my impression is that you would benefit from having law schools include some clinical training with special attention to the elderly.

I did not take from your comment the suggestion that there be a substantive law course on the subject of legal problems of the elderly as much as, perhaps, a combined substantive law and clinical program. To that extent, it would seem to me that it would certainly be useful to consider the existing mechanisms, such as the Ford Foundation grant called CLEPR—Clinical Legal Education for Professional Responsibility—which Bill Pincus administers, and other existing programs that you and I have had occasion to work with and which the private sector might well energize in a law school, or two more programs which would be models.

My belief is that Mr. McCalpin is probably correct. It is the young members of the bar doing the kinds of things which we are now doing which will be more valuable in the long run to ultimately delivering the services to the elderly—to have lawyers in the field already established and working who we know are not merely thinking about going out to practice law and who ultimately go to do something else, but lawyers who are there physically in the field practicing, who have their own firms or belong to firms, either volunteering their services or developing a side of their practice in a profit setting, if that be the case, but developing a side of their practice with a particular view toward the fact that there is a special area here of attention which is necessary, and attention which they should be involved in.

Mr. AFFELDT. Mr. Greenberg.

CLINICAL CONCEPT

Mr. GREENBERG. My view, quite frankly, is that I adhere to the concept that in the law school setting an emphasis on the clinical programs is wise and the substantive area of the law should be handled the way they have traditionally been handled in law schools, which is smaller seminars on these particular programs and a particular substantive, such as social security and veterans statutes, and so forth.

Mr. AFFELDT. Where did you attend law school?

Mr. GREENBERG. Rutgers, the State University of New Jersey.

Mr. AFFELDT. Did you have any courses on social security or medicare?

Mr. GREENBERG. No, they were traditional. This is the emphasis I think we should have in the future. They were all subsumed in administrative law courses and you were lucky to touch upon a particular case.

As you know, the traditional method of law teaching is the case method. There are very few cases that get to the courts dealing with the substantive problems of the elderly as elderly. I think a greater

emphasis should be made to include substantive law but I wish to make the following point, and that is, agreeing with what Mr. McCalpin and Mr. Piliro have said, I would put the two together, and that is conducting legal education programs for practicing lawyers should deal with the substantive areas of the law of concern to the elderly.

In the State of Virginia, the Virginia Bar Association had a program, I believe, last fall, in which practicing lawyers would come together, traditionally Saturday morning or 1 or 2-day sessions, and deal with particular substantive areas whether it be social security, whether it be supplemental security income, veterans statutes, or private retirement.

As you know, we have a brandnew Private Pension Reform Act of last year which, I believe, Senator Williams is one of the principal sponsors of. These are the kinds of things that should be emphasized, in my view. The practicing attorney should be encouraged to get the information in terms of the substantive areas of law. That is the emphasis I would make, not necessarily in law school but once the lawyer is admitted and is practicing. That is where he should get the knowledge of the substantive area in the law.

CONTINUING LEGAL EDUCATION

Mr. McCALPIN. There is a development which is emerging around the country which I think is apt to tie in rather closely to what Mr. Greenberg has suggested, and that is the increasing emphasis on the requirement of continuing legal education as a condition of maintaining your license in effect. At least two States have now adopted rules of court which require lawyers to spend a specific number of hours in upgrading their skills continuing their education.

Mr. AFFELDT. Are those States Iowa and Minnesota?

Mr. McCALPIN. Exactly, and I think it is 45 hours in a 3-year period of accredited instruction as a condition of maintaining the license. It is courses of that kind which can easily accommodate the concept which Mr. Greenberg has suggested.

Mr. AFFELDT. Mr. Schneider.

Mr. SCHNEIDER. On behalf of Senator Kennedy, let me raise a few questions.

PARALEGALS

You mentioned favorably the paralegals here dealing with the problems of the elderly. Yesterday, there was testimony which indicated that some State bar associations apparently have passed regulations which tend to forbid nonlawyers from handling administrative law cases for elderly clients. I am wondering if you could comment.

Mr. McCALPIN. Well, I think that generally speaking, the use of paralegals is considered to be entirely appropriate within the framework of their working in a general way with guidance from professionals. Now so far as I know, the only areas where there are flat prohibitions, if I remember, in Michigan a few years ago there was a proposal that nonlawyers represent persons before the Workmens Compensation Commission and I believe the Michigan bar opposed that.

In other words, it was completely independent, outside of the rules, outside of the training and the code of professional responsibility of the profession.

I think that so long as paralegals work within the general structure of the profession subject to the rules as to confidentiality, conflicts of interest, and the general supervision of professionals, I don't think that there is any organized opposition by the bar.

Mr. SCHNEIDER. Let me turn it around a little bit. What is the bar doing to encourage these paralegals?

Mr. McCALPIN. Well, the bar is doing all kinds of things. The availability committee, which I was privileged to chair for 5 years, spun off the idea of paraprofessionals. There was created a special committee of the American Bar Association, under the chairmanship of Lee Turner of Kansas, about 6 or 7 or 8 years ago. That committee has sparked and energized the creation of numerous paralegal training programs around the country within recognized institutions of education, frequently at the community college level, sometimes in the general public educational system.

That committee has dealt with not only the training but the utilization of paralegals in the profession and I think as a result of the activities of the organized bar we have seen an enormous increase in the use of paralegals.

The OEO funded programs took it up. The OEO provided money for the utilization and training of paralegals. That mantle has now passed to the Legal Services Corp. I have had some conversations and correspondence with Mr. Ehrlich in that connection over the past year or so. I think the bar has done very much to increase the recognition, the training and utilization of paralegals in the last 6 or 7 years.

PRO BONO REPRESENTATION

Mr. SCHNEIDER. One final question. One of our later witnesses in prepared testimony quotes from a speech by Justice Brennan at Harvard on the possibilities of the legal profession urging that each member of the bar be required to spend 5 hours per week in pro bono representation. No bar association, according to him, has yet imposed such an obligation upon its members.

Do you think that that is a reasonable standard and do you think that the bar association might consider that?

Mr. McCALPIN. Mr. Affeldt and I were discussing earlier the resolution which was adopted by the house of delegates of the American Bar Association a year or so ago at the instance of the special committee on public interest practice. That resolution, which is now the policy of the American Bar Association, says that it is a basic professional responsibility of each lawyer engaged in the practice of law to provide public interest legal services.

Now what you are doing, of course, is quantifying that obligation in terms of 5 hours a week. As a lawyer engaged in the private practice of law myself I would say to you that I think 5 hours a week is pretty stiff. I do think that there is an obligation. I think that we are at work now trying to translate that obligation into specifics.

I am not sure that each lawyer is constitutionally made up so as to provide the service himself. It may be that you will do it in a

surrogate way. I point to you the sample of Hogan and Hartson here in Washington which has supported a public interest section in the firm which has a lawyer in charge and two or three other lawyers.

John Ferren, who is the head of that section, is a very devoted and able lawyer and he is completely supported by the firm along with his section. I think that this is the way that it may be, that the quantum of the obligation may be translated in different ways across the country.

Indeed it may be that some will merely support it financially, but I think that the bar has accepted Mr. Justice Brennan's principle and it is now trying to translate that into active reality.

Mr. AFFELDT. Mrs. Fayé.

Mrs. FAYÉ. No questions.

Mr. AFFELDT. I think one of the impediments for private attorneys to provide legal counsel for the elderly is, as you pointed out, the \$10 limitation for VA benefits. In a prior working paper for the committee—prepared by Legal Research and Services for the Elderly—one of the contributing attorneys pointed out that in so many cases the issues affecting the elderly are the type that are very complicated and do not offer much of a return for the expenditure of time for the private attorney.

PROPOSALS TO IMPROVE FEE SYSTEM

What, in your judgment, can be done to improve the fee system so that it will be more financially attractive for the attorney to represent the elderly client and yet not result in a great dilution of benefits—to the point that it would not be advantageous for the elderly client to be pursuing his legal rights?

Mr. McCALPIN. I think there are a couple of things that can be and are being done in that respect. First of all, the use of paraprofessionals is a less expensive way of going about solving the problem than to utilize a fully trained and higher priced professional.

Second, the concept of prepaid legal services which has been espoused by the bar is one which offers a solution. I happen to sit on the board of Prepaid Legal Services, Inc., in St. Louis. A senior citizens group has come to us with a view to creating a prepaid legal services program for that senior citizens group of the typical open panel variety where they pay what amounts to a premium. It is a spread the risk sort of thing which makes it possible for them to get the services.

There is, of course, no reason why a group of senior citizens could not do as many labor unions have done across the country and that is to create a closed panel legal services program where counsel is on a salary rather than paid a fee for service, and this again has the effect of minimizing the cost so far as the individual recipient of the service is concerned.

I think that these are at least a couple of ways that that problem can be addressed very quickly within a nonradical solution.

Mr. AFFELDT. Do the other panelists wish to make any contributions?

Mr. PILLERO. Mr. Affeldt, I think we will have to recognize that, aside from the possibility of there being a fee, there will be those

who are simply not able to pay a fee at any level, and the system will not be a fee-generating one. To that extent the work of the volunteer lawyer which we are energizing and the work of the Legal Services Corp. upon which you received testimony this morning, and as I understand it, a reporting system of some sort which Senator Kennedy requested be established, will probably be the best aid.

For the private bars' part, I would suggest that the young lawyers will be addressing some 275 affiliates in the coming year. We would expect that in excess of 500 or 600 presidents of the young lawyers groups throughout the country will be attending with officers and committee chairpeople and we would hope to energize committees of practicing lawyers in a volunteer setting.

As Mr. Greenberg suggested, in some instances these volunteers function on a fee basis where it appears that the problem and client warrant a fee. In most instances, however, it is just volunteer time which comes back to the question of what is the bar doing with the volunteer services. We don't keep track of the hours. I can only tell you that in a disaster assistance project I know we answered 5,000 claims over a 2-year period.

In the past year we have had volunteers present in an Indochinese refugee assistance program made at the request of the Department of State last year. I know that we have established an assistance program and answered more than 1,500 calls on this program. Similar programs will be the subject of our five regional meetings which Mr. McCalpin suggested. So I think that although we are unable to quantify and send in tables of hours devoted to these projects, the private bar does pull a good share of its weight, and without a fee. I don't think the fee question has stopped us from providing the service. Indeed, we accept no fees on any of the problems which I discussed.

Mr. McCALPIN. In addition, of course, to paralegal and prepaid legal, we do have the discharge of the public interest obligation which we have discussed earlier as well. Of course, the services of the Legal Services Corp., which has been greatly supported by the bar, are approaches to solving the fee problem for legal services for the elderly as well.

Mr. AFFELDT. Any more questions?

Thank you very much.

Mr. McCALPIN. Thank you.

Mr. GREENBERG. Thank you.

Mr. PILIERO. We appreciate the opportunity to testify.

Mr. AFFELDT. Now we shall hear from Mr. Paul Nathanson who is the executive director of the National Senior Citizens Law Center. His testimony at the committee's Los Angeles hearing in 1974 provided a spark for the Tunney amendment to the fiscal 1975 Labor-HEW Appropriations Act. It provided a \$1.2 million special funding level which led to the creation of 11 model projects throughout the country.

The National Senior Citizens Law Center also provides technical assistance on a wide range of issues to State and local offices of aging, serving 29 States west of the Mississippi.

We welcome you, Mr. Nathanson.

**STATEMENT OF PAUL S. NATHANSON, EXECUTIVE DIRECTOR,
NATIONAL SENIOR CITIZENS LAW CENTER, LOS ANGELES,
CALIF.**

Mr. NATHANSON. Thank you. It is a pleasure to be here.

I am here actually in a dual capacity; as executive director of the National Senior Citizens Law Center, and as a member of the executive committee of the newly formed legal services section of the largest State bar association, the State Bar Association of California. I have submitted a statement¹ for the record on behalf of the legal services section.

I also have a prepared statement² which I hope will be included in the record.

We have heard today and yesterday, and we will continue to hear, about the efforts that the private bar has been making with respect to providing legal services for the elderly.

However, I am not convinced that aggressive advocacy—major litigation and legislative and administrative advocacy—will go on if the sole representative of the legal rights of the elderly poor is the private bar.

I think that the staffed legal services programs funded now by the Legal Services Corp. and by the Administration on Aging through its title III program have been a major source of improvement in the daily lives of older people through their advocacy efforts.

It is this expertise in dealing on a daily basis with social security, food stamps, title VII, SSI and the major Federal benefit programs which I think is critical. I do not see that expertise arising—except perhaps in the long, long range—out of the private bar and judicial-type programs.

ACTIONS TO DEVELOP EXPERTISE FOR ATTORNEYS

Mr. AFFELDT. What steps do you think would be necessary in order to develop this expertise for these various programs?

Mr. NATHANSON. For private attorneys?

Mr. AFFELDT. For private attorneys and perhaps legal services attorneys because I think many of them are not that well informed about programs.

Mr. NATHANSON. There are several things that can be done. Publicly-funded legal services attorneys have the various backup support centers mentioned by President Ehrlich. They have training programs. There are manuals which are prepared to at least begin to give out some of the expertise. These resources are generally not available to the private practitioner.

For example, I spoke recently with a private attorney in Chillicothe, Mo., who would very much like to take an occasional social security case but cannot spend the 2 days required to go down to Kansas City, read the Federal Register and then go back home and do the research.

If that attorney had available the services of a support center such as ours—or the Welfare Law Center in New York, or another one,

¹ See appendix 1, item 10, p. 369.

² See p. 292.

depending on what the question was—where he immediately could be told, “Look, that is a case that is worth pursuing,” or “We are doing something in Florida with respect to that,” and so forth, I think you would see him taking social security cases because he would be able to afford it. And in the long run you would see the private citizen being able to afford having that attorney in Chillicothe take the case at a reasonable fee.

LEGAL SERVICES ASSISTANCE FOR ELDERLY

I would like to give a few examples of the ways in which legal services attorneys have assisted elderly clients. In *Kennedy v. Matthews*, brought by the Food Research and Action Center, a court order was obtained requiring the release of \$37.5 million in funds impounded under title VII of the Older Americans Act. As a result, the nutrition services for the elderly were expanded to reach an additional 63,000 persons as a direct result of that case brought by Ron Pollock and his associates.

In the case of *Cardinale v. Weinberger*, legal services attorneys were successful in negotiating the right to a hearing before reduction, suspension, or termination of SSI benefits.

The case of *Abascal v. Weinberger* ultimately resulted in the Social Security Administration handing out over 1,000 copies of the SSI claims manual to legal services attorneys and other advocates. Initially, the Social Security Administration had indicated that it did not want to hand out that manual which is, as you know, the basic law of the SSI program. It did not want advocates in the field to have it. A lawsuit was brought by Ralph Abascal. Our office went to Baltimore and negotiated with SSA and, as a direct result of those negotiations, it sent out the manual to legal services attorneys.

Even in the face of such major decisions nothing is perhaps as moving as the self-explanatory letter recently received from the National Senior Citizens Law Center with respect to a case involving the eligibility of a plaintiff for a civil service retirement annuity.

I would like to quote just for a moment.

So let me thank you most sincerely for whatever you did for me. I have tried for over 17 years to negotiate the return to me of my right to a pension for nearly 30 years of Government service, mostly abroad. Now it is all over, thanks to you, Mr. Harden, and others of your service. It gives me great satisfaction to tell you that last Friday, September 3, I received two U.S. Treasury checks, one for \$28,654 and another for \$1,200.

Also, I was informed I would received \$200 monthly from now on. I am deeply grateful for everything, now that you and your service have accomplished what I tried to do alone for so long.

SUBSTANTIVE EXPERTISE CAN MAKE LITIGATION UNNECESSARY

Obviously, benefits to clients derive not only from actual litigation but from the general substantive expertise of legal services attorneys and from the enhanced credibility given the negotiations of such attorneys by the mere threat of potentially successful litigation.

Thus, at the simplest level, merely being able to decipher and understand complex pension reports and their significance recently resulted in the discovery of pension credits previously overlooked and

the ultimate issuance of a check for \$14,000 to a client for retroactive benefits. In addition, the retiree and his spouse, if he predeceases her, will now receive a monthly annuity of \$357.

Now, these are concrete individual cases. My point is that the expertise that legal services attorneys are able to acquire often results in helping people on an individual basis without the need for litigation.

I think it is critical that the expertise which the legal services attorneys have now acquired be available for legislative and other public hearings. It seems to me it would be an excellent idea if there were a way of allowing that expertise to be used in public hearings.

I note with pleasure that Senator Kennedy and others have introduced or sponsored legislation, such as S. 2715, which would provide attorneys fees for aiding individuals and for participating in public hearings. That kind of an approach, I think, is critical if we are really going to tap into the expertise that now exists in the field.

The Federal Trade Commission has been involved in providing attorneys fees or hiring attorneys to represent the consumer interests in its own hearings. That is the kind of thing I think we would like to see more of.

Unfortunately, the other side of the coin is shown by the Social Security Administration. The SSI study group specifically mandated SSA to have legal services attorneys on an advisory panel to talk about the problems in the SSI program. After having had a couple of meetings, SSA is now indicating that it is not even willing to come up with the travel costs of these already financially strapped legal services attorneys to come to Baltimore for task force meetings. It seems to me that that is an area where, if it is anyway possible, there ought to be some legislative mandate to the Social Security Administration.

Mr. SCHNEIDER. Excuse me just 1 second. This is an administrative decision taken by the Social Security Administration. Previously travel vouchers?

Mr. NATHANSON. They provided travel for two meetings.

We have a letter in our office indicating that it looks as though SSA is not going to pay the travel for a few legal services lawyers from around the country to come to Baltimore to work with SSA on improving the SSI program.

I would like to highlight just a few special problems that have come up with respect to legal services for the elderly. One is the funding structure of the Older Americans Act and other Federal programs—the idea of “seed money” and maintenance of effort. We have heard from directors of several projects now serving the elderly who have encountered tremendous problems in the face of these unrealistic kinds of requirements. This is especially true, given the fact that local money is, first of all, generally very limited and a truly effective legal services program—that may be involved with challenges to some of the practices of local municipal agencies—may have an even harder time getting some of these limited funds from the local agency.

PARALEGALS ESSENTIAL FOR EXPANSION OF LEGAL SERVICES

I think that State and local bar associations have to be educated to the fact that paralegals are critical to the development and expansion of legal services for the elderly. Spokesmen for the bar ought to voice that support, not just in public meetings, but should also go back to Michigan and to other places where paralegals are encountering problems from the organized bar.

Mr. SCHNEIDER. Excuse me. At that point could you provide any information you have of situations in various States where those problems do exist so that we can go back to the bars?

Mr. NATHANSON. Yes.

I think that the private attorneys, especially in rural areas around the country, have to be educated to the fact that the setting up special elderly law units, whether they be funded through the Legal Services Corp. or through the Older Americans Act, is not going to take away business from local lawyers. Such offices are probably going to really generate more business by increased referrals and utilization of the legal process in general.

FEE SCHEDULES MUST BE IMPROVED

As has been pointed out, if the private bar is going to get involved in dealing with the major legal problems of the elderly, the fee schedules under social security, SSI, and especially the situation under the Veterans Administration, must be improved.

I understand Senator Hart of Colorado has introduced legislation to do away with the \$10 limitation on attorneys fees with respect to veterans cases; and in the House, Congressman Cohen has introduced similar legislation.

As I also understand—

Mr. AFFELDT. I want to mention some points raised by the Veterans Administration. The Veterans Administration's \$10 limitation is designed for a couple of purposes. First, to prevent a reduction in benefits for the veteran and his family. Second, the Veterans Administration maintains that this is not an adversary proceeding. The VA personnel actually work for the veterans in terms of receiving their benefits.

What would you say to those arguments?

Mr. NATHANSON. Well, taking the latter question first, I think it is probably correct that in a vast majority of situations the counselors that the VA uses are very helpful and give out good information.

I think, however, that in any kind of a situation which challenges the basic system and therefore needs advocacy against the system—such as the kinds of cases we have seen coming out of legal services programs in general with respect to social security, SSI, food stamps—the various VA groups that get funded by the VA itself will not be in the forefront.

In addition, I am a little leery of saying it is not an adversary proceeding. We have heard that for years with respect to guardianship and involuntary commitment and I certainly believe individual representation is needed there.

I think there are various interests at stake in any of those hearings and a person has a right to independent counsel.

Could you repeat the first question that you asked? Your question had two parts and I often have trouble remembering both parts of two-part questions.

Mr. AFFELDT. I was asking you what your rebuttal would be to the Veterans Administration's arguments for limiting the fee to \$10.

One, dilution of benefits. Second, this is essentially a nonadversary proceeding to help the veteran.

Mr. NATHANSON. I agree with the position that would not have these fees come out of benefits due. I would like to see that happen with respect to the social security fees. I think Congressman Cohen, in his legislation in the House, sets up a special fund for providing fees for attorneys who work in the VA area and I think that is the approach that we ought to be looking at instead of taking the fee out of the benefit.

Mr. AFFELDT. I shall ask Mr. Schneider if he has any questions.

MAKING EXPERTISE MORE READILY AVAILABLE

Mr. SCHNEIDER. One of the points that you made was the necessity of bringing the expertise available to the services from the program, make it available to private attorneys. What are you doing to make that expertise available to other practitioners in the area to be eligible to social workers and counsel, et cetera?

Mr. NATHANSON. Well, as you are aware, we have two grants. One is from the Administration on Aging to provide technical assistance to State and area agencies on aging in setting up legal programs for the elderly.

Above and beyond giving that kind of technical assistance, we are also involved in really answering substantive questions for the area agencies, for the State offices, and for anyone else in the aging network.

The legislative and administrative newsletter, which is put out by our Washington office on a weekly basis, goes to all area agencies, all aging groups, and anyone else that is interested. We are trying to build that network now.

One of the main things we have been involved in, in the last couple of years, is trying to bridge that gap between the legal services community on the one hand and the professionals in aging on the other, so they start to see the obvious interrelation. I guess if I were to use the word interface in this connection, you would know I am talking to aging professionals on a daily basis.

RECOMMENDATIONS

Mr. SCHNEIDER. Do you have any recommendations for steps that the Legal Services Corporation could take or should take to more adequately serve the elderly?

Mr. NATHANSON. Well, I think that one thing they ought to be doing is definitely focusing in some way or another on those people that can't come in to a legal services office. I don't have any doubt that legal services offices will serve anybody that will and can come into the office and can wait as long as clients often have to wait.

Saying "We will serve anybody that comes in," is not sufficient with respect to isolated individuals—especially the elderly—who have no means of transportation. The effort ought to perhaps aim not specifically at the elderly only, but rather at increased outreach efforts to get services to people who are not now coming into legal services offices. This would include rural segments of the population and I imagine in the long run would hit the elderly heavily anyway.

I am not sure exactly how I feel about specifically earmarking some dollars out of the corporation for the elderly. I would rather go the other way.

Mr. SCHNEIDER. What about requiring that in each legal service office that one or more of the individuals be specially trained to deal with the problems?

Mr. NATHANSON. Generally, I agree with something like that. However, you have to be careful when you create an elderly law specialist that the SSI specialist, the food stamp specialist, and all the other specialists don't start dumping their work on the elderly law specialist.

I think it is important that you have somebody in the office who has the big picture with respect to this client group, who works with aging organizations and who works with the bar associations. I think it is important to focus on these client groups because the elderly have a lot of friends and strengths which can be parlayed by a lawyer who is a part of the "aging network."

In addition, it is really important that the elderly law specialist sensitize other staff members of the legal services project to the special needs of the elderly.

EDUCATING PRACTITIONERS ABOUT USEFULNESS OF ATTORNEYS

Mr. AFFELDT. One point you made in prior hearings is that many practitioners don't know how to use legal services attorneys to benefit their programs or clientele. What tools do you think would be most effective in educating practitioners about the usefulness of legal services attorneys? How can they be sensitized?

Mr. NATHANSON. I think since that time in 1974, a lot has fortunately happened, such as the changes in the Older Americans Act and the existence of the legal services model projects. I think we are at a point now of having at least a basic level of sensitivity.

The next step is going to be some sort of real training at the local level, both with respect to the roles of lawyers, paralegals, social workers and others, and as to the substantial legal issues of importance.

I think it is important that social workers and lawyers be educated to see what their appropriate roles in the entire network are. Everybody ought to be doing what they are best at, as opposed to trying to do somebody else's job and spending time with professional jealousies—at the ultimate expense of needy older people. A perfect example is the area of protective services. This is an area where there ought to be a lawyer, a social worker, and a psychiatrist or a psychologist, working together.

Mr. AFFELDT. I thank you very much.

First, let me ask if Mrs. Fayé has any questions.

LEGAL SERVICES DEVELOPERS

Mrs. FAYÉ. I would like to know what your relationship would be, that of the National Senior Citizens Law Center, with the new program that AoA is putting in, with a person in a State agency to handle legal advocacy.

Mr. NATHANSON. Well, our grant now from AoA is to provide technical assistance to State and area agencies on aging. I think it is up to the 29 States as to how to be involved in that program. Once the developers are in place, our job will be to provide them with technical assistance on how to set up legal services offices and also give them substantive backup or support if that is what they need. We now plan on having a training conference in January in Los Angeles for the developers from all 29 States.

Mrs. FAYÉ. My thought is you are already providing technical assistance to the State agencies and the area agencies. How does that relate to the person coming into the State agency?

Mr. NATHANSON. Well, last year we had a grant to give technical assistance to several States. Now the developer will be on the local scene, on a daily basis, able to talk to law schools, bar associations, and so forth, and we will be able to deal with the developer in each State who will be focusing all of his or her attention on developing legal services within the State.

Mrs. FAYÉ. Basically, are you going to be giving technical assistance to the developer?

Mr. NATHANSON. Yes. That is right.

Mrs. FAYÉ. But he would already be a lawyer as well?

Mr. NATHANSON. He may be a lawyer but that is not necessarily the same as being sensitive to legal problems of the elderly or being aware of what can be done in the State. The lawyer-developer will need special technical assistance.

Mrs. FAYÉ. These people are going to have to be trained then?

Mr. NATHANSON. I don't know. It depends.

Mrs. FAYÉ. Trained in the elderly problems area when they come in?

Mr. NATHANSON. The hope, of course, is that you can get somebody who has already been in the legal services program and is aware of the special legal problems of the elderly. That would be ideal, but in lots of situations you won't or you may have someone from a legal services program who is not aware of the intricacies of filing fee legislation or title XX as funding sources for an older Americans legal project, for example.

There are various pieces to the full education of one of these developers that we would hope to be able to provide.

Mr. AFFELDT. Thank you again for an excellent presentation.

[Testimony resumes on page 332.]

[The prepared statement of Mr. Nathanson follows:]

PREPARED STATEMENT OF PAUL S. NATHANSON

My name is Paul Nathanson. I am the executive director of the National Senior Citizens Law Center. The center is currently funded under two grants: the first grant, from the Legal Services Corporation, has allowed us to give substantive assistance to Legal Services Corporation attorneys so that they

could better serve the elderly poor. Thus, upon request from a legal services program, the National Senior Citizens Law Center (NSCLC) will draft pleadings, write memoranda and briefs, assist with litigation, act as cocounsel, otherwise participate in cases affecting the elderly, and provide legislative and administrative advocacy on behalf of clients of legal services programs. In the past our functions also included sensitizing legal services projects to the need for servicing the elderly poor and training legal services attorneys in the special substantive areas that affect the elderly. NSCLC's main office is in Los Angeles, Calif., but it maintains an office with three staff attorneys in Washington, D.C.

We are also funded under an Administration on Aging model projects grant to assist State and area agencies in 29 States to develop and expand legal services delivery systems specifically designed to aid the Nation's elderly.

STATEMENT OF THE PROBLEM

The Need

Perhaps more than any other group, the elderly rely upon complex public and private institutions for their daily subsistence. Therefore, their legal problems frequently relate to the policies and actions of governmental agencies and private corporations, both of which often present undecipherable bureaucratic mazes which even younger persons find difficult to manage. Many of these elderly people now classified as "poor" were, at one time, a part of the mainstream of middle America, and became poor only when forced to live on fixed incomes at age 65. Worse, the income of these newly poor elderly people is constantly reduced by inflation.

Superimposed upon the lives of the low-income elderly is a vast array of complex statutory, regulatory, and decisional law. Their shelter may be provided or secured under Federal and State public and subsidized housing laws, relocation laws, environmental protection laws, and zoning laws. Their health is often dependent upon medicare, medicaid, laws regulating nursing homes, and laws relating to the advertisement of prescription drugs. Their nutrition is often secured by the food stamp program and nutrition programs established by other Federal laws. The source of their income may be social security, supplemental security income under title XVI of the Social Security Act, or private pensions. The dignity of personal freedom and control of property is subject to the vagaries of the law of guardianship, conservatorship, and involuntary commitment.

Thus, the elderly are, on the one hand, confronted with a vast complex of crucial legal issues, bureaucracies, and forms with which to deal; and on the other hand, they have no real place to turn for adequate and effective assistance. Unlike younger people, who have been forced from birth to live under governmental programs and large bureaucracies, today's elderly have not learned to "work the system." Because the elderly have no place to turn for assistance, and because they are not adept at working the system, the elderly as a distinct group in our population, are the least able to deal with issues of a legal nature.

Before examining the available legal services resources and methods which may serve to increase these resources, I would like to take a moment to discuss some of the significant legal issues presently surfacing through the work of legal services attorneys serving the elderly. (I include in this category, attorneys funded by the Legal Services Corporation and other sources such as the Older Americans Act.) I think that, although the focus of these hearings is on the *expansion* of legal services, such a discussion may serve to crystalize and underscore the need for such services.

Over the past 10 or so years, legal services attorneys have won numerous victories which have had a significant impact upon the daily lives of elderly poor people in America. These run the gamut from results in individual cases to nationwide class action suits. I hope it will be informative to mention just a few—the listing is designed to provide an overview and is by no means intended to be exhaustive. The following major victories have been won in the last few years:

Income Maintenance Cases

Buffington and Elliott v. Weinberger, Civil No. 734-73C2 (W.D. Wash. 1974); 371 F. Supp. 960 (D. Hawaii 1974); No. 74-1611, 74-3118 (9th Cir. 1975)

These suits, consolidated before the Ninth Circuit Court of Appeals, assure all social security recipients facing recoupment of alleged prior overpayments

from their future benefits the same rights to advance notice and an opportunity for a hearing guaranteed to welfare recipients by *Goldberg v. Kelly*, 397 U.S. 254 (1970). *Elliott* was brought on behalf of a class consisting only of social security recipients residing in Hawaii, but since *Buffington* was brought on behalf of a nationwide class, the favorable district court order required the Social Security Administration to alter its notice and hearing procedures in all overpayment cases in order to comply. Although the Ninth Circuit's affirmance of both cases has been vacated by the Supreme Court for rehearing in light of *Mathews v. Eldridge*, 96 S. Ct. 893, the district court opinions in each case were thereby reinstated and the Social Security Administration has continued to abide by the revised procedures required by these orders. Under these procedures, before any overpayment can be recovered out of future benefits the affected recipient is entitled to an oral hearing on the question whether such recovery must be waived because the recipient was not at fault in causing the overpayment and because recovery would deny him the funds necessary to purchase adequate food, clothing and shelter.

Cardinale v. Weinberger, 399 F. Supp. 1168 (D. D.C. 1975)

This suit is also a notice and hearing case, this time involving the SSI program. Though SSI is unquestionably a welfare program whose recipients endure the same "brutal need" found by the Supreme Court to be dispositive in *Goldberg v. Kelly*, the Social Security Administration has sought to carve out a number of exceptions to the general requirement that SSI benefits could for no reason be reduced, suspended or terminated without advance notice and an opportunity for an oral hearing being provided to the affected recipient. These exceptions, ostensibly designed for such purposes as the correction of clerical error and the implementation of changes flowing from information provided by the recipient himself, were so broad as to swallow up the general rule. The *Cardinale* case successfully sought an injunction against use of the exceptions and a reaffirmation of the requirement of *Goldberg* that advance notice and an opportunity for a hearing be provided in all cases of potential reduction, suspension or termination of SSI benefits.

O'Connor v. Weinberger, Civ. No. 74-591 (D. D.C. 1975)

O'Connor was brought to correct the Social Security Administrations failure to provide SSI recipients whose benefits were at risk adequate notice of their rights to appeal. The original notice used by SSA in cases of reduction, suspension or termination of benefits did not, for example, inform the affected recipient of his right to an oral, adversary hearing before the adverse action would be commenced. After the entry of a temporary restraining order on behalf of a nationwide class of SSI recipients enjoining the use of the defective notice, the Social Security Administration stipulated to the substitution of a constitutionally adequate notice which is still in use.

Abascal v. Weinberger, No. C-73-2353 (N.D. Cal. 1974)

Abascal was another case which was successfully settled. Originally brought to force publication in the *Federal Register* of those portions of the Social Security Administration claims manual which address the SSI program, this suit was settled when the Social Security Administration agreed to provide these portions of the manual to legal services attorneys, paralegals and other advocate groups. It is the claims manual, rather than the statutes and regulations, which is actually used by Social Security claims representatives working in district offices to determine a recipient's entitlement to and amount of benefits. It is in a very real sense the operating law of the program. Regular and easy access to the manual was therefore essential to attorneys and paralegals who were representing SSI claimants and recipients on a regular basis. As a result of the *Abascal* suit, SSA has provided such regular access by mailing claims manual transmittals pertinent to the SSI program to all legal services programs in the country.

Santos v. Weinberger, No. 75-166G (D. Mass. 1975)

This case was brought on behalf of all applicants for SSI benefits filing claims at the Cambridge, Mass., Social Security district office and was designed

to enforce Congress' intention that SSI applications be disposed of at least as promptly by the Social Security Administration as were welfare applications by the States in the programs which preceded SSI. Despite Congress' design that SSI be a more efficient program than its predecessors, and despite the fact that applicants for benefits under these predecessor programs were entitled to receive a response to their applications within a time certain (either 30 or 60 days, depending on the program), the Social Security Administration has failed to impose any limits whatever on itself for issuing initial determinations in response to applications for SSI benefits. The *Santos* suit sought an order requiring the imposition of such limits and has to date resulted in the issuance of a preliminary injunction requiring that all applications for SSI benefits filed by claimants 65 years of age and over be acted upon by the Social Security Administration within no more than 45 days.

Health Cases

Franssen v. Juras, 406 F. Supp. 1375 (D. Ore. 1975)

This suit successfully sought on behalf of a class of medicaid patients residing in Oregon an injunction against the State's scheme of calculating a medicaid recipients income on the ground that it conclusively presumed that a recipient who was institutionalized in a nursing home had available the income and resources of his/her spouse, regardless of whether such income and resources were in fact available. The conclusive presumption was struck down by a three-judge panel as violative of title XIX of the Social Security Act.

Martinez v. Richardson, 472 F.2d 1121 (10th Cir. 1973)

Martinez was a notice and hearing case involving the medicare program. It successfully sought a permanent injunction barring the Social Security Administration from terminating inhome medical services provided to elderly people under the program without affording a prior hearing on the question whether such services continued to be needed.

If a nursing home goes out of business or is decertified from the medicaid program and the State and/or home wants to move patients immediately for financial or other reasons to another home, a major problem facing the patient is the high mortality rate resulting from nursing home "transfer trauma." Several legal services programs around the country have established, through litigation, rights of nursing home patients to prior hearings and adequate advance transfer planning.

Housing Cases

Underwood v. Hills, No. 76-469 (June 8, 1976)

Underwood was filed on behalf of a nationwide class of tenants in housing projects that are federally subsidized pursuant to §236 of the National Housing Act. It successfully sought an injunction requiring the Secretary of Housing and Urban Development to make the payments for operating subsidies to §236 housing project owners required pursuant to 12 U.S.C. §§1715z-1(f)(3), (g).

Hall v. Flournoy, California Superior Court, County of Alameda,
No. 450144-4 (Jan. 15, 1976)

Hall held that recipients of SSI in California are entitled to homeowner's property tax relief thereby overturning the existing practices of the State taxing authority.

Even in the face of such major decisions, nothing is perhaps as moving as the following self-explanatory letter recently received by the National Senior Citizens Law Center with respect to a case involving the eligibility of the plaintiff for a civil service retirement annuity where denial was based upon alleged voluntary separation, but in point of fact, plaintiff had been forced to terminate employment in the face of unsupported allegations of homosexual conduct:

" . . . So let me thank you most sincerely for whatever you did for me. I had tried for over 17 years to negotiate the return to me of my right to a pension for nearly 30 years of Government service—mostly abroad. Now it is all over—thanks to you, Mr. Hardin, and others of your service.

"It gives me great satisfaction to tell you that last Friday, Sept. 3, I received two U.S. Treasury checks viz: For \$28,654 and for \$1,200; the first one being a settlement for all back pension to February 29, 1976 and the other one for the monthly payments March-August 1976 at \$200 per month. Also I was informed I would receive \$200 monthly from now on.

"I am deeply grateful for everything—now that you and your service have accomplished what I tried to do alone for so long. . . ."

Obviously, benefits to clients derive not only from actual litigation, but from the general substantive expertise of legal services attorneys and from the enhanced credibility given the negotiations of such attorneys by the mere threat of potentially successful litigation. Thus, at the simplest level, merely being able to decipher and understand complex pension reports and their significance, recently resulted in the discovery of pension credits previously overlooked and the ultimate issuance of a check for \$14,668.57 to the client for retroactive benefits. In addition, the retiree (and his spouse if he predeceases her) will now receive a monthly annuity of \$357.77.

Some issues currently being litigated (and which might well prove extremely fertile for administrative or legislative change) include:

Income Maintenance Cases

1. Due process challenge to the 5-month waiting period which title II disability recipients must endure before their benefit payments may begin.
2. Eligibility of plaintiff for civil service retirement annuity where denial was based upon alleged voluntary separation but the plaintiff was forced to terminate employment in the face of unsupported allegations of homosexual conduct.
3. Unduly long SSI application delays.
4. Compliance by trustees of various pension plans with their duty to formulate reasonable eligibility criteria.
5. Whether the Federal Pension Reform Act of 1974 preempts California community property law so as to prevent a court from ordering that pension payments due one spouse be paid directly to the other spouse.
6. Whether pension plan discriminates against seasonal workers in the design and implementation of its eligibility conditions.
7. Constitutionality of Social Security Act provision terminating benefits of fully insured individual upon deportation under specified circumstances.
8. Constitutionality of Social Security Act provision denying to divorced husbands of fully insured individuals benefits equivalent to divorced wives of fully insured individuals.
9. Whether trustees of a pension plan requiring 15 years of credited service as a condition to entitlement to a pension may deny benefits to a worker who has completed 21 6/12 years of credited service on account of a break in service when the break occurred because the worker reasonably continued working for an employer whose employees had previously been covered by the plan; a subsidiary issue is whether the trustees may reasonably require that the minimum amount of future service credit necessary to trigger recognition of past service credit must be worked during the first 5 years of the plan's existence.
10. Constitutionality of the Civil Service Commission procedures for recoupment of overpayment of Civil Service pensions.
11. Validity of practice which limits SSI emergency advance payments to three categories of impairment and which fails to make presumptive disability determinations in advance of final determinations.
12. Validity of HEW regulations which inhibit the reopening of applications for disability benefits under title II of the Social Security Act by imposing time limitations and by creating the concept of "administrative res judicata" without statutory authority.

Health Cases

1. Constitutionality of medicaid deeming regulations which require the income of an out-of-institution spouse be applied to the institutionalized spouse's income in determining medicaid eligibility for nursing home care.
2. Constitutionality of provision in title XVIII which permits carriers to make final and binding determinations with respect to contested claims under part B.

3. Class action against an individual nursing home, the State and Federal governments alleging violations of the U.S. Constitution, Civil Rights Act, Federal medicaid regulations, breach of contract between the State and nursing home and intentional infliction of emotional distress on behalf of all recipients in the defendant nursing home. The specific rights alleged to be violated include: (1) the right to manage personal monies and/or receive an accounting, (2) the right to meet with legal counsel, (3) the right to notice before transfer, (4) right to have an adequate level of care, (5) right to access to medical files.

Other Cases

1. Constitutionality of the Federal food stamp regulations that permit benefits to be terminated at the end of a certification period without the right to a prior hearing.

2. Whether a public housing authority may reduce security measures in an elderly housing project without giving the occupants a meaningful opportunity to protest the change and present reasons in support of their protest.

3. Constitutionality of involuntary guardianship statutes.

4. Whether the imposition of a special assessment in excess of one-half the value of the property in question is constitutional.

Unfortunately, negotiation or litigation are not always successful and the only approach available may be legislative or administrative change. In this regard, the following issues come to mind:

1. Delays in processing applications for SSI and in the SSI appeals process are inordinately long, and legislation is needed to place reasonable time constraints upon the Social Security Administration.

2. The SSI "6-month rule" provides that a married individual, separated from his/her spouse, will continue to be treated as married for purposes of SSI benefits until he/she has been living apart from the spouse for more than 6 months. This means that each spouse will receive only one-half of the couple's payment (which is less than two individual payments) rather than each receiving a full individual payment (even though he/she is actually living alone) until 6 full months after their separation. The only exception to this 6-month rule is the termination of the marriage by death, divorce, annulment or when one spouse begins living with another party and they hold themselves out as husband and wife. Furthermore, a recipient's income includes the income of his or her eligible spouse. Thus the couple's grant is reduced by the spouses income before it is divided in half and paid to each separated spouse. For example, if a husband has a \$200 per month pension benefit, the couple's SSI grant is \$56.60. Husband and wife each receive a monthly check of \$28.30. If they separate and he refuses to provide her with part of his \$200 pension, she is left to live on \$28.30 per month for a full 6-month period! Thus, the 6-month rule may operate to reduce aid below the level needed for subsistence or to terminate or deny it entirely despite the need of the separated spouse. This is particularly a problem of the older woman, for the male spouse is more likely to have resources and income other than that provided by SSI benefits; such as, social security and/or veterans benefits.

3. The Social Security Act presently authorizes the appointment of a representative payee (a fiduciary) for purposes of receiving title II and title XVI supplemental security income benefits without prior notice or a hearing.

4. In probably over half of the States (HEW has not indicated the exact number), a noninstitutionalized spouse is forced to pay an arbitrary amount of his or her monthly income to the institution for the care of the institutionalized spouse. Medicaid then pays the difference to the institution.

The amount which the noninstitutionalized spouse pays to the institution (the amount which is deemed available to the institutionalized spouse) is arrived at in any number of arbitrary methods, but always without regard to the actual expenses of the noninstitutionalized spouse. Consequently, if the cutoff level (that is, the amount which the noninstitutionalized spouse can keep) is low enough, that spouse will face a serious crisis. Since the individual will often have numerous fixed expenses—such as, rent payments, utilities, transportation costs, insurance, etc.—the arbitrary amount which he or she is allowed to keep will rarely reflect actual costs and income needs.

Often, the arbitrary amount which the noninstitutionalized spouse is permitted to keep will represent only a third or half of his or her previous income. In such a situation, the alternatives are: (1) to refuse to pay the deemed

amount to the institution, (2) to pay the amount, or (3) to obtain a divorce. The first alternative leads inevitably to the eviction of the institutionalized spouse, since medicaid has conclusively presumed that that income is available and does not meet those costs if the noninstitutionalized spouse fails to pay. The second alternative reduces the noninstitutionalized spouse to the poverty level, and will, at least, force a substantial change in the standard of living. The third alternative is an emotionally disturbing process, especially difficult for elderly couples.

5. Mandatory retirement and other forms of age discrimination are in need of legislative reform as numerous challenges through the courts have been unsuccessful.

I hope the above discussion serves to show some of the significant legal issues of concern to the elderly and, at the same time, the kind of expertise and sensitivity which resides within the legal services community. Legal services attorneys can thus be a tremendous resource to legislative and administrative bodies interested in designing or modifying programs so that they will most effectively help the Nation's elderly. I think there can be no greater argument for the expansion of legal services for the elderly than these activities and concerns. Although there has been, and will be, much discussion of the role which the private bar can and should play in the overall legal services delivery system, I would strongly underscore our feeling that the advocacy function illustrated by the above discussion and examples can only be effectively carried out by an adequately funded legal services program staffed by attorneys specifically dedicated to serving the less affluent members of society. Thus, although, for example, the present social security and SSI statutes specifically provide for fees for the handling of such cases, and numerous individual cases are handled by private practitioners, the major impact cases and suggestions for legislative and administrative reform are almost exclusively the domain of publicly funded legal services attorneys.

MAGNITUDE OF PROBLEM : PAUCITY OF RESOURCES

At least 20 percent of the Nation's 29 million poor people are elderly. Regarding the availability of legal services for the poor in general, Thomas Ehrlich, president of the Legal Services Corporation has said:

"... all but a small fraction have no access to assistance when they face a legal problem. For all but that small fraction, the legal system is beyond reach.

"A recent study indicated that about 23 percent of the poor face a legal problem each year. In the main, they are relatively routine matters involving housing, consumer law, family law, and administrative benefits. But to the individuals involved, these matters often assume crisis proportions. For most people, a defective car can be a substantial irritant. But for a poor person, it may well mean unemployment. A poor person's problem with a landlord may mean no housing at all. Then denial of social security payments can be disastrous.

"Legal aid lawyers are currently able to handle only about 1 million of these problems each year—something less than 15 percent of the real need as determined on a conservative basis..."¹

Statistics concerning the availability of legal services for the elderly from Legal Services Corporation grantees present an even more grim picture. Although the elderly comprise over 20 percent of the Nation's poor, they comprise only approximately 6 percent of the client load of the average Legal Services Corporation grantee.² Thus, the low-income elderly receive only little of the

¹ Remarks of Thomas Ehrlich, president, Legal Services Corporation, on "Justice for the Poor: Public and Private Responsibilities"; presented before the Los Angeles County Bar Association, May 5, 1976.

² The 6 percent figure is an estimate resulting from an informal survey conducted by the Office of Legal Services, Office of Economic Opportunity (OEO). As to the disproportionately low representation of the elderly within legal services offices, see B. Terris, *Legal Services for the Elderly*, Senior Opportunity & Services Technical Assistance Monograph 9, National Council on Aging (1972). This early and well-documented work suggests that the reasons for this disproportionately low representation of the elderly may include the inability or lack of desire of elderly people to reach or use available poverty legal services, and the concentration of poverty attorneys on younger clients. A 1975 study of the availability of legal services to the general indigent population sheds further light on the plight of the elderly. This study, performed by the Legal Action Support Project of the Bureau of Social Science Research, demonstrates a ratio of one legal services attorney to 13,239 eligible poor persons. Further, over 40 percent of the financially eligible persons in the United States live in locations providing no access whatsoever to legal services projects. 9 Clearinghouse Review 469 (1975).

nominal legal services provided generally for the Nation's 29 million poor persons. The millions of elderly people who are above the poverty guidelines, but who cannot afford a private attorney have even less access to legal representation.

The problem of providing legal services to the rural elderly deserves special mention. Very little has been done to provide the rural elderly with access to legal services. Far fewer of the rural poor have access to legal services than do their urban counterparts.³ Transportation problems further compound the problem of delivering legal services in rural areas to the elderly. Because of their limited mobility, and because of the great distances involved, the costs of providing legal services to the elderly in rural areas have traditionally been significantly higher than the costs of providing the same services in urban areas. The small number of attorneys (most often private attorneys, are the only ones available) in rural areas causes the burden of aiding the poor and near-poor to fall on the already overburdened shoulders of a few civic-minded attorneys who have very little time to spare.

POSSIBLE SOLUTIONS

Staffed Programs

In order to meet the legal needs of the elderly, specially staffed law programs funded primarily through title III of the Older Americans Act have been established to serve senior citizens. The location of these programs and examples of some of their innovative activities and experiments in the delivery of services are included within *A Manual of Funding Sources and Models for Delivering Legal Services to the Elderly*, published by NSCLC.⁴ Unfortunately, to date, fewer than 100 such programs (which have less than an average of two attorneys per project) are in operation and even in conjunction with regular Legal Services Corporation programs these special law programs cannot begin to provide effective legal services coverage for the middle and low-income elderly.

The 1975 amendments to the Older Americans Act show Congress' clear intent that the Administration on Aging and its network of area agencies on aging place a high priority on the provision of legal services to the elderly. Although limited progress is being made in the expansion of legal services through this network, the other pressing social service needs of the elderly and the paucity of available funds lead to the conclusion that, absent drastically increased funding, the Administration on Aging will not be able to single-handedly shoulder the burden of providing legal services to the elderly.

A couple of specific problems have come to our attention, which relate to the scarcity of available funds, but which may be remedied by specific legislative changes. The first relates to the maintenance of effort requirements of the Older Americans Act. Thus, projects which are started with little monetary support or with support which is by its nature of short-term duration may well be unduly penalized when seeking title III funding for the continuation of their projects. In addition, although the "seed money concept" of title III and other Federal programs may have theoretical arguments in its favor, the extreme demands placed on local money, combined with the sometimes locally politically unpopular nature of an effective legal services project may lead to a situation wherein no funds are available for carrying on a legal services program for the elderly after the initial 3- or 4-year "seed money" period has expired. Although the concept may have validity and provide the desired results in certain circumstances—it may well be that the special nature of legal services requires an exception to this general rule.

As pointed out above, the knowledge and expertise of legal services attorneys, combined with the nationwide network they represent, can oftentimes be a major resource for legislative and administrative bodies concerned with the problems of the elderly. In this regard, such attorneys not only aid the cause of their clients as a group, but also provide a service to such agencies and bodies as they perform their oversight and administrative duties on behalf of the public at large. It is hoped that means will be developed and expanded by which legal services attorneys can be financially assisted in their efforts to

³ As few as 17.5 percent of the poor in rural areas have access to legal services programs through the Legal Services Corporation, p. 57 of *Legal Services Programs: Resource Distribution and the Low Income Population*, Goodman, Leonard H., Walker, Margaret H., Bureau of Social Science Research, Inc., July 1975.)

⁴ The table of contents of the manual is attached as appendix A [see p. 306]. Because of its length, it was impracticable to attach the entire Manual—it is, however, available from the National Senior Citizens Law Center (NSCLC) and the Administration on Aging.

make their services available to such public legislative and administrative bodies.

The Federal Trade Commission has recently adopted the policy of providing representation in its hearings to consumer interests. It does this by funding responsible organizations and attorneys to represent the consumers' interests. This appears to be an excellent beginning. However, most agencies may not be as receptive as the FTC and perhaps will need additional prodding or legislative mandates to expand their activities in such a way. For example, despite the recommendation of the SSI study group that legal services attorneys and other advocates of the poor be consulted by the Social Security Administration in the formulation of SSI policy, the elderly poor remain without representation at the policymaking level. Unlike other interest groups whose activities are regulated by a Federal agency, the elderly poor have no voice in the policies which affect their receipt of social security or SSI benefits. Although SSA has made an attempt to put together an advisory group of legal services attorneys, and this group has met with SSA officials twice, this project is doomed to failure because thus far SSA has refused even to agree to reimburse the attorneys for their travel and per diem expenses incurred in attending the meetings in Baltimore.

Regarding other alternatives for funding elderly law programs, I would call your attention to the appendix which describes and analyzes various government and private sources for funding special law programs. Additionally, I would like to briefly call your attention to two alternative methods of providing funding which although not generally utilized have great potential for providing a stable source of funding for elderly law programs:

Filing fee legislation, which has been enacted in Florida, Oregon and Nevada, generates revenue for legal services programs by imposing additional fees on pleadings and papers filed in court. What is unique about such legislation is that it provides a funding source without either using monies otherwise available for other social service programming or requiring an allocation of funds from the States' general revenue. Also, filing fee money can be used as local match in obtaining other monies with which to fund a seniors law program. (A more complete discussion and statutory citations are included in the appendix.)

Another alternative for capturing resources to provide manpower for legal services is a lawyer referral service. Such a service currently operates in Orange County, Calif., and generates \$160,000 per year in revenue. The service requires a \$10 or \$15 fee (depending on the client's income) for initial consultation with an attorney. This money is donated to the legal services program and is used to supplement the monies the program receives from the Legal Services Corporation.

In an effort to determine the effectiveness of the network of elderly legal services programs, and how these programs perceived the problem of providing legal services to the elderly, the National Senior Citizens Law Center conducted a survey by questionnaire of 73 projects specifically providing legal services for the elderly.⁵ From the 32 programs that responded to the survey, we discovered that among these services providers, there were serious questions regarding their ability to be effective because of the limited resources available. Fifty-eight percent of those responding indicated that their present staff size was inadequate to meet their projects' present elderly caseload. Eighty percent responded that their staff size was not adequate to meet the demands of the potentially eligible elderly community.

Our survey clearly indicated that the network of senior citizen law programs is still in its infancy. Administration on Aging efforts to expand the availability of legal services to the elderly must continue. The network of legal services programs serving the elderly must be expanded to provide senior citizens with access to legal services within every planning and service area within the nation. This means that area agencies on aging, Legal Services Corporation grantees, and others (both public and private) will have to contribute more of their resources toward funding staffed legal services programs.

Even if adequate funding for the staffing of special projects were available, lawyers and paralegals staffing these offices will only be as effective as the training, substantive materials and manuals and backup specialized services they have available to them. As has been noted before, the substantive areas

⁵ See NSCLC survey attached as Appendix C [see p. 323].

of the law concerning SSI, nutrition programs, social security, public and private pensions, guardianship, medicare, medicaid, nursing homes, veterans benefits, mandatory retirement and age discrimination are very complex; training and other support services in these areas have traditionally been very meagre. The National Senior Citizens Law Center and several other AOA model project grantees may in actual fact represent very close to the sum total of these support services presently available.

An obvious way of increasing the effectiveness of existing special field programs (and, as is discussed below, the private bar also) is for the existing resources providing training and other technical assistance to receive continued and expanded financial support. It is hoped that both the Administration on Aging and the Legal Services Corporation will take a leading role in making certain that these critical support services will be provided.

Regarding training and other support services, 60 percent of the projects responding to NSCLC's survey indicated they have utilized backup services or other model project services for such assistance. Of the 40 percent who indicated they had not used a backup service, 96 percent of them said they would do so if an appropriate case arose. 96 percent of the respondents indicated that they were interested in attending training conferences at which training would be provided by a backup center. When asked the type of training and technical assistance which they felt was necessary, 87 percent requested training in the area of nursing homes, 80 percent requested training in the areas of social security and SSI, 77 percent requested training in consumer problems concerning the elderly and 73 percent requested training in guardianship and involuntary commitment. (The analysis of training needs are more completely delineated in Appendix C [see p. 323]).

*The Private Bar: A Potential New Source of Legal Assistance*⁶

Legal Services attorneys acting specifically on behalf of the elderly can increase their effectiveness by complementing rather than duplicating the conventional sources of legal assistance in the community. Here again, by stimulating other legal resources in the community to recognize and adopt roles in a coherent scheme for the representation of aged persons, legal services attorneys can reserve their time for services which they alone can provide.

Attorneys general, city attorneys, county attorneys, and other government attorneys, for instance, should be persuaded to devote more of their legal resources to aiding the elderly. This might include assistance with problems relating to consumer fraud, property tax exemptions, special assessments, guardianships, involuntary commitment, nursing homes, and probate matters. In each instance, individuals concerned with the rights of the elderly should examine the charters and statutes creating such legal offices for ways in which these offices can begin to assist the elderly.

On a nationwide basis, the organized bar has hitherto limited its activities to forming committees of the American Bar Association to study the legal problems of the elderly.⁷ Hopefully, however, some concrete volunteer programs, especially programs utilizing the vast resources of retired attorneys, can be devised and implemented to serve the elderly. The ABA is apparently becoming aware of this latent potential in its older members. A past president of the association—taking a cue from the activities of retired business executives in SCORE⁸—recently suggested that retired attorneys be mobilized under ABA auspices to provide legal help for other retirees.⁹

Assistance may also be obtained from other organizations. A Jewish organization in Los Angeles, for example, is using member attorneys to provide volunteer assistance in a primarily elderly neighborhood. Another recent development has far-reaching potential. In Los Angeles, a reserve contingent of the civil affairs unit of the Army decided to devote the time of reservists to legal services for the needy. One office served primarily older people. Failing the necessary approvals from Washington, this program has been halted.

⁶ A substantial part of the following testimony is combined in an expanded article cited as: Nathanson, Paul, *Legal Services for the Nation's Elderly*, 17 *Arizona L. Rev.* 275 (1975).

⁷ The ABA family law section and probate and trust section have special subsections dealing with the elderly.

⁸ SCORE is an acronym for Service Corps of Retired Executives. See generally 42 U.S.C. §§ 5031-5032 (Supp. III, 1973).

⁹ Nationwide program to provide free legal service to elderly sought by ABA president, ABA Release No. 111574 (Nov. 18, 1974).

The problem of providing truly adequate legal representation to the elderly cannot be solved without full and effective participation by the private bar. Although members of the private bar may provide some services on a pro bono basis, their participation as private attorneys will largely be on a compensatory basis. The thrust of any effort to increase the availability of legal services for the aged from the private bar, therefore, must be to identify services which can be provided on a fee-generating basis and to develop methods for providing these services at a cost which the elderly can bear.

As noted, a substantial portion of the legal concerns of the aged relate to government benefit programs. The development of assistance from the private bar in the pursuit of these benefits is trapped in a vicious circle. The belief of private attorneys that practice in this area cannot be remunerative prevents them from developing expertise concerning entitlement to benefits.¹⁰ The circle is completed when this lack of expertise prevents the development of office practice methods which permit assistance within feasible cost parameters including reasonable remuneration for the attorney.¹¹ Thus, if sufficient compensation were available for representing elderly clients with benefit disputes, an incentive would exist to develop the necessary expertise.

Social security, SSI, and veterans benefit statutes establish fee systems which may well act to deter private attorneys from pursuing claims on behalf of elderly clients¹² since the Social Security Act¹³ and other programs¹⁴ regulate fees. For example, the Social Security Administration sets a reasonable fee upon the application of the representative of a claimant successful in an administrative hearing.¹⁵ The fee is contingent in nature. If the administrative proceedings result in the award of past-due benefits,¹⁶ the representative may receive directly from SSA a fee not to exceed 25 percent of such benefits.¹⁷ In successful proceedings before a court, the representative receives a reasonable fee set by the court, but not exceeding 25 percent of the past-due benefits resulting from the judgment.¹⁸

This system is irrational. The fact that fees are deducted from past-due benefits not only unduly burdens needy claimants, it also encourages attorneys to delay presenting claims so that retroactive benefits will accumulate, increasing the maximum fee.¹⁹ Moreover, existing fee levels are considered grossly inadequate by those few attorneys practicing in the field.²⁰ As a result of the restrictive fee system, less than 2 percent of disallowed claims ever reach the courts, even though courts have overturned the administrative decision

¹⁰ See generally, joint hearing on Improving Legal Representation for Older Americans, before the Senate Special Committee on Aging and the Subcommittee on Representation of Citizen Interests of the Senate Committee on the Judiciary, 93d Cong., 2d Sess. (1974) (hereinafter cited as joint hearing on legal representation).

¹¹ For an excellent overview of problems of access to legal services, including questions regarding use of paralegals, group legal services, government-funded legal services, and fee mechanism, see Symposium, 4 *U. Tol. L. Rev.* 353 (1973). For a lengthy and complete bibliography dealing with all aspects of delivery of legal services, see Brickman, *Legal Delivery Systems—A Bibliography*, 4 *U. Tol. L. Rev.* 465 (1973).

¹² The general situation is well summarized by Yarowsky, *Attorneys' Fees in Social Security Proceedings: A Criticism of the Official Restrictive Design*, 17 *Kan. L. Rev.* 79, 88 (1968).

The issues of attorneys' fees in social security proceedings is closely tied to legal aid. If the claimant does not meet the standards for indigency established by the local legal aid program, he is generally referred to the local bar association. However, if no private attorney will take the case because of the fee problems involved, the claimant who desires an attorney has no one to champion his cause. While some legal aid societies will represent those for whom the referral system has failed, this places the burden of the claimant's litigation on society even though the claimant, through the fees allowed, has an "ability to pay." Such procedure seem (sic) contrary to the concept of legal aid. This problem would not arise if the private practitioner were permitted to earn what his time and effort were worth.

¹³ 42 U.S.C. § 406(a) (1970).

¹⁴ 42 U.S.C. § 1383(d)(3) (Supp. III 1973) (SSI); 38 U.S.C. § 3404(c) (1970) (veteran's benefits).

¹⁵ 42 U.S.C. § 406(a) (1970); 20 C.F.R. § 404.975(b) (1975). Claimants may be represented before the Social Security Administration by lay persons, 42 U.S.C. § 406(a) (1970); 20 C.F.R. § 404.971 (1975); cf. *id.* § 404.972(b), but unlike attorneys, the particular qualifications of such lay representatives are taken into account in allowing fees, *id.* § 404.976(a)(6), and they are ineligible for direct payment from past-due benefits, *id.* § 404.977(b)(2). See 42 U.S.C. § 406(a) (1970).

¹⁶ *Hopkins v. Cohen*, 390 U.S., 530, 531035 (1968).

¹⁷ 42 U.S.C. § 406(a) (1970); 20 C.F.R. § 404.977(b) (1975).

¹⁸ 42 U.S.C. § 406(b) (1970); 20 C.F.R. § 404.977(a) (1975).

¹⁹ *Blankenship v. Gardner*, 256 F. Supp. 405, 410 (W.D. Va. 1966); Yarowsky, *supra* note 12, at 84.

²⁰ For a practitioner's view of the fee scheme, see Yarowsky, *supra* note 12.

in 63 percent of the appealed cases.²¹ In addition, only 5 percent of all claimants are represented by attorneys at the administrative level;²² even though a vast majority of such cases involve complex matters regarding proof of disability.²³

The fee situation with respect to veterans benefits may only be characterized as bizarre. The statute limits fees to \$10 for any one claim before the Veterans Administration (VA).²⁴ In addition, the decisions of the VA on any question of law or fact regarding a claim for benefits or payments are final and not subject to any judicial review.²⁵ The \$10 fee limitation clearly inhibits private attorneys from ever taking a case on behalf of a veteran. Veterans' organizations argue that they, the Red Cross, and other groups provide very effective counseling for veterans. This is exactly the kind of counseling that should be encouraged, but it should not be considered a substitute for necessary legal assistance. These organizations depend largely on the good will of the VA for their efficacy. Moreover, these groups work with the VA on many matters other than benefit entitlement, and it is plainly in their interest to maintain good working relations. Therefore, a claim challenging a statutory or regulatory scheme and VA procedures has little chance of ever being asserted by these organizations. Without private counsel, it seems unlikely that such cases will come to the fore. Of course, without judicial review, there is even less chance of airing such issues. In light of the extremely restrictive provisions regulating fees in veterans benefit cases, the only solution to this stalemate appears to be amendment of the statutory scheme.

In cases that can generate even modest fees, including social security and SSI claims, another method exists for breaking the vicious circle inhibiting the private bar from pursuing government benefits for the elderly. An initial investment in developing office practice procedures, including specialization and routinization of a lawyer's tasks, could allow the private practitioner to increase his representation of the elderly without altering the basic practice of a small private firm. Greater efficiency results in greater profits for the time invested. If an attorney can represent many clients with small claims, charging small but adequate fees, it may be profitable to serve such clients. Many of the special legal services sought by the elderly are susceptible of routinization and simplification. For example, manuals could be prepared for social security and SSI claims which would allow assistants to prepare a case for ultimate review by an attorney. Many of the tasks presently performed by attorneys are unnecessarily complicated and could be simplified to allow more efficient treatment of individualized problems.

The natural adjunct to the specialization and routinization of the lawyer's job is the effective and expanded use of paralegals.²⁶ Paralegals are being employed increasingly in private practice; their utility is well established within Legal Services Corporation programs because of the very limited resources available to attorneys for the poor.²⁷ Paralegals can handle routine substantive matters, do initial client interviewing, go to aged individuals who cannot come into the office, handle administrative appeals, and do factual investigations.²⁸ It may be particularly advantageous to employ elderly people as

²¹ *Id.* at 80. See also *Scott v. Celebrezze*, 241 F. Supp. 733, 736 n.21 (S.D.N.Y. 1965) (citing 47 reversals and 27 affirmances in volumes 227 to 236 of the Federal Supplement); *Seldomridge v. Celebrezze*, 238 F. Supp. 610, 620 n.17 (E.D. Pa. 1965) (75 percent reversals in volumes 231 to 234 of the Federal Supplement).

²² Yarowsky, *supra* note 12 at 79.

²³ *Id.*

²⁴ 38 U.S.C. § 3404(c) (1970); *Hoffmaster v. Veterans Administration*, 444 F. 2d 192 (3d Cir. 1971) (constitutionality upheld). However, a recent decision by the Ninth Circuit in *Gendron v. Saabe*, 501 F. 2d 1087 (9th Cir. 1974), holding that the question of the constitutionality of the \$10 fee limitation did not present an insubstantial constitutional question for purposes of convening a three-judge court, is an indication that the provision might be found to deprive the veteran of his right to counsel, equal protection, or procedural due process. The court observed that the United States Supreme Court had never passed on the validity of the provision of the context of the constitutional rights of the veteran, as opposed to the rights of an attorney seeking fees. *Id.* at 1088-89. Accord, *Staub v. Johnson*, 44 U.S.L.W. 2169 (D.C. Cir. Sept. 15, 1975).

²⁵ 38 U.S.C. § 211(a) (1970); *De Rodulfa v. United States*, 461 F. 2d 1240 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 949 (1973) (constitutionality upheld).

²⁶ See B. Terris, *supra* note 2, at 23-25; Fry, *The Senior Citizen Paralegal: An Advocate for the Elderly Poor*, AGING Jan.-Feb. 1974, at 11.

²⁷ See Lander, *Legal Assistants: The Experience of the Legal Aid Society of the City and County of St. Louis*, 6 Clearinghouse Rev. 663 (1973).

²⁸ According to informal information and funding proposals reviewed by NSCLC staff, the vast majority of legal projects serving the elderly use paralegals extensively.

paralegals. Elderly clients may respond more openly to questions and suggestions from their peers than to those of a younger person.²⁹ A further benefit is that some older individuals will thus find meaningful employment.³⁰ It is however, critical to note that, in order to fully realize the potential of paralegals in the delivery system, restrictive regulations promulgated by local bar associations designed to preserve the entire delivery domain for licensed attorneys must be carefully scrutinized for their potentially adverse impact on the elderly's access to justice and needed legal services.

Experience in using standardized methods and paralegals in a variety of legal specialties indicates the potential of this practice method. Preliminary findings show lawyers saving from 25 to 50 percent of the time normally required to perform some services.³¹ An analysis of the tasks involved in corporate formation confirms that delegation of ministerial tasks to paralegals can reduce the cost of providing this service by one-half.³² Adequate figures have not been developed for legal services of interest to the aged. The reduction in cost to the client made possible by such efficiencies may bring many needed services within the reach of elderly people of moderate means. Legal services attorneys can encourage the private bar to involve itself in aiding the elderly by making their expertise available in the development and preparation of such methods.

A prime example of combining routinization, specialization, and the use of paralegals is the legal clinic of attorneys Jacoby and Meyers in Los Angeles.³³ This office has pioneered the use of kits and paralegals in order to provide low cost legal assistance to low and moderate income individuals. From all indications, a successful private practice has resulted.³⁴ The experience of Jacoby and Meyers, however, brings to the fore one problem which must be dealt with by the private bar if low cost legal assistance is to be available to the moderate income individual: the prohibition of advertising by private practitioners.³⁵ If profit, and derivatively, significant involvement of the private bar rests on a large volume of clients paying smaller fees, it is critical to let potential clients know about available low cost services.³⁶

Another possibility for providing low cost legal services for the elderly is through a prepaid legal services plan. Without adding to the large and growing literature on such plans,³⁷ it is worth noting that they may be designed to conform almost perfectly to the needs of many elderly people. The elderly may participate in such plans on several bases—as union members or as members of senior citizen groups or of other organizations which have special benefit plans for older members. The first and perhaps most likely way is through union membership and participation in a plan which benefits retirees as well as active members. A recent amendment to the Taft-Hartley Act,³⁸ which permits employers to provide legal services as an employee benefit under collective bargaining agreements, promises to catapult group legal service plans

²⁹ See, e.g., Fry, *supra* note 26, at 11; *Joint hearing on legal representation, supra* note 10, at 30-31; National Senior Citizens Law Center, *Senior Legal Assistants*, 7 Clearinghouse Rev. 273 (1973). See also Collins, Flanagan, & Donnelly, *The Senior Citizens Project of California Legal Assistance: An Action Arm of the National Senior Citizens Law Center*, 6 Clearinghouse Rev. 22 (1972).

³⁰ B. Terris, *supra* note 2, at 25.

³¹ K. Strong & A. Clark, *Law Office Management* 93 (1974).

³² American Bar Association special committee on legal assistants, *Liberating the Lawyer: The Utilization of Legal Assistants by Law Firms in the United States*, 44-45 (Prelim. Draft, 1971).

³³ Disco and Meyers, *Legal Supermarkets*, Harper's Magazine, July 1973, at 30.

³⁴ It should be noted that the office does not specialize in legal problems of the elderly, but in problems of the moderate income individual. Many of those problems, however, are also problems of the elderly, such as wills, social security, disability claims, and small claims court matters.

³⁵ ABA, code of professional responsibility, DR 2-101(B) (1975); Cal. Bus. & Prof. Code § 6076, rules 2-101 to -102 (West Supp. 1975). The California bar has instituted proceedings against Jacoby and Meyers. Disco and Meyers, *supra* note 33 at 30. It should be noted, however, that it has not been clearly established that advertising was involved in this case.

³⁶ Legal services attorneys are presently allowed to advertise the availability of free legal services to their potential client community. ABA, code of professional responsibility, DR 2-101(B) (1975); Ariz. Ethics Op. 74-7 (1974).

³⁷ See, e.g., Hallauer, *The Shreveport Experiment in Prepaid Legal Services*, 2 J. Legal Studies 223 (1973); Politz, *Prepaid Legal Services—The Shreveport Plan: The Long-Bought Answer?* 7 Trial, Mar.-Apr. 1971, at 29; Roberts, *The Shreveport Plan for Prepaid Legal Services—A Unique Experiment*, 2 La. L. Rev. 45 (1971).

³⁸ 29 U.S.C. § 186(c) (8) (Supp. III, 1973).

into prominence as a means of financing services for middle-income people.³⁹ Plans formed under the amendment should be designed to capture the amendment's benefits for retirees. One limitation on Taft-Hartley legal service plans which may restrict their utility for retirees is that such plans are barred from rendering services in actions against the employer or the union.⁴⁰ Thus, actions relating to some aspects of pensions or other retirement benefits could probably not be financed by these plans. However, actions against the pension trust or its trustees, as distinguished from the employer or the union, appear to be covered.⁴¹

It would also appear that senior citizen groups, by making small regular payments, could finance an insurance-like group legal service plan to benefit members. Such a group legal service plan should be designed specifically to benefit this age group. The services available under a closed panel plan, which are often restricted to employment related matters, should be expanded to include both a preretirement legal checkup and services in substantive areas of concern to the aged, such as special benefit programs, estate planning and probate, and guardianship. While open panel plans usually offer a wider range of services, the choice between open and closed panels should be guided by whether lawyers are available with expertise in the legal areas of concern to the aged. Where available expertise is limited, a closed panel plan permits development of needed expertise in areas of particular concern to the elderly. Finally, a plan should not automatically exclude legal representation in cases which could be taken on a contingent fee basis. Because the fees available in social security and pension matters are, as already noted, often insufficient to secure actual representation, attorneys with appropriate expertise may simply not be available to handle such matters. Thus, the contingent fee case would be no more than an illusion, with no attorney actually available.

As previously discussed, it is more difficult to provide legal services in rural areas. Assuming that no ongoing legal services program exists in a rural area, it may become necessary to contract with a local private attorney in order to provide legal services to the elderly community. These services might be provided on an as needed basis. If the legal needs of the elderly in the area require only 50 percent of an attorney's time for example, the attorney could be funded to do only half-time work on behalf of the elderly. Additionally, a local private attorney might be funded to supervise paralegals. As noted above, the use of paralegals can significantly reduce per case costs and allow the program to do outreach which might otherwise be infeasible because of the expense involved. Experiments (more fully discussed in Appendix C [see p. 323]) are currently going on which combine the extensive use of paralegals, WATS telephone lines, mobile vans and the rural private bar with an eye toward solving the special legal needs of the rural elderly. These projects should be carefully studied and assessed and additional model projects which attempt to solve the special access problems of the rural elderly should be generated and funded.

If the private bar is to become involved in handling cases for elderly clients, private attorneys and paralegals must be provided with the proper training and backup services. It must be demonstrated to the private bar that there are ways to handle seemingly complex issues for reasonable fees without spending unduly long periods of time in research. Training, backup, and research services provided to private attorneys and paralegals could potentially reduce fees charged to elderly clients. Without training, most attorneys could only, with great difficulty, handle cases involving issues concerning private or public pensions, social security, SSI, veterans matters or age discrimination in employment. The Administration on Aging and others should seriously consider funding programs designed to train and provide these backup services to the private bar thus enabling private attorneys to operate more efficiently and to reduce fees charged to elderly clients.

CONCLUSION

In order to develop a strong and meaningful national network of legal services providers, it will be necessary to do several things:

³⁹ Tunney, *Financing the Cost of Enforcing Legal Rights*, 122 *U. Pa. L. Rev.* 632, 633 n.2 (1974).

⁴⁰ 29 U.S.C. § 186(c)(8)(A) (Supp. III, 1973).

⁴¹ See *Id.* § 186(c).

1. Technical assistance to State and area agencies on aging regarding the expansion of legal services for the elderly must be continued.

2. The cooperation of the Administration on Aging (and its network of area agencies on aging) with the Legal Services Corporation (and its network of local legal services programs) must be continued and expanded so as to establish additional staffed legal services programs serving the elderly. Funding for Legal Services programs must be expanded.

3. Innovative model legal services programs which demonstrate more efficient methods of providing legal services should be funded. (The funding of programs which show potential for developing a viable legal services delivery system in rural areas should be given top priority.)

4. A program designed to involve the private bar in the provision of legal services to the elderly should be undertaken. On a local level, volunteer panels and lawyer referral services for the elderly could be established; on a national level legislation which would allow for reasonable and appropriate fees for representation of a client in administrative matters (e.g., SSI, social security or veterans benefits) should be enacted.

5. Training, backup and research programs designed to make the necessary expertise available to staffed legal services programs and the private bar should be supported thus enabling all legal services providers to meaningfully and efficiently deal with legal issues of concern to the elderly.

The goal of providing adequate legal services for the elderly is obtainable, and the present national focus on this crucial access service shows that the time is right for action.

[Appendix A]

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[Appendix B]**NATIONAL SENIOR CITIZENS LAW CENTER**

January 1, 1976 to June 30, 1976

ACTIVITY REPORT**IV. LITIGATION ASSISTANCE**

1. *Basel v. Butz*, United States Court of Appeals for the District of Columbia, No. 75-1494.

ISSUE

Constitutionality of the federal food stamp regulations that permit benefits to be terminated at the end of a certification period without the right to a prior hearing.

LEGAL SERVICES PROGRAM ASSISTED

Legal Services of Eastern Michigan, 412 Genesee Bank Bldg., Flint, Michigan, Food Research and Action Center, 25 West 43rd Street, New York City 10036, and Michigan Legal Services, 900 Michigan Bldg., 220 Bagley Avenue, Detroit 48226.

STATUS

On May 14, 1976, oral argument was conducted before the U.S. Court of Appeals for the District of Columbia. Extensive discussion was held at the argument with regard to *Eldridge* and the court requested post-argument briefs on the subject. A decision is expected in late summer or fall.

NSCLC PARTICIPATION

NSCLC participated in the discussion of strategies with FRAC attorneys. Also, the basic arguments of the post-argument brief on *Eldridge* were taken from draft memos prepared by NSCLC.

2. *Barr v. DiGiorgio, et al.*, United States District Court, Central District of California, No. CV 76-0493-FW.

ISSUE

Challenge to denial of disability pension to worker who retired in reliance on representations of union official when trustees of the Seafarers Pension Trust used the union to communicate with covered workers about the Seafarers Pension Plan.

LEGAL SERVICES PROGRAM ASSISTED

We are working with a private attorney in Wilmington, California who is working with us on a pro bono basis. The case was originally referred to him by the Legal Aid Foundation of Long Beach.

STATUS

Complaint was amended in April to assert ERISA as a source of jurisdiction chiefly in order to blunt efforts by the union and trustees to shift the case to New York on venue grounds. Answers from both were received in May. Since then we have been preparing our first wave of discovery and putting together a response to some 150 pages of interrogatories served by the trustees in June. Most of these interrogatories are boiler plate and appear to reflect a decision by the trustees to make it very burdensome to litigate against them in California.

NSCLC PARTICIPATION

NSCLC has assumed primary responsibility for the case. We drafted the complaint, amended complaint and are handling all discovery matters.

3. *In Re the Dissolution of Marriage of Kurt Benninghoff and Karen Benninghoff*, Indiana Superior Court, County of Lake, No. 576-2760.

ISSUE

Constitutionality of Medicaid deeming regulations which require the income of an out-of-institution spouse be applied to the institutionalized spouse's income in determining Medicaid eligibility for nursing home care.

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Society of Greater Hammond, Inc., 232 Russell Street, Hammond, Indiana 46325.

STATUS

The court, during the divorce proceeding, joined the State of Indiana as a party and denied the divorce and ordered that Indiana grant the institutionalized spouse Medicaid, despite the deeming regulations.

NSCLC PARTICIPATION

We appeared as co-counsel in the divorce proceedings and wrote the majority portion of the brief on the constitutionality of the deeming procedure. We are also involved heavily in all strategic decisions made in the case.

4. *Branch and Biggins v. Weinberger*, United States District Court, Middle District of Florida, No. 74-122-Civ-J-S.

ISSUE

Due process challenge to the five month waiting period which Title II disability recipients must endure before their benefit payments may begin.

LEGAL SERVICES PROGRAM ASSISTED

Duval County Legal Aid Association, Downtown Office, 205 E. Church Street, Jacksonville, Florida:32202.

STATUS

The government's motion to dismiss on *Salft* jurisdictional grounds has been under the court's submission for some nine months.

NSCLC PARTICIPATION

We have worked with Carolyn Zisser all along on this case providing advice and information chiefly on the class action aspect of the litigation and on the legislative history of the waiting period. We have also assisted with the brief in opposition to the government's motion to dismiss providing arguments in support of Administrative Procedure Act jurisdiction, Social Security Act jurisdiction, and in opposition to the government's argument that the suit had to be filed within 60 days of Mrs. Biggins' award.

5. *Burroughs v. Board of Trustees of the Pension Trust Fund for Operating Engineers, et. al.*, United States Court of Appeals for the Ninth Circuit, No. 75-2897.

ISSUE

Whether the district court erroneously denied plaintiff's application for an award of attorney's fees and whether the district court's holding that the plan's break in service rule could not be applied to Burroughs was correct.

LEGAL SERVICES PROGRAM ASSISTED

Plaintiff is being represented by private counsel.

STATUS

All briefing to the Ninth Circuit is completed and oral argument has been set for September 7, 1976.

NSCLC PARTICIPATION

NSCLC submitted an amicus brief in support of the district court's decision on the merits and appellant Burroughs' claim for attorneys fees.

6. *Cardinale v. Mathews*, United States District Court, District of Columbia, No. 74-930.

ISSUE

Constitutionality of HEW regulations allowing reduction, suspension or termination of benefits in certain circumstances, e.g., clerical error, without advance notice.

LEGAL SERVICES PROGRAM ASSISTED

Western Center on Law and Poverty, 1709 W. 5th St., Suite 600, Los Angeles, CA 90017.

STATUS

The government's motion to stay the district court's order holding the regulations unconstitutional was denied. Our proposed settlement was then accepted by the government which decided not to appeal the order to the D.C. Circuit. Upon HEW's expected adoption of final regulations implementing this settlement, final judgment will be entered.

NSCLC PARTICIPATION

We assisted in preparing the response to the government's motion for a stay of the district court's order and in formulating the settlement proposal.

7. *Cheney v. Hampton*, United States District Court, District of Oregon, Civ. No. 75-974.

ISSUE

Eligibility of plaintiff for civil service retirement annuity where denial was based upon alleged voluntary separation but the plaintiff was forced to terminate employment in the face of unsupported allegations of homosexual conduct.

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Service, East County Office, 4420 South East 64th Ave., Portland, Oregon 97206.

STATUS

The Civil Service Commission has agreed to pay Mr. Cheney's claim in its entirety pursuant to either of two formulas based on alternative dates on which Mr. Cheney could have chosen to retire. In light of Mr. Cheney's relatively brief life expectancy, we elected the option offering the larger lump sum payment (\$28,000) and the smaller prospective monthly annuity (\$200).

NSCLC PARTICIPATION

NSCLC drafted pleadings and assisted in the formulation of theories under which to bring the case in federal court. Once the government's offer of settlement was made, we researched the tax consequences of the alternative offers.

8. *Commonwealth of Massachusetts Board of Retirement v. Murgia*, U.S. Supreme Court, No. 74-1-44.

ISSUE

Constitutional validity of state law requiring mandatory retirement of uniformed police officers at age 50.

LEGAL SERVICES PROGRAM ASSISTED

NSCLC appeared amicus curiae in collaboration with the American Association of Retired Persons and the National Retired Teachers Association.

STATUS

On June 25, 1976 the U.S. Supreme Court decided this case and reversed the lower court's judgment in favor of Murgia. The decision was predicated in large part upon the fact that the retirement statute was aimed at policemen, and the interest of the state in maintaining a vigorous police force. The Court did not reach the procedural due process issue argued by the NSCLC in its amicus brief and Justice Marshall, in his dissent, apparently invoked further challenges upon that ground by mentioning the absence of a procedural due process contention by the appellee and the fact the majority was dealing with policemen. Of interest is the fact that Mr. Justice Marshall apparently relied heavily on the NSCLC brief in tailoring the procedural due process arguments set forth therein to the equal protection clause.

NSCLC PARTICIPATION

NSCLC prepared a brief amicus curiae.

9. *Deutsch v. Vandenberg Air Force Base Exchange*, United States District Court, Central District of California, No. 752928; United States Court of Appeals for the Ninth Circuit, No. 78-1803.

ISSUE

Whether an employee of a federal non-appropriated fund activity can be involuntarily retired at age 62, pursuant to a pension plan, consistent with the Federal Age Discrimination in Employment Act of 1967.

LEGAL SERVICES PROGRAM ASSISTED

California Rural Legal Assistance, 126 W. Mill Street, Santa Maria, CA 93454.

STATUS

The lower court granted the government's motion to dismiss, on the authority of *Steiner v. National League*, another California federal district court case which decided the case contrary to the plaintiff's contentions. The appeal has been docketed and the appellant's brief has been served and filed; the government has offered to settle, reinstating Deutsch with back pay and the appeal will be dismissed.

NSCLC PARTICIPATION

The NSCLC has assumed primary responsibility for prosecution of this case, including preparation and filing of pleadings in the federal district court and in the Ninth Circuit Court of Appeals.

10. *East Hills Safety Comm. v. Pittsburgh Housing Authority*, United States District Court, District of Pennsylvania, No. 1151-75.

ISSUE

Whether a public housing authority may reduce security measures in an elderly housing project without giving the occupants a meaningful opportunity to protest the change and present reasons in support of their protest.

LEGAL SERVICES PROGRAM ASSISTED

Neighborhood Legal Services Association, 310 Plaza Bldg., Pittsburgh, Pa. 15219.

STATUS

A complaint has been filed, interrogatories served and preparation of a motion for summary judgment is under way.

NSCLC PARTICIPATION

NSCLC has done extensive research on both jurisdictional and substantive issues, assisted in the preparation of the complaint, and provided a revised version of the brief in support of a motion for summary judgment.

11. *Ferguson v. Mathews*, United States District Court, Central District of California, No. CV 75-2620-RF.

ISSUE

SSI application delay case.

LEGAL SERVICES PROGRAM ASSISTED

Western Center on Law and Poverty, 1709 W. 8th St., Suite 600, Los Angeles, CA 90017.

STATUS

Still no word from Judge Firth on cross motions for summary judgment filed by plaintiffs and defendant.

NSCLC PARTICIPATION

This case originated with the Western Center on Law and Poverty where it was brought by Miriam Goslins. She came on our staff for the duration of the case and we assumed all backup responsibilities. NSCLC prepared all the pleadings in support of the motion for summary judgment. The motion seeks an order requiring the promulgation of regulations establishing alternatively time limits of 30 and 60 days within which aged and disabled applications for SSI benefits must be processed or reasonable time limits subject to court approval within which such applications must be processed.

12. *Gadsden v. Weinberger*, United States District Court, Central District of California, No. CV 75-2946-ALS.

ISSUE

Constitutionality of provision in Title XVIII which permits carriers to make final and binding determinations with respect to contested claims under Part B.

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Society of Orange County, 1932 W. 17th St., Santa Ana, California 92706.

STATUS

A motion was made to intervene an additional party plaintiff in the suit; however, it had to be withdrawn because the plaintiff died prior to any hearings in the court. In addition, numerous communications were made to the court concerning new cases involving the jurisdictional issues under consideration. Plaintiffs also filed a supplemental memorandum of law on the jurisdictional issues because of the numerous cases that had been decided prior to the filing of the earlier brief. Motion to dismiss of defendants is still under submission.

NSCLC PARTICIPATION

NSCLC prepared all pleadings submitted to the court in Gadsden, including the intervention papers and the supplemental memorandum.

13. *Goodpaster v. Mid-America and California Iron Workers Pension Plans*, California Superior Court, County of Los Angeles, No. C 143975.

ISSUE

Whether the Mid-America Plan can apply its break in service provision to a period during which Mr. Goodpaster was working outside its geographical jurisdiction, albeit in the covered industry and at the behest of the company which employed him during his period of coverage by the Mid-America Plan.

LEGAL SERVICES PROGRAM ASSISTED

Southeast Legal Aid Center, 1331 E. Compton Blvd., Compton, California 90221.

STATUS

In late April an answer to our complaint was finally received from the California Trust denying each and every one of plaintiff's allegations. In the meantime, we have provided answers to interrogatories served by the Mid-America Trust. We are also preparing our own initial discovery to the trusts designed to remove as many factual issues as possible from Mr. Goodpaster's claim.

NSCLC PARTICIPATION

NSCLC did the research and prepared the complaint in this case and has assumed primary responsibility for pursuing all discovery prior to filing a motion for summary judgment.

14. *Hall v. Flournoy*, California Superior Court, County of Alameda, No. 450144-4.

ISSUE

Whether, under new legislation, recipients of Supplemental Security Income are entitled to homeowners' property tax relief (the statute disqualifies individuals whose property taxes are paid in whole or in part, directly or indirectly by the State).

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Society of Alameda County, 4600 E. 14th St., Oakland, CA 94601.

STATUS

By judgment dated January 15, 1976, the court found for the plaintiffs, ruling that they are entitled to receive the homeowners exemption, and overturning the then existing practice of the State taxing authorities. The State has appealed and the appellant's brief has been served and filed.

NSCLC PARTICIPATION

The NSCLC formulated the theories upon which the suit was initially based and assisted the Legal Aid Program in drafting the memorandum in support of the motion for summary judgment which was granted. We are now writing a segment of the respondent's brief.

15. *Harrison v. Crowell, et al.*, United States District Court, Central District of California, No. 73-1402-RF.

ISSUE

Compliance by trustees of the Southern California Construction Laborers Pension Trust with their duty to formulate reasonable eligibility criteria.

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Foundation of Los Angeles, 2301 South Hill Street, Los Angeles, CA 90007; California Rural Legal Assistance, 126 West Mill St., Santa Maria, CA 93454.

STATUS

At the end of March, Judge Firth finally ruled on the trustees' motion for summary judgment, denying it, and on the proposed intervenors' motion for intervention, granting it. The trustees then sought certification of both rulings as appealable orders, apparently part of a strategy to place the case before the Ninth Circuit as quickly as possible. Judge Firth, however, denied this motion as well, leaving us free to bring the case to resolution with our own summary judgment. To that end, we have, along with CRLA, retained Howard Winklevoss of the Wharton School to do actuarial consulting work, both in connection with *Harrison* and *Martinez v. Ivers*. Our next step will be to secure the tapes (we hope voluntarily) containing the work records of all employees who have passed through the plan for Howard to use.

NSCLC PARTICIPATION

NSCLC has handled this case in its entirety since its filing in June, 1973.

16. *State of Indiana v. Superior Court of Lake County, et al.*, Indiana Supreme Court.

ISSUE

Constitutionality of Medicaid deeming regulations which require the income of an out-of-institution spouse be applied to the institutionalized spouse's income in determining Medicaid eligibility for nursing home care.

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Society of Greater Hammond, Inc., 232 Russell Street, Hammond, Indiana 46325.

STATUS

After the order in the *Benninghoff* case, listed above, the State of Indiana filed an original action in the Supreme Court to challenge the authority of the Superior Court judge to knock out the state deeming regulations. The Supreme Court and the defendant Superior Court requested that the parties to the divorce also file briefs in the case. The brief has been filed and the case argued and is awaiting decision by the Supreme Court of Indiana.

NSCLC PARTICIPATION

We drafted the brief and filed an appearance on behalf of the husband in the action.

17. *International Brotherhood of Electrical Workers Pension Plan v. Superior Court*, United States District Court, Central District of California, No. CV 76-1768-F.

ISSUE

Whether a state court preliminary injunction requiring IBEW Pension Plan, on community property grounds, to pay half the husband's pension bene-

fit to the wife pending final resolution of his suit for divorce is subject to collateral attack in a federal court on the ground that ERISA preempts California community property law insofar as it "relates" to any pension plan.

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Foundation of Long Beach, 4790 E. Pacific Coast Highway, Long Beach, CA 90804.

STATUS

Complaint filed by the trustees of the IBEW Pension Plan was dismissed by Judge Ferguson following his issuance to all parties of an Order to Show Cause why the complaint should not be dismissed.

NSCLC PARTICIPATION

NSCLC assisted Diane Messer of Long Beach Legal Aid in preparing a brief on behalf of the defendant wife in the pending state divorce suit urging that the trustees' complaint be dismissed.

18. *Johnson v. Seafarers' Union Pension Fund*, California Superior Court, County of Los Angeles, No. C108480.

ISSUE

Must a pension plan's disability payments be made retroactive to the date Social Security determines disability to have begun, or may the plan commence payment only for dates subsequent to the date Social Security issues its determination?

LEGAL SERVICES PROGRAM ASSISTED

Legal Services for the Elderly Poor, 2095 Broadway, Suite 304, New York City 10023.

STATUS

Since the class action motion in a similar New York case was denied, we have begun working with a Los Angeles attorney who filed the *Johnson* case in California Superior Court. The defendants filed a motion to quash service and to dismiss the case. The attorney responded and oral argument is set for early July.

NSCLC PARTICIPATION

We have extensively discussed strategy (with both New York and local counsel), including intervention in the New York case versus filing a separate action in California.

19. *Johnston v. Johnston*, California Superior Court, County of Los Angeles, No. SO-D-54559.

ISSUE

Whether the federal pension reform act of 1974 preempts California community property law so as to prevent a court from ordering that pension payments due one spouse be paid directly to the other spouse.

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Foundation of Long Beach, 4790 E. Pacific Coast Highway, Long Beach, CA 90804.

STATUS

The wife's motion to have the pension plan joined as a party and have them preliminarily enjoined so as to require all pension payments paid directly to the wife was granted by the superior court. The pension plan then filed a notice of appeal of the preliminary injunction and while that has been pending the divorce case has been moving toward a final judgment with hearings scheduled in early July.

NSCLC PARTICIPATION

Our participation included discussion of all strategy involving the pension issue and assistance in preparation of briefs with regard to the pension issue

and interpretations of the federal pension law. NSCLC has also agreed to enter as counsel of record for the appeal in the California Court of Appeals and in any subsequent court hearings with regard to the pension issue.

20. *Kennedy v. Mathews*, United States District Court, District of Columbia, No. 76-0390.

ISSUE

Legality of withholding authorized funds from the Title VII nutrition program for the elderly.

LEGAL SERVICES PROGRAM ASSISTED

Food Research and Action Center, Inc., 25 West 43rd St., New York, New York 10036 and numerous Legal Services programs throughout the country who appeared as of counsel in the case.

STATUS

Plaintiffs' moved for a preliminary injunction and on May 17, 1976 the court issued an opinion and order granting plaintiffs' permanent injunction requiring that all monies appropriated be spent no later than the end of fiscal year 1977, ending all forward funding of the program, and requiring that states who do not spend their full allocation of funds return the money to the federal government for reallocation to states who need more monies.

NSCLC PARTICIPATION

Participated in the formulation of theories and strategies of the case and appeared as local counsel in the suit.

21. *Liz, et al. v. Edwards, et al.*, California Superior Court, County of Los Angeles, No. NCC-10209-B.

ISSUE

Propriety of the pension trustees' interpretation of a pension plan, the effect of which was to deprive the plaintiffs of their pensions; application of the "short term contributory employer" provision to the plaintiffs is contrary to the intent behind that provision.

LEGAL SERVICES PROGRAM ASSISTED

San Fernando Valley Neighborhood Legal Services, 13327 Van Nuys Blvd., Pacoima 91331.

STATUS

Trial has been set for August 24, 1976, but the parties have been able to achieve an agreed statement of fact and a stipulation to the effect that the matter may be submitted to the court on briefs. Because the plaintiffs pensions were terminated in November, 1975, it was believed appropriate to expedite the case because of the likelihood of an appeal regardless of the outcome and the desirability of a simple, easily compiled record.

NSCLC PARTICIPATION

The NSCLC has assumed the major responsibility for prosecution of this case. We have prepared all pleadings, motions and discovery materials. Lately, Percy Anderson, of SFNLS, has been participating in strategy sessions and attending the court proceedings with us.

22. *McGrath v. Weinberger*, United States Court of Appeals for the Tenth Circuit, No. 75-1839.

ISSUE

Constitutionality of "representative payee" provision in the Social Security Act which authorizes the appointment of such a fiduciary, for purposes of receiving Title II benefits and Title XVI Supplemental Security Income benefits, without a prior notice and hearing.

LEGAL SERVICES PROGRAM ASSISTED

Northern New Mexico Rural Legal Services, P.O. Box 1464, Las Vegas, New Mexico 57701.

STATUS

Following the district court's decision in favor of the government, plaintiff appealed to the Tenth Circuit. Briefs have been submitted and oral argument heard and we are currently awaiting the court's decision.

NSCLC PARTICIPATION

We appeared by way of amicus curiae and assisted in the briefing of all issues.

23. *Mathews v. Sanders*, United States Supreme Court, No. 75-1443.

ISSUE

Whether a federal district court has jurisdiction under either the Social Security Act or the Administrative Procedure Act, over a Social Security disability applicant's claim that his request that an earlier application be reopened was unreasonably denied by the Social Security Administration.

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Bureau, Inc., 341 North Calvert Street, Baltimore, Maryland 21202.

STATUS

In June of 1976 the Supreme Court granted the petition for writ of certiorari filed by HEW Secretary Mathews. The government's brief is due in mid-August, respondent Sanders' brief will come due a month later.

NSCLC PARTICIPATION

NSCLC is assisting attorneys with Baltimore Legal Aid in preparing an amicus brief in support of the position of respondent Sanders.

24. *Martinez v. Ivers*, United States District Court, Northern District of California, No. C-75-0198 RHS.

ISSUE

Whether pension plan discriminates against seasonal workers in the design and implementation of its eligibility conditions.

LEGAL SERVICES PROGRAM ASSISTED

California Rural Legal Assistance, Senior Citizens Program, 115 Sansome St., Suite 900, San Francisco, California 94104.

STATUS

This case has required a considerable amount of discovery. There was a full day session in San Francisco with our pension expert, Howard Winklevoss, a person from the Teamsters' Pension Plan, and lawyers for both sides to discuss the way in which the plan gathers data and how we may use that data for our expert. Other data continues to be sought through interrogatories and a major deposition of the Prudential Insurance Company's actuary is scheduled for early fall in Newark, New Jersey.

NSCLC PARTICIPATION

CRLA attorneys are doing the primary work on discovery. NSCLC attorneys have appeared on several occasions to assist in oral argument and in negotiation with attorneys for the trustees on discovery questions. NSCLC continues to be involved in determining overall strategy for the case and are counsel of record for plaintiff.

25. *Martinez v. Weinberger*, United States District Court, Central District of California, No. CV-75-1651-RJK.

ISSUE

Constitutionality of Social Security Act provision terminating benefits of fully insured individual upon deportation under specified circumstances.

LEGAL SERVICES PROGRAM ASSISTED

International Institute of Los Angeles, One Stop Immigration Center, 1441 Wright St., Los Angeles, California 90015.

STATUS

The government's motion for summary judgment was briefed by both sides and argued before Judge Kelleher. The case has been taken under submission by the court and a decision on the summary judgment motion should be soon forthcoming.

NSCLC PARTICIPATION

The NSCLC has assumed primary responsibility for prosecution of the case, prepared, served and filed the pleadings, and has drafted memoranda and other documents resisting the motion for summary judgment.

26. *Miller v. DePaulo Health Plan*, California Superior Court, County of Los Angeles, No. C-122674.

ISSUE

Compliance by a private pre-paid health plan with state and federal laws regulating the operation of such plans, as well as ordinary tort law of the state.

LEGAL SERVICES PROGRAM ASSISTED

Community Legal Assistance Center, 1800 W. 6th St., Los Angeles, CA 90057; National Health Law Program, 10995 LeConte Ave., Los Angeles, CA 90024.

STATUS

Several hearings have been held with regard to defendant's failure to comply with discovery and plaintiffs have been successful in all hearings. Discovery continues to take place in the case.

NSCLC PARTICIPATION

We have been involved in discussion of some of the strategy in the case; however, we have begun to discuss whether or not NSCLC will remain in this case and to that effect have held a meeting with the National Health Law Project to discuss whether or not we will continue to be involved in the case.

27. *Miranda v. Audia*, United States District Court, Southern District of California, No. 75-0517-GT.

ISSUE

Compliance by the trustees of the San Diego County Construction Laborers Benefit Funds with their duty to formulate reasonable eligibility criteria and with their responsibility not to discriminate against lower paid employees.

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Society of San Diego, 964 5th Avenue, San Diego, California 92101.

STATUS

The complaint was filed and plaintiffs began discovery by serving interrogatories on defendants and requests for production of documents. Defendants have complied with discovery and a status conference was held in May to discuss progress in the case. Plaintiffs are planning to amend the complaint to make the case a class action and add ERISA jurisdiction. A further status conference was scheduled for October, 1976.

NSCLC PARTICIPATION

We assisted in drafting all the pleadings and discovery, as well as appearing as counsel of record in the case.

28. *Munoz v. Timber Operators Council*, California Superior Court, County of San Joaquin.

ISSUE

Propriety of pension fund trustees denying a pension to an employee of a former employer who went out of business where a dispute exists concerning compliance with certain notice requirements and where, under the terms of the pension plan, employees of employers who went out of business are given more favorable treatment with respect to future service credit than are other employees.

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Society of San Joaquin County, 110 N. San Joaquin St., Stockton, CA 95202.

STATUS

The complaint has been filed in California Superior Court.

NSCLC PARTICIPATION

The NSCLC formulated the theories underlying the suit and drafted the complaint; the suit has been filed and the defendants are being served.

29. *Oliver v. Mathews*, United States District Court, Northern District of California, No. C-74-1416-SC.

ISSUE

Constitutionality of Social Security Act provision denying to divorced husbands of fully insured individuals benefits equivalent to divorced wives of fully insured individuals.

LEGAL SERVICES PROGRAM ASSISTED

American Civil Liberties Union Foundation, 22 E. 40th St., New York, New York 10016.

STATUS

Following the court's dismissal on *Salvi* jurisdictional grounds, Mr. Oliver exhausted the Social Security Administration's administrative appeals process through the Reconsideration stage. Upon completion of that stage, we asked counsel for Secretary Mathews to invoke the expedited appeals process which permits Mr. Oliver to refile his complaint without further administrative exhaustion. The stipulation has been drafted and sent to Mr. Oliver for signature and we expect to refile as soon as it is returned.

NSCLC PARTICIPATION

NSCLC drafted and filed the pleadings in this case, prepared the memoranda in connection with Mrs. Oliver's petition for intervention, conducted all discovery and prepared the motion for summary judgment on Mr. Oliver's behalf along with Kate Peratis of the ACLU. Since the court's *sua ponte* dismissal of the complaint, NSCLC has shepherded Mr. Oliver's claim through the administrative appeals process.

30. *Rosenthal v. Mathews*, United States District Court, District of Columbia, No. 76-601.

ISSUE

Constitutionality of provision in Title XVIII which permits carriers to make final and binding determinations with respect to contested claims under Part B.

LEGAL SERVICES PROGRAM ASSISTED

Legal Counsel for the Elderly, 1424 Sixteenth St. N.W., Washington, D.C. 20036.

STATUS

Plaintiff has filed interrogatories which are scheduled to be answered in early July, defendants have in turn filed a motion to dismiss and a request for protective order not to have to answer the interrogatories and both of which will be heard in early July. In addition, plaintiffs have filed a motion for a nationwide class action also to be heard in early July.

NSCLC PARTICIPATION

We were involved in formulating and drafting the complaint and interrogatories, wrote the briefs for the class action and in opposition to the motion to dismiss.

31. *Schultz v. Borradaile*, United States District Court, Eastern District of Michigan, No. 74-4123.

ISSUE

Constitutionality of involuntary guardianship statutes.

LEGAL SERVICES PROGRAM ASSISTED

Legal Services of Eastern Michigan, 412 Genesee Bank Bldg., Flint, Michigan and Michigan Legal Services, 900 Michigan Bldg., 220 Bagley Avenue, Detroit 48226.

STATUS

Plaintiffs have responded to defendants' motions and have moved the court for summary judgment. Defendants have responded to that motion and the motion is currently under submission.

NSCLC PARTICIPATION

NSCLC attorneys have assisted in writing the briefs to be filed, is co-counsel for the plaintiffs and is expected to participate in oral argument. In addition, NSCLC as an organization has filed an amicus brief.

32. *Sesanto v. Construction Laborers Pension Trust for Southern California* (will be filed in the United States District Court, Central District of California).

ISSUE

Whether trustees of a pension plan requiring 15 years of credited service as a condition to entitlement to a pension may deny benefits to a worker who has completed 21 and 6/12ths years of credited service on account of a break in service when the break occurred because the worker reasonably continued working for an employer whose employees had previously been covered by the plan; a subsidiary issue is whether the trustees may reasonably require that the minimum amount of future service credit necessary to trigger recognition of past service credit must be worked during the first five years of the plan's existence.

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Foundation of Los Angeles, 326 S. Lincoln Blvd., Venice, CA 90291.

STATUS

Exhaustion of the administrative remedies provided by the trustees has been completed unsuccessfully and complaint is now in preparation.

NSCLC PARTICIPATION

NSCLC has assumed complete responsibility for this case at the request of the Venice office.

33. *Shannon v. U.S. Civil Service Commission*, United States District Court, Northern District of California, No. C-76-1364-SW.

ISSUE

Constitutionality of the Civil Service Commission procedures for recoupment of overpayment of Civil Service pensions.

LEGAL SERVICES PROGRAM ASSISTED

Seattle Legal Services, 5308 Ballard St., N.W., Seattle, Washington 98107.

STATUS

Plaintiffs, upon filing their complaint for a nationwide class action, received a temporary restraining order ordering the defendants not to recoup any money from the named plaintiff. A motion for preliminary injunction and the class action was set down to be heard in late August and a briefing schedule set up. In addition, plaintiff anticipates some discovery which will include production of documents and a deposition.

NSCLC PARTICIPATION

NSCLC attorneys have done all the work on this matter.

34. *Shaw v. Weinberger*, United States District Court, District of North Carolina, No. C-C-74-105.

ISSUE

Validity of practice which limits SSI emergency advance payments to three categories of impairment and which fails to make presumptive disability determinations in advance of final determinations.

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Society of Mecklenburg County, 6th Floor, Professional Services Center, 403 N. Tryon Street, Charlotte, North Carolina 28202.

STATUS

Don Gillespie, of the Legal Aid Society of Mecklenburg County, has responded to the Government's report on the processing of presumptive disability and emergency advance applications in North Carolina by urging that the court dismiss our presumptive disability claims as moot but grant our motion for summary judgment with respect to emergency advance payments.

NSCLC PARTICIPATION

NSCLC drafted pleadings, briefs and participated in the oral argument of the motions for summary judgment. NSCLC has also assisted in the evaluation of and response to the government's reports submitted pursuant to the court's order.

35. *Smith v. O'Halloran*, United States District Court, District of Colorado, No. 75-M-539.

ISSUES

Class action against an individual nursing home, the state and federal governments alleging violations of the U.S. Constitution, State Rights Act, federal Medicaid regulations, breach of contract between the state and nursing home and intentional infliction of emotional distress on behalf of all Medicaid recipients in the defendant nursing home. The specific rights alleged to be violated include 1) the right to manage personal monies and/or receive an accounting, 2) the right to meet with legal counsel, 3) the right to notice before transfer, 4) right to have an adequate level of care, 5) right to access to medical files.

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Society of Metropolitan Denver, 912 Broadway, Denver, Colorado 80203.

STATUS

The motions to dismiss and for summary judgment are still pending; however, the judge has discussed with all attorneys the possibility of ordering a special master expert appointed to study the nursing home conditions in the state of Colorado. The feasibility of that study is currently being considered.

NSCLC PARTICIPATION

We continued to assist Legal Aid Society of Denver as needed, including advice on strategy, possibilities for funding of the special expert, and assistance in research when needed.

36. *Stoskus v. City of Baldwin Park*, United States District Court, Central District of California, No. 73-2646.

ISSUE

Whether the imposition of a special assessment in excess of one-half the value of the property in question is constitutional.

LEGAL SERVICES PROGRAM ASSISTED

Community Legal Assistance Center, 1800 W. Sixth Street, Los Angeles, CA 90057.

STATUS

The case has survived a motion to dismiss predicated upon the res judicata effect of earlier state court litigation. We are now preparing our own motion for summary judgment.

NSCLC PARTICIPATION

We have agreed to take an active part in this case which has previously been handled by CLAC. We have obtained copies of all files, completed a preliminary study of the case, and prepared a draft motion for summary judgment.

37. *Tomlin v. Crowell*, California Superior Court, County of Los Angeles, No. C-108967.

ISSUE

Validity of provision in pension plan restricting circumstances under which pro rata credit can be earned through work generating contributions to a pension plan having a reciprocity agreement with the defendant pension trust.

LEGAL SERVICES PROGRAM ASSISTED

Community Legal Assistance Center, 1800 W. 6th St., Los Angeles, CA 90057.

STATUS

Our motion for summary judgment has been filed with the court and oral argument will be heard in the early fall.

NSCLC PARTICIPATION

NSCLC assisted the Community Legal Assistance Center in drafting the complaint, the memorandum in opposition to a motion to dismiss and the interrogatories. NSCLC staff prepared the summary judgment motion and points and authorities in support thereof and will take responsibility for oral argument on the motion.

38. *Watkins v. Mathews*, United States District Court, Middle District of Louisiana, No. 75-124.

ISSUE

Validity of HEW regulations which inhibit the reopening of applications for disability benefits under Title II of the Social Security Act by imposing time limitations and by creating the concept of "administrative res judicata" without statutory authority.

LEGAL SERVICES PROGRAM ASSISTED

Legal Aid Society of Baton Rouge, 2303 Government St., Baton Rouge, La. 70806.

STATUS

The court dismissed the suit for lack of jurisdiction and an appeal is being taken to the Fifth Circuit.

NSCLC PARTICIPATION

We will participate in the appeal either by way of a brief amicus curiae, or by being of counsel.

39. *Wilson v. Operating Engineers Pensions Fund*, United States District Court, Northern District of California, No. C-75-1820.

ISSUE

Propriety of pension trustees giving conclusive effect to Social Security records in finding a break in employment where an ambiguity existed concerning whether the claimant was, during the questioned time, an employee or an independent contractor and where claimant had earned sufficient credit to qualify for a pension prior to his alleged break.

LEGAL SERVICES PROGRAM ASSISTED

Fresno County Legal Services, Inc., Brix Building, 1221 Fulton Mall, Fresno, CA 93721.

STATUS

Chief Judge Carter treated the March hearing on our motion for preliminary injunction as a trial. Accordingly, we spent two days presenting witnesses designed chiefly to show the irreparable injury suffered by the Wilsons and Cliff Wilson's work in covered employment during the period of his supposed break in service. Before a date could be set for the trustees to put on their opposition, Judge Carter died suddenly of a heart attack. We have since re-noticed our motion which will now be heard by Judge Ingram on August 18th and 19th. In the meantime, the trustees have deposed both Cliff Wilson and another union member who worked for Wilson's employer during the period of his break.

NSCLC PARTICIPATION

NSCLC has prepared all pleadings and conducted all negotiations with the trustees of the Operating Engineers Pension Fund. In addition, we will be responsible for all oral arguments before the Northern District.

[Appendix C]

SURVEY OF STAFF PROVIDING LEGAL SERVICES TO THE ELDERLY SURVEY
DESCRIPTION

In October, 1975, the National Senior Citizens Law Center conducted a survey, by questionnaire, of 73 projects specifically providing legal services for the elderly. The purpose of the survey was to obtain an accurate assessment of problems confronted by legal services providers. The questionnaire was designed to provide a wide range of information on legal problems. Nine broad areas were covered: I. Services, II. Eligibility, III. Funding, IV. Staff, V. Paralegals, VI. Relations with the Local Bar, VII. Accessibility of Services, VIII. Coordination with Other Services, and, IX. Availability of Resources.

The questionnaire which was prepared by the Staff of NSCLC incorporates within it questions solicited from the other model project grantees. Survey responses were received from 32 of the 73 law programs receiving the questionnaire (a response rate of 44%). We are presenting a preliminary analysis of our survey responses which indicates how manpower problems are perceived by legal service providers working with the elderly.

SUMMARY ANALYSIS OF STAFFING PATTERNS

Legal service programs for the elderly, like those of other social service programs in the field of aging, have a multiplicity of goals. We are concerned that older people are employed and adequately trained to fill the staffing needs wherever possible. We are also concerned that staff attorneys, paralegals and community workers have competency in their specialties, are sensitive to the needs of the elderly, and that personnel have knowledge of the special issues that impact the lives of the elderly.

Legal service programs, especially, need specific knowledge in the substantive areas that are most commonly addressed in dealing with the aged. For the most part, lawyers have not been trained in law school or in private or public practice in these substantive areas.

This part of our survey attempts to look at present staffing patterns to see how well we have met our goals, as well as finding out which areas we must improve. In this part of our statement five broad categories are covered: 1. Statistical profile of staffing patterns, 2. Adequacy of present staff, 3. A demographic profile of present attorneys, 4. Project training needs, and 5. Paralegals.

STATISTICAL PROFILE OF STAFF—WHO AND WHAT KINDS OF WORKERS
ARE EMPLOYED

Staff utilization

In the 32 projects there were a total of 49.5 (50 rounded) attorneys employed for an average of 1.66 attorneys per project [Table I]. Approximately 56% of the projects had one or fewer attorneys [Table II]. No project had more than 4 attorneys and only 3% had 4. In fact, almost 85% of the projects employed 2 or fewer attorneys.

Paralegals, another category, [Table III] are utilized in approximately 72% of the projects. Twenty-eight percent have no paralegals, 38% of the projects have 1 or 2 paralegals and 9% have 9 or more. Statistical averages, however, can be misleading: 40% of the 116 paralegals employed (48) are in four projects.

Community and social service personnel are used relatively infrequently [Table IV], with almost 47% of the projects utilizing none. Approximately 47% utilize some type of social service personnel with some projects utilizing administration staff for social service tasks. Only 9% of the projects have 5 or more community or social service workers.

Part-time vs. full-time employment was another category studied. Almost 48% of the projects responded that they didn't use part-time workers. Of those who used part-time personnel [Section B, Table VI], 16% of the projects had all part-time personnel and another 19% used part-time personnel extensively. That, of course, means that close to 66% utilized part-time workers little or none at all.

Law students were utilized in 47% of the projects while 53% made no use of law students [Section B, Table V].

Adequacy of present staff

This section in the survey was concerned with the adequacy of staff size and projected needs for future staffing if these projects were to become adequate to meet the legal needs of the elderly. An interesting and significant difference arises [Table I and II, Section B] when legal service providers are asked to assess the adequacy of their staff size.

When asked about the adequacy of staff size to meet the demands of their project's present elderly caseload, 58% responded that present staff is inadequate to meet the demand, which is a good indication of their needs. However, when asked if their staff size was adequate to meet the demands of the *elderly community eligible for legal services*, an overwhelming (80%) majority responded that their staff was inadequate. It indicates that there is dissatisfaction with their ability to meet their caseloads, but an even greater dissatisfaction with their ability to assist the potentially needy elderly community.

Further questions were asked to see what kind of staff was needed to meet both caseload and community legal needs. The greatest need was for attorneys (74%) and for paralegals (60%) ([Section B, Table III]). Only 7 cases (26%) mentioned community and social service workers.

A further concern was whether part-time older workers were employed. Often older workers, because of social security regulations, physical condition, etc., are unable to work full time. Out of the 23 projects which utilized older workers (61%), when asked how successful this was, 12 out of 14 (86%) said it was successful, while 2 said only partially successful.

Profile and demography of attorneys' ages, experience, bar membership

Attorneys in the legal services projects are relatively young [Section C, Table II]. Sixty-eight percent of the attorneys are under 30, while 80% are under 35 and 86% under 40. Only 14%, or 8 attorneys, are 55 and older while 4 are over 65 with the oldest attorney 72. It is interesting to note that no attorneys fall into any age categories between 41 and 55.

When hired, 88% are either active or retired members of the bar. Sixty-two percent of all attorneys had less than three years experience when hired, with 28% having 0 to 11 months. Only 8 lawyers, or 14%, had over 10 years experience. This data exactly correlates with the 14% of the lawyers 56-65 and older.

Paralegals

The fifth section deals with paralegals: utilization, desirability to legal services projects, sources of funding and demographic characteristics. Twenty-

three of the 32 legal service projects use 116 paralegals, an average of 3.62 paralegals per project. Average statistics often represent skewed pictures. Four of the projects utilize approximately 40% (or 48) of the total number of paralegals. Eighteen out of the 23 projects have some type of salaried paralegal.

Fifty percent of the paralegals are part-time non-salaried, while approximately 26% (25.9%) are full-time salaried employees, with approximately 24% full-time non-salaried. We were unable to do any correlation to see what proportion of elderly paralegals were paid or non-paid. The age breakdown for paralegals showed approximately 35% over 65 and 25% between 55-64. The next largest age group was 21-30 with 18% of the total paralegal population.

Of the 9 projects not presently utilizing paralegals, approximately 67% (66.7%) said they would like to employ paralegals. Of those projects presently employing paralegals, an overwhelming 82% (81.9%) said they would like to expand their paralegal staff. By overwhelming numbers, 87% of the respondents indicated insufficient funding to secure adequate training for paralegals. Even if the training money were available, 70% indicated NO adequate training for senior citizen paralegals was available in their community.

GENERAL INFORMATION FROM THE 32 PROJECTS: STAFFING AND MANPOWER

SECTION A.—TYPES OF WORKERS UTILIZED

Table I.—The number of attorneys per the 32 projects surveyed. *Average* number of attorneys *per project*—1.66. Total number of attorneys—49.5 (*including part time*).

TABLE II.—NUMBER OF ATTORNEYS

Number of attorneys.....	1 0	1	2	3	4
Projects having specific attorneys.....	2	16	9	4	1
Percent of projects.....	6.2	50	28.1	12.5	3.1

¹ Approximately 84.3 pct of the 32 projects have less than 3 attorneys; 56.2 pct have 1 or fewer attorneys.

TABLE III.—NUMBER OF PARALEGALS PER PROJECT ¹

Paralegals	0	1 to 2	3 to 4	5 to 6	7 to 8	9, plus
Projects.....	9	12	2	5	1	3
Percent of projects with paralegals.....	28.1	37.5	6.3	15.6	3.0	9.3

¹ Approximately 28 pct of the survey projects use no paralegals; 38 pct have 1 to 2 paralegals; 66 pct between 0 and 2 paralegals; 34 pct between 3 and 18 paralegals.

TABLE IV.—NUMBER OF COMMUNITY OR SOCIAL SERVICE PERSONNEL PER PROJECT

Community and social service workers	0	1 to 2	3 to 4	5 to 6	9 to 10	11 plus	No Response
Projects.....	15	8	3	1	1	1	(2)
Percent of projects having community or social service workers.....	46.9	25.0	9.3	3.0	3.0	3.0	6.25

NOTES

Almost 50 pct do not have community or social service workers.
71.9 pct have 0 to 2 community or social service workers.
81.2 pct have 0 to 3 community or social service workers.
9 pct have more than 4.

The survey showed some overlap between this classification and paralegals in that it seems as if some paralegals were used as community workers and vice versa.

TABLE V.—UTILIZATION OF PART-TIME WORKERS

[27 projects responding]

Part-time workers	0	1 to 2	3 to 4	5 to 6	7 to 8	9 plus	No Response
Projects.....	13	8	1	2	1	2	(5)
Percent projects with part-time workers.....	48.1	29.6	3.7	7.4	3.7	7.4	-----

Almost 50% have no part time workers, 30% have 1-2. Only approximately 21% have over 3 part time workers.

SECTION B

Another set of questions revolved around the adequacy of the staff size and the projected needs if the projects were to become adequate to meet the needs of the elderly population. There were two questions specifically geared to this problem.

Is staff size adequate to meet the demands of your project's *present* elderly caseload?

TABLE I

	Yes	No	No response
Number of staff.....	13	18	1
Percent of total responses.....	41.9	58.1	-----

Is this staff size adequate to meet the *demands* of the *elderly community eligible* under your project's guidelines?

TABLE II

	Yes	No	No response
Number of staff.....	6	24	2
Percent of total responses.....	20	80	-----

When asked what does your program need to adequately serve the elderly community and your present caseload (total figures greater than 100%—some participants citing more than one need), the greatest additional staff needs were for attorneys (74%) and paralegals (59.3%).

TABLE III.—CHANGES NEEDED IN STAFF

[27 projects responding]

	Percentage	Number of cases
Additional paralegals.....	59.3	16
Additional attorney.....	74.0	20
Support staff—administrative-clerical.....	22.2	6
Community and social service personnel.....	25.9	7
Law students.....	7.0	2
Pay for volunteers.....	3.7	1
Additional full-time personnel.....	3.7	1

On the question of salaries for attorneys and support staff pay (not including paralegals), most respondents said that salaries are not competitive (approximately 60%).

TABLE IV.—COMPETITIVE SALARIES

	Yes	No	No response
Salaries competitive (28 responses).....	11	17	(4)
Percent of projects responding.....	39.2	60.7	

TABLE V.—PROJECT UTILIZATION OF LAW STUDENTS

[32 responses]

	Yes	No
Number of cases.....	15	17
Percent of total projects responding who use law students.....	46.9	53.1

Do you utilize part-time personnel?

TABLE VI.—PROJECT USE OF PART-TIME PERSONNEL

[32 responses]

	None	Little	Extensively	All
Number.....	9	12	6	5
Percent.....	28.1	37.5	18.75	15.6

Of those cases who utilize part-time personnel, 65% have paid and 60% have volunteer. Only 15 programs responded to the question.

TABLE VII.—PART-TIME PERSONNEL

[32 responses]

	Number	Percent
Paid.....	15	65.2
Volunteer part time.....	14	60.8

TABLE VIII.—UTILIZATION OF OLDER PEOPLE PART TIME

[23 responses]

	Yes	No	Number available
Number.....	14	7	2
Percent.....	61.0	30.4	

TABLE IX.—ARE THESE PART TIME OLDER WORKERS SUCCESSFUL?

[21 responses]

	Yes	Partially
Number of cases.....	12	2
Percent of people responding.....	85	
Is the use of part-time older workers feasible.....	30	2
Percent of people responding.....	94	6

SECTION C

The next set of questions concerned attorneys' qualifications and age.

Questions on attorneys' qualifications, primarily questions of age, previous experience before working in this program, membership in the bar when hired based on the total number of attorneys (49.5) (rounded to 50 attorneys) in projects.

TABLE I.—AGE OF ATTORNEYS IN PROJECT

Age	Number of attorneys	Percent of attorneys
21 to 25.....	4	8
26 to 30.....	30	60
31 to 35.....	6	12
36 to 40.....	3	6
41 to 45.....	0	0
46 to 50.....	0	0
51 to 55.....	0	0
56 to 60.....	1	2
61 to 65.....	2	4
65 plus (oldest 72).....	4	8
Total.....	50	100

NOTES

- 68 pct of the attorneys are under 30.
- 80 pct of the attorneys are under 35.
- 86 pct of the attorneys are under 40.
- 14 pct of the attorneys are over 55.
- 12 pct of the attorneys are over 60.

TABLE II.—EXPERIENCE OF ATTORNEYS BEFORE BEING HIRED FOR THE PROJECT

	0 to 11 mo	1 to 2 yr	3 to 4	5 to 6	10 to 20	21 to 30	31 to 40	40 plus
Number.....	14	17	9	2	2	1	4	1
Percent.....	28	34	18	4	4	2	8	2

62% of all attorneys had less than three years experience.

80% of all attorneys employed had less than five years experience when hired.

Only 18% had 10 or more years experience when hired.

TABLE III.—MEMBER OF THE BAR WHEN HIRED

	Yes	No	Retired
Number.....	43	6	1
Percent.....	86	12	2

The overwhelming majority of attorneys were admitted to the bar when hired to staff the respective projects.

SECTION D

Category D had to do with specialized training for professional staff in elderly law or legal issues affecting the elderly, whether it was received and how it was given. The preponderance of in-house training specified that, although it was in-house, it utilized materials from outside—organizations such as NSCLC and NPI training documents.

When asked whether specialized training was given, an overwhelming majority of projects said yes.

TABLE I.—GIVE SPECIALIZED TRAINING

	Yes	No
Number of cases.....	25	7
Percent of cases.....	78.1	21.8

TABLE II.—IS TRAINING IN-HOUSE¹

	Yes	No
Number of cases.....	18	7
Percent of cases.....	72	28

¹ 75 pct give some form of in-house training.

TABLE III.—OUTSIDE TRAINING

	Yes	No
Number of cases.....	18	7
Percent of cases.....	72	28

TABLE IV.—SOURCES OF OUTSIDE TRAINING

[18 cases responding]

Source	Number	Percent
Legal education programs.....	9	50
Backup centers.....	17	94
Bar association.....	4	22.2
Law school seminars and training.....	5	27.8
Other legal aid programs.....	3	16.7
Workshops.....	3	16.7
Outside materials.....	1	5

TABLE V.—RECRUITMENT OF FULL TIME STAFF

[27 cases responding]

Source	Number	Percent
Advertising.....	22	81.5
Law schools.....	12	44.4
Vista.....	4	14.8
Legal aid offices.....	4	14.8
Elderly organizations.....	2	7.4
Other.....	2	7.4
Word of mouth.....	9	33.3

The prime method of recruit full-time staff is through advertising in various journals and at law school. Few legal service projects utilize senior citizens organizations or publications.

SECTION E.—PARALEGALS

TABLE I.—PAY STATUS OF PARALEGALS

[116 cases responding]

	Full-time salaried	Full-time non-salaried	Part-time salaried	Part-time non-salaried
Number.....	30	1	27	58
Percent.....	25.9	.8	23.8	50

TABLE II.—SOURCES OF FUNDING FOR PAID PARALEGALS

[57 cases responding]

Source	Number	Percent
Title III OAA.....	15	26.3
Title XX.....		1.7
SOS.....	3	14
VISTA.....	9	15.8
CETA.....	6	10.5
United Way.....	5	8.8
FRS.....	11	19.3
Other.....	2	3.5

TABLE III.—DEMOGRAPHIC BREAKDOWN OF PARALEGALS

[114 cases]

Age	Number	Percent
Under 21.....	4	3.5
21 to 30.....	21	18.4
31 to 40.....	12	10.5
41 to 55.....	9	7.9
55 to 65.....	28	24.6
65 plus.....	40	35.1

Notes.—59.7 pct of all paralegals over 55; 21.9 pct of all paralegals under 30.

	Sex		Black	Caucasian	Spanish speaking	Other
	Males	Females				
94 responses.....	32	62				
Percent.....	34	66				
94 responses.....	10	73	7	4		
Percent.....	10.6	77.7	7.5	4.2		

Paralegals in these projects were likely to be female (66%) and Caucasian 78% (77.7%). Blacks and Spanish-speaking personnel were being utilized.

Table IV.—Of the 58 paralegals funded, there was a great disparity of funding sources. The prime *single source*, Title III—OAA, was 26.3%, with Federal Revenue Sharing 19.3%, and RSVP, VISTA, CETA and Wins comprising 40% funding source for paid paralegals. RSVP could be considered a non-paid position since transportation and lunches may not be adequate pay. Several respondents declared that if they could, they would request "real" pay for their RSVP workers.

Table V.—Training is primarily in-house—65%.

TABLE VI.—TRAINING OF PARALEGALS

[23 cases responding]

	In-house	Outside
Number.....	15	8
Percent.....	65.2	34.8

TABLE VII.—DESIRABILITY AND VALUE OF PARALEGALS

	Yes	No
Number.....	6	3

Note.—Of the 9 projects presently without paralegals, 6 would like to employ them.

	Yes	No
Number.....	18	4
Percent.....	81.9	18.1

Note.—Of those projects presently employing paralegal staff—desire to expand paralegal staff (22 cases responding).

TABLE VIII.—SUFFICIENCY OF FUNDS TO PROVIDE TRAINING FOR PARALEGALS

[30 cases responding]

	Yes	No
Number.....	4	26
Percent.....	13.3	86.7

	Yes	No
Number.....	9	21
Percent.....	30	70

Note.—Availability of training for senior citizens paralegals in the community (30 cases).

SECTION F.—AVAILABILITY OF RESOURCES

Has your elderly legal services project used a backup center or model grant program for technical or other assistance?

TABLE I.—USE OF BACKUP CENTERS AND MODEL GRANT PROGRAMS

	Yes	No
Number of projects.....	18	12
Percent of projects.....	60	40

TABLE II.—WHAT WAS YOUR EXPERIENCE WITH THE BACKUP CENTER?

[18 cases]

	Good	Average	Bad
Number of projects.....	15	2	1
Percent of projects.....	84	10	6

TABLE III.—TYPE OF TRAINING FELT NECESSARY

	Number of projects	Percent of projects
A—Substantive Areas of Elderly Law (30 Cases)		
Age discrimination.....	15	50
Older women.....	12	40
Consumer problems.....	23	77
Private pensions.....	14	47
Federal Government pensions.....	12	40
Probate.....	14	47
Funding.....	19	63
Guardianship and involuntary commitment.....	22	73
Social security.....	24	80
Health and nutrition.....	18	60
SSI.....	24	80
Housing.....	18	60
Transportation.....	13	43
Nursing homes.....	26	87
Veterans' matters.....	19	63
B—Funding Sources for Elderly Legal Services Programs		
Title III.....	18	60
Title XX.....	13	43
Revenue sharing.....	9	30
LEAA.....	8	27
CETA.....	9	30
Other.....	4	10

Summary of findings

The sixth section of our survey had to do with the availability of outside resources. There were two areas of questions: (1) the use of back-up or model grant projects; and (2) substantive areas of training needed.

Sixty percent of the projects had utilized a back-up or model project. Out of those, 84% felt that the experience was very good, 10% felt it was satisfactory, and one case felt it was unsatisfactory. Out of the 40% who had not been able to or who had not used a model project or back-up center, 96% said they would use them if an appropriate case arose.

Another question in the survey was whether the elderly legal project would use specialized training provided by a back-up center at a training conference. Ninety-six percent of the cases said that they would attend such training.

When asked what type of training they felt is necessary for their elderly project, responses were as follows:

	Percent		Percent
Age discrimination.....	50	Nursing homes.....	87
Consumer problems.....	77	Older women.....	40
Federal Government pensions.....	40	Private pensions.....	47
Funding.....	63	Probate.....	47
Guardianship and involuntary commitment.....	73	Social security.....	80
Health and nutrition.....	60	SSI.....	80
Housing.....	60	Transportation.....	43
		Veterans' matters.....	63

Mr. AFFELDT. Now we shall hear from Mr. David Marlin, director, Legal Research and Services for the Elderly.

Mr. Marlin has always been most helpful to the committee, serving us well in many capacities. The working paper which he and his staff prepared in 1970 on "Legal Problems of the Elderly" helped launch our study on improving legal representation for older Americans.

Dave will soon prepare another working paper for the committee on another timely topic, "Protective Services for the Elderly."

Now we will hear from Mr. Marlin.

**STATEMENT OF DAVID MARLIN, DIRECTOR, LEGAL RESEARCH
AND SERVICES FOR THE ELDERLY, WASHINGTON, D.C.**

Mr. MARLIN: Thank you.

I would like to start by expressing gratitude to the committee, its Senators and staff, who have provided a focus on this important issue for the last several years. The interest of the committee has accounted for a lot of the progress that has been made.

I also would like to call special attention to the staff members who are here this late today.

The advantage to being last, if there is one, is the opportunity of hearing everything that goes before and, therefore, having the opportunity to comment on anything that you heard. I would like to make some comments on some of the things that have been said today and yesterday.

You have the testimony that I was prepared to provide and I will just hit a few highlights from it.

We have been privileged since 1968 to be working in this field. By "we," I mean the legal program of the National Council of Senior Citizens. I think our special strength and validity as lawyers is that we represent an organization of 3.5 million older persons, which is well known in the country for championing the causes of older persons. Our focus has been, is, and will continue to be, how to solve the problems of senior citizens. We approach issues in terms of how they impact on older people.

Since 1968, more than 100 legal services programs for the elderly have been funded, largely with title III funds. We estimate they serve more than 100,000 persons a year. There also have been about 10 law schools that have initiated programs—clinical, academic, or both.

The organized private bar, upon which I wish to comment a little bit later, in recent years has recognized the need and begun to provide some assistance to resolve legal problems of older persons. But the lightning rod has been and continues to be governmental support.

Much remains to be done in spite of the substantial progress that has been made.

We believe the vast majority of older persons today do not have access to adequate legal representation. In addition to the 100,000 persons we previously estimated are served by the 100 elderly law projects, we estimate 200,000 older persons per year are represented by the Legal Services Corp., legal aid offices, the private bar, and law school clinics.

As the current population of persons 65 and over is in excess of 22.3 million, over 22 million older persons are potential legal clients. Discounting the 30 percent with incomes presumptively sufficient to retain a private attorney, that still leaves 15.6 million.

SIX MILLION ELDERLY WITHOUT LEGAL REPRESENTATION

As the American Bar Foundation estimates that 37.3 percent of the adult population will face a legal problem each year, a conservative estimate of the number of older persons per year who face im-

minent legal action, but are without access to legal representation, is 5.8 million persons.

In our prepared statement,¹ we provide some illustrations of the need. Picking one largely rural area—the States of Mississippi, Tennessee, and Alabama—with 706,500 older persons, let me refer the committee to our prepared statement where we elaborate on that.

We have recommended four goals to accomplish and I would like to very briefly state those and comment on them.

GOAL ONE: PRIORITIZE SERVICES

First, that the Legal Services Corp. programs be mandated by Congress to establish priorities for their services so that all segments of the poor are served equally according to their proportion of the poor population.

Now there has been testimony this morning about Congress earmarking funds. That provides a lot of problems for any program, and for Congress. I don't think it is necessary to earmark funds in order to prioritize services. We suggest, for example, in our prepared statement, the creation of some special units or persons within legal services projects who are given the responsibility to represent the elderly. They would be therefore, obligated to perform, and their performance will be one measure of the test that Senator Kennedy posed this morning to Mr. Ehrlich.

In addition, there is the subject of alternative delivery systems which has not been mentioned today or yesterday, to my surprise. Our prepared statement refers to one of them—the voucher system—which is one of the delivery methods that the corporation is testing. Its application to older persons still remains. There are a number of other methods including prepaid plans that I could elaborate on subsequently.

I am trying to keep it short because I know we all want to go to lunch, but there are a number of alternative delivery systems that are possible and that should be experimented with.

I now want to comment on Mr. Ehrlich's testimony. I had an opportunity during the break to outline to him the sort of comment that I intended to make.

There is, unfortunately—and I don't blame anyone for it—a historical imbalance in the amount of legal services that indigent older persons have been receiving from our public legal services movement which was created in 1964.

Whether the figure is 6 percent, a little bit more, or a little bit less—granted we don't know exactly, but I don't think anybody who is attuned to the situation would argue that there is not a historical imbalance.

So the question is: How do we close that gap? I suggest that it has got to be more than training in substantive legal issues affecting older persons and more than paralegalism and more than mobile units to reach older persons. That is why we suggest that Congress take a hand and provide some sensible and rational basis for asking the corporation to prioritize its services.

¹ See p. 336.

GOAL TWO: ENCOURAGE PUBLIC INTEREST LEGAL SERVICES

Our second recommendation is that the private bar be encouraged by Congress to fulfill its articulated professional responsibility of providing public interest legal services.

I appreciate Mr. Schneider asking Mr. McCalpin about Justice Brennan's quote. I have known Mr. McCalpin for years. I know the sincerity that he and others in the leadership of the American Bar Association have toward fulfilling that professional responsibility, but I think there has to be more than acceptance of the principle. There must be a test of performance for the Bar Association also. It has to be more than accepting the principle. The word we were using this morning was "quantify." It has not been quantified yet.

I suggest it has to be quantified, otherwise it is an illusory promise that in some places will be fulfilled and other places will not.

In our prepared statement we point out some of the examples of the lack of private bar fulfillment of that responsibility. We suggest certain pro bono and reduced-fee services that could be and should be available.

We pick up a suggestion made in 1933 by Carl Llewelyn which is to impose a tax on the incomes earned by large firms to subsidize legal services for the poor.

In addition, we talk about consideration of an amendment to section 170(c) of the Internal Revenue Code which would allow a charitable deduction for lawyers and other professionals who render services to or through a tax-exempt organization such as a legal aid society.

GOAL THREE: FUNDING FOR AOA STAFF PERSON

Our third recommendation is that Congress approve as part of the Older Americans Act amendments, in 1977 or in the appropriation process for fiscal 1977, a staff position at AoA. This would provide them the capacity and the authority to hire someone to administer all these programs, the model projects, the training grants. They would have someone on the staff who could provide leadership within AoA.

I know Commissioner Flemming is very much in favor of this. He is trying to find ways to bring a person like that aboard, but is relegated to nondirect methods since there is no authorized staff position.

May I respectfully suggest to the committee that it provide consideration for that?

GOAL FOUR: EARMARKED FUNDING FOR ELDERLY

Finally, our suggestion is that a portion of the appropriations for such Federal programs as the Law Enforcement Assistance Act, the Legal Services Corp., the Older Americans Act, title I of the Higher Education Act, or the consumer education programs be earmarked for educational programs in the legal rights and problems of the elderly.

I don't have to point out to the committee or to persons in the room how important it is that older persons themselves be made

aware of their legal situation. They know they have problems, but sometimes they don't appreciate they are legal and can be solved through the assistance of lawyers and paralegals. There is a great need for educational programs for older persons.

I think I will stop at this point, Mr. Affeldt.

If there are any questions, I will be happy to answer them.

[The prepared statement of Mr. Marlin follows:]

PREPARED STATEMENT OF DAVID MARLIN

I appreciate this opportunity to appear here and share our recommendations regarding the development of legal representation for the elderly.

Since its inception 8 years ago, the mission of our office has been to work with State and area offices on aging, Legal Services Corporation and legal aid offices, bar associations, law schools, and organizations of older persons to develop programs of legal representation for the elderly. The National Council of Senior Citizens, under a grant from OEO from 1968 to 1972, established the first 12 legal services for the elderly demonstration projects in the country—projects which have since been replicated throughout the Nation.

Beginning in 1974, we pioneered the first legal services technical assistance effort to State and area offices on aging funded by the Administration on Aging. Under this grant covering the States in HEW Region III, we helped develop direct legal service delivery systems, drafted and critiqued State legislation impacting older persons and trained State and area agency staff, legal services providers, and older persons themselves in the legal rights and problems of the elderly. Based upon this experience, AoA in July 1975 expanded this program to include all 50 States and increased NCSC's responsibilities to include the 19 States in HEW Regions I, III, and IV.

The advances in legal representation for the elderly that we have stimulated during the past eight years have been significant. Prior to 1968, there were no legal programs in the country focusing on older persons; elderly law seminars and clinical programs were unheard of by the Nation's law schools; the private bar had not yet awakened to the fact that older persons are a significant and largely unserved segment of the population, and government support for legal services for the elderly was virtually nonexistent.

Since 1968, over 100 legal services for the elderly projects have been funded, largely with title III funds, and continue to serve over 100,000 persons per year. Ten law schools have initiated law and aging seminars and/or clinical programs which not only provide direct legal representation for the elderly but train future lawyers in the substantive areas of the law impacting older persons and sensitize them to their needs. The organized private bar—although slow—is beginning to recognize the legal needs of the elderly. Finally, governmental support has been and is the lightning rod of the movement.

Direct legal services programs for the elderly have been initiated and sustained by support from such Federal programs as the Older Americans Act, ACTION, the Housing and Community Development Act, revenue sharing, CETA, the Legal Services Corporation, and title XX of the Social Security Act. Most recently the designation by this Congress of legal services as a priority social service under the Older Americans Act has been a boon to the effort of insuring adequate legal representation for older persons. State and area agencies who had been indifferent to the development of legal representation for the elderly are, because of this congressional mandate, becoming eager to learn about legal services delivery, to provide training for their staff in the legal rights and benefits of the elderly, and to work toward the establishment in their areas of direct legal services programs.

Although substantial progress has been made, much remains to be done. The vast majority of older persons today remain without access to adequate legal representation. Approximately 200,000 older persons per year are served through Legal Services Corporation/legal aid offices, law school clinics and the 100-plus elderly law units. As the current population of persons 65 and over is in excess of 22.3 million, over 22 million older persons still remain in the potential client population. Discounting the 30 percent with incomes presumptively sufficient to retain a private attorney, 15.6 million remain. As

the American Bar Foundation estimates that 37.3 percent of the adult population will face a legal problem each year, a conservative estimate of the number of older persons per year who face imminent legal action but are without access to essential legal representation is 5.8 million.

The lack of access is particularly acute for older persons in the South. For example, in the three States of Mississippi, Tennessee, and Alabama, there are 163 counties with a total elderly population of 706,500 without any form of legal assistance for the poor. In those 74 counties in which legal aid is available, the attorney-client ratio is at times as high as 1 attorney per 31,000 eligible poor persons.¹ As the basic policy of such programs is to serve clients in the order in which they appear at the door, older persons who are at best reluctant consumers of legal services get lost in the shuffle. Legal Services Corporation estimates of older persons serviced by LSC offices bear this out. Although older persons nationally represent 20 percent of the poor population, only 6 percent of LSC clients are elderly. The 1975 caseload totals for Georgia Legal Services, the only HEW Region IV legal services program to claim statewide coverage, supports this estimate. Of the 15,550 cases handled by Georgia Legal Services during 1975, only 776 involved older persons.

In addition to the millions of older persons per year who recognize that they have a legal problem and thus require a legal advocate to intervene on their behalf, there are millions more who do not know enough about their legal rights to recognize when they are unjustly denied public benefits, defrauded in consumer transactions, or victimized in real estate transactions, long-term care arrangements or protective services proceedings. Although ignorance of the law is not peculiar to older persons, the effects of such ignorance is particularly devastating to them because of their vulnerability, marginal resources, and dependence on public benefit programs.

This ignorance of the law and lack of access to adequate direct representation can and must be remedied. To accomplish this goal, we recommend the following:

(1) *That Legal Services Corporation programs be mandated by Congress to prioritize their services so that all segments of the poor be served equally according to their proportion of the poor population.*

Although it is true that the Legal Services Corporation offices, even with the increased appropriation of \$123 for fiscal year 1977, cannot possibly serve all 29 million poor persons in this country eligible for their services, all segments of the poor population should be assured equal access to the limited services that are available. For the poor elderly to receive their fair share of representation, Legal Services Corporation projects must commit more of their resources to outreach and education of older persons.

Let me emphasize we are talking about congressional appropriated Legal Service Corporation funds, not Older Americans Act funds. Poverty legal services projects should not be permitted to neglect the elderly unless they receive the scarce funds from an area agency on aging.

One way of implementing this mandate would be to develop within each LSC project which is presently underserving older persons a special unit which is sensitive to the legal needs of the elderly poor and has the proper training and outreach capacity for dealing with the legal problems of the elderly.

Another step which the corporation should consider is to allocate a portion of the money reserved for the study of alternative delivery systems to projects which focus on reaching the elderly poor. The voucher system, one of the delivery methods designated for testing by the corporation, combined with an outreach and educational component may be a more effective method of reaching the elderly poor than the existing staff attorney system. For many poor older persons, the present staff attorney system, because of its development under OEO, has the taint of welfare, and thus is rejected as a source of services. The voucher system, in addition to being free of that taint and providing a choice as to which attorney provides the representation, may also help to remedy the physical problem of access which presently inhibits many older persons from seeking LSC program services.

¹ This is the current attorney-client ratio in the 40 counties serviced by North Mississippi Rural Legal Services.

(2) *That the private bar be encouraged by Congress to fulfill its articulated professional responsibility of providing public interest legal services.*²

Justice Marshall, at the 1975 ABA convention, noted that: "While the organized bar has philosophically adopted the idea of its responsibilities in securing adequate representation of all persons, it has yet to come to grips with its responsibility for enforcing this obligation."

This lack of commitment of the private bar is borne out by the results of a survey of a nationwide sample of lawyers conducted in 1973-74 by the Wisconsin Institute for Research on Poverty. Of the 1,450 lawyers responding, 870—or 60 percent—spent less than 5 percent of their billable hours doing public interest work and nearly half of these spent no time at all. A second interesting fact revealed by this study is that lawyers in large urban firms reported doing no more public interest work than smaller firm lawyers and did considerably less than solo practitioners. Seventy percent of the large firm lawyers spent less than 5 percent of their billable hours on public interest work, as compared to 45 percent of the solo practitioners.

The import of these statistics with regard to legal representation for the elderly is obvious. As publicly funded legal services will never be sufficient to serve the millions of persons unable to afford the normal fees of private attorneys, the private bar itself must significantly increase its pro bono or reduced fee services if the vast number of lawyerless poor and elderly persons are to be served. A rule of thumb suggested by Justice Brennan in a speech at Harvard in 1967 on "The Responsibilities of the Legal Profession" is that each member of the bar be required to expend 5 hours per week in pro bono representation. No bar association has yet imposed such an obligation upon its members.

If the private bar continues to evade its own articulated responsibility Congress should seek a means to achieve Justice Brennan's goal. Although direct Federal regulation of the private practitioner's services may be both difficult and unwise, Congress could consider adopting a suggestion made by Carl Llewelyn in 1933 and impose a tax on the income earned by large firms to subsidize legal services for the poor. Or Congress could adopt a carrot-and-stick approach. For a number of years, private practitioners have been advocating an amendment to section 170(c) of the Internal Revenue Code to allow a charitable deduction for lawyers and other professionals who render services to or through a tax exempt organization such as a legal aid society. Although such an amendment should be drawn very narrowly to avoid large windfalls to lawyers, Congress may wish to consider such an amendment with the added condition that the value of such services are deductible only after the lawyer has provided 100 nondeductible hours per year of pro bono services.

(3) *That Congress approve as part of the fiscal year 1977 AoA appropriation a legal services development staff position to monitor and evaluate the programs of the State and national contractors in developing legal representation for the elderly, to negotiate with Federal manpower and legal services funding agencies to insure that older persons receive their fair share of such resources and to formulate AoA policy regarding the implementation of legal services as a priority service under the Older Americans Act.*

Although the initiative of Commissioner Flemming in launching the State legal services development grant program is an important step in the process of providing adequate legal representation for the elderly, this program lacks adequate staff support at the federal level. There is presently no one at the policymaking level within AoA with the qualifications, experience, and time to assimilate, evaluate, and develop policy based upon the experiences at the State and area agency levels. The effect of this gap in the aging network is unnecessary duplication of efforts and inconsistencies of services between programs and geographic areas.

Finally, (4) *That a portion of the appropriations for such Federal programs as the Law Enforcement Assistance Act, Legal Services Corporation, Older Americans Act, Title I of the Higher Education Act, or the consumer education program be earmarked for educational programs in the legal rights and problems of the elderly.*

As noted earlier on in this testimony, many older persons fail to assert valid legal claims because they are uninformed as to their rights under the law.

² A resolution approved by the house of delegates of the 1975 ABA convention states: ". . . it is a basic professional responsibility of each lawyer engaged in the practice of law to provide public interest legal services. . . ."

In-depth but comprehensible law education programs for the elderly could remedy this gap in knowledge. LEAP (Legal Education and Participation), a consumer law program operated through senior centers in Philadelphia by Temple University Law School, might serve as one model for such programs. Through this 10-week, 20-hour program, older persons are taught basic principles of contract law, the public benefit programs, legal and illegal advertising, and consumer credit. Legal concepts are translated into comprehensible terms by teams of lawyers and teachers, and the elderly participants are actively engaged in the learning process through debates, role playing, and independent research. This process teaches older persons not only their substantive rights under the law but demystifies the law so that they will feel comfortable in asserting their own rights and serving as advocates for others.

Now that models for legal education for older persons have been developed with foundation support, the basic difficulty is obtaining funding to implement the models on a national basis. Such Federal programs as the Law Enforcement Assistance Act, the Legal Services Corporation, Older Americans Act, the Higher Education Act, and the consumer education programs would seem to be natural funding sources for such efforts. However, thus far, few legal education for the elderly proposals have been funded under these programs. One way to spark both increased proposals and greater attention by the agencies administering these Federal programs is for Congress to earmark a portion of the appropriations for one or more of these programs for educational programs in the legal rights and problems of the elderly.

In the long run an investment in such preventive law education programs is more effective and cost efficient than our present system of remedial law.

NEW LEGAL SERVICES TITLE?

Mr. AFFELDT. First, let me pose a question that I don't expect you to respond to now, but I am hopeful that you would provide some information for the committee's hearing record. In addition, this question will be posed to Mr. Nathanson. I would appreciate a memo¹ from you concerning a suggestion made at yesterday's hearing with regard to establishing a new title under the Older Americans Act dealing specifically with legal services.

At the hearing, the precise requirements of that title were not spelled out in detail. However, I would be interested in your general reaction to this conceptually and whether you oppose it or support it. Please give us your reasons.

If you do support it, I would be interested in what should be included in the title.

Mr. MARLIN. I would be glad to do that.

Mr. SCHNEIDER. That is one of the questions Senator Kennedy put to Dr. Flemming and I think one aspect of the response should be how that program would relate to legal services activities and other ongoing activities.

Would it be in addition to or would it be a coordinating mechanism? How would it relate to providing services, training, and also to the private bar?

Mr. AFFELDT. I have a second question.

AOA'S EFFORTS TO STRENGTHEN LEGAL REPRESENTATION

Do you believe that the Administration on Aging's efforts to strengthen legal representation for older Americans is developing satisfactorily now? If not, what steps do you think are needed?

¹ See appendix 1, item 8, p. 353.

Mr. MARLIN. I believe that the Administration on Aging has been extremely responsive to the legal problems of older persons in terms of trying to originate and maintain some programs that would meet those needs, solve those problems.

The Administration on Aging is an organization with a responsibility to 22 million older persons in this country. Many millions are in great need of assistance, frequently of an emergency nature which can include a place to sleep, food, and other essentials to life.

Through the efforts of Congress, particularly over the last few years, the appropriations and mandate of Administration on Aging have been so substantially increased that they are able to make a credible effort to resolve some of those problems.

Being biased that lawyers can significantly contribute toward solving problems, I am very much in favor of adding legal services and legal representation to those lists of services that can be provided for older persons under the Older Americans Act. I believe the Administration on Aging and its administrator have responsibility to be a Government catalyst to help the older persons.

That is kind of a premise. I am sorry it took so long. What I am trying to say is that I think Administration on Aging has responsibilities in legal services and that they have started to exercise them well. It may be somewhat premature to put a lawyer on the staff of every State office on aging, but Commissioner Flemming is trying to create the capacity and the sensitizations within State offices on aging to assist the elderly with their legal problems.

Mr. AFFELDT. I have another question which I would expect a written response to after our hearing.

In your testimony—which, I want to add, is excellent—you pointed out that 10 law schools initiated law on aging seminars. I was wondering if you could provide us with a listing¹ of those 10 law schools?

PRIVATE BAR AND AVAILABILITY OF LEGAL SERVICES

Mr. MARLIN. Yes.

Mr. AFFELDT. One more question, and then I shall ask the other staff members if they would like to pose any questions to you.

What do you think should be the private bar's role for making legal services more readily available for the elderly? In other words, what do you think is the private bar's responsibility? How does it fit in with the overall effort to make effective representation more readily available?

Mr. MARLIN. Well, the private bar has the responsibility through its professional oath to make its services available without charge, if necessary, to those who need them. That effort, since 1964, has been pretty largely relegated to OEO and now the Legal Services Corp. That has been the approach that has been followed in this country, a satisfactory one in the sense it has produced persons who are qualified and trained in issues of poverty law. They become experts and are able to render more efficient services.

If I were to point a direction, Mr. Affeldt, it would be toward those persons who are not indigent but still cannot afford legal fees

¹ See appendix 1, item 8, p. 353.

of \$50, \$75, and \$90 an hour, and some even more astronomical rates that are charged by private practitioners in this country.

It can be done through prepaid plans, through clinics. Bar associations should, I believe, assess lawyers and establish plans through paid staff.

Bar associations should, while they have the opportunity, in a voluntary way, be original and develop programs in cities and States to serve the interests of persons who cannot afford the fees and who need an education themselves in knowing how lawyers can help them.

Mr. AFFELDT. Mrs. Fayé.

Mrs. FAYÉ. No questions.

Mr. AFFELDT. Mr. Schneider.

Mr. SCHNEIDER. It was excellent testimony. My questions were answered in the testimony.

Mr. MARLIN. Thank you.

Mr. AFFELDT. The hearing is adjourned, subject to the call of the Chair.

[Whereupon, at 1 :30 p.m., the hearing was adjourned.]

APPENDIXES

Appendix 1

CORRESPONDENCE AND MATERIAL SUBMITTED BY SENATOR KENNEDY AND HEARING WITNESSES

ITEM 1. LETTER FROM SENATOR EDWARD M. KENNEDY TO HON. ARTHUR S. FLEMMING,¹ DATED SEPTEMBER 30, 1976

DEAR COMMISSIONER FLEMMING: Once again, I want to commend you for an excellent presentation at the Committee on Aging's hearing on "Improving Legal Representation for Older Americans." You provided a valuable addition to our overall hearing record.

As soon as a transcript of the proceeding is available, a copy will be sent to you for any necessary editing.

I was unable to ask all the questions that I intended to raise at the hearing because I had to attend a bill-signing ceremony at the White House. For this reason, I would appreciate a response to the following questions:

(1) I understand that you have issued a memorandum directing that State legal service developers should be employees of State agencies, except in "extenuating circumstances." However, it appears that some States plan to subcontract out the development function—in most cases to legal services projects. Your technical assistance memorandum states that a subcontracting arrangement, such as this, would require a waiver from the Administration on Aging. Do you plan to grant waivers in cases when the State agency merely prefers to subcontract, or will you require a showing that it is not possible to put the developer on the State payroll?

(2) The State legal services developer will have the task of coordinating legal services. In this capacity the developer would have considerable influence over the disposition of money available to the States under the Older Americans Act. Do you think that there may be a possible conflict of interest if the development function is subcontracted to an agency which is also an applicant for funding from the State? What limitations, if any, would you put on a subcontracting developer from also receiving State funding to operate programs?

(3) Many local offices on aging have awarded title III funds to legal services programs, which, in turn, impose income limits for persons applying for assistance. This seems to contradict congressional intent, prohibiting the imposition of a means test under the Older Americans Act. What have you done to resolve this problem? Do you think that this issue can be resolved through an interagency agreement with the Legal Services Corporation?

(4) The Administration on Aging is now funding some national projects which provide technical assistance and training to States and area agencies on aging. These model projects, however, will not be continued indefinitely. Assuming these projects are needed in the future, would the Administration on Aging plan to continue these programs on a permanent basis?

(5) One of the witnesses at the hearing suggested that the Administration on Aging should have a designated person assigned to legal services. Would you favor specific authority for the Administration on Aging to employ an attorney to supervise the Administration on Aging's activities in developing legal services? If so, would this require legislation or could this be achieved through other means?

Thank you and best wishes.

EDWARD M. KENNEDY.

¹ See statement, p. 254.

ITEM 2. LETTER AND ENCLOSURE FROM HON. ARTHUR S. FLEMMING
TO SENATOR EDWARD M. KENNEDY, DATED NOVEMBER 3, 1976

DEAR MR. CHAIRMAN: Thank you for your letter of September 30 identifying several additional questions you would like me to respond to in connection with the Special Committee on Aging's hearing on "Improving Legal Representation for Older Americans." My response to those questions is enclosed.

I enjoyed appearing before you on this issue. As I indicated at the hearing, I believe legal services can help to meet many of the problems of today's older persons. I appreciate your leadership in helping to promote and strengthen these services.

Very sincerely and cordially yours,

ARTHUR S. FLEMMING.

[Enclosure]

Question 1. I understand that you have issued a memorandum directing that State legal service developers should be employees of State agencies, except in "extenuating circumstances." However, it appears that some States plan to subcontract out the development function—in most cases to legal services projects. Your technical assistance memorandum states that a subcontracting arrangement, such as this, would require a waiver from the Administration on Aging. Do you plan to grant waivers in cases when the State agency merely prefers to subcontract, or will you require a showing that it is not possible to put the developer on the State payroll?

Response. As a matter of basic policy I do not intend to approve proposals to subcontract the development function to organizations outside the State agency on aging. I believe this is a sound policy because it is the State agency on aging under the Older Americans Act that has responsibility for developing the annual State plan on aging, approving annual area agency plans and budgets, managing the title III program, and providing effective, vigorous leadership in the State in the field of aging. We strengthen the role of the State agency on aging, and help to insure that legal services become part of the coordinated comprehensive service systems being developed by State and area agencies when we assign this leadership and developmental function to the State agency.

In cases where personnel ceilings or State policy preclude adding the legal services specialist to the State agency staff we intend to pursue with the State the possibility of the State agency using its model project funds to retain an individual as a consultant to the State agency to perform the legal services development function. As a consultant, this individual, though technically not a staff member, would be expected to participate in staff meetings and act, in effect, as a regular member of the staff.

I would consider exceptions to this policy only in cases where a State could fully document its inability to add a staff member or work out an arrangement with a consultant in the manner I have described.

Question 2. The State legal services developer will have the task of coordinating legal services. In this capacity the developer would have considerable influence over the disposition of money available to the States under the Older Americans Act. Do you think that there may be a possible conflict of interest if the development function is subcontracted to an agency which is also an applicant for funding from the State? What limitations, if any, would you put on a subcontracting developer from also receiving State funding to operate programs?

Response. First, as I indicated in response to question number 1, I do not expect to approve any proposals to subcontract the development function to an organization outside the State agency on aging.

As you appreciate, under the title III program, it is the area agency, not the State agency, that make awards to organizations to provide services. Nonetheless, the State obviously can exercise some degree of influence on the funding decisions of area agencies. Therefore, in order to limit the potential conflict of interest problem your question suggests, we will not allow States that in certain exceptional situations may be allowed to subcontract the development function to fund, or allow area agencies to fund, the subcontractor for any other legal service projects.

Question 3. Many local offices on aging have awarded title III funds to legal services programs, which, in turn, impose limits for persons applying for assistance. This seems to contradict congressional intent, prohibiting the imposition of a means test under the Older Americans Act. What have you done to resolve this problem? Do you think that this issue can be resolved through an interagency agreement with the Legal Services Corporation?

Response. I agree that imposition of a means test is contrary to the letter and spirit of the Older Americans Act of 1965, as amended. Unlike our authorizing legislation the Legal Services Corporation requires that there be a means test to determine eligibility for services under the act.

You have, therefore, identified a very difficult problem, inasmuch as the Congress evidently did not intend that legal services provided under the Older Americans Act be provided as a publicly supported competitor for tax-paying lawyers in private practice, regardless of whether the older person could otherwise avail himself or herself of the services of a private practitioner. For example, suppose that an older person wants to sue a large corporation for triple damages for violation of antitrust laws, in a case involving millions of dollars. Since he would have no difficulty whatever obtaining the services of a lawyer in private practice, and since representing him would take an inordinate amount of the time of a legal service project for the elderly, it would seem quite enough for the project to assist such a prospective client to find an attorney who specializes in antitrust litigation, and to help him in other ways to find suitable legal representation.

Therefore, one solution to the problem might be to make available legal services to all older Americans, but to tailor-make the service according to the needs and circumstances of the individual. For example, if the client is so needy as to qualify for free representation by a legal aid society or an organization supported by the Legal Services Corporation, the Older Americans Act program might limit its legal service to him to advising him of the availability of that service and helping him get it. If the client is wealthy enough to afford the services of a private practitioner, our project might advise him of the mechanisms established by the organized bar to identify which lawyers specialize in which types of cases, and might advise him what type of specialist he needs. But where the older person is too indigent to afford a private practitioner but not enough so to qualify for free legal services in another program, our project might give him free legal advice or represent him in litigation.

Because of the complexity of the issues we clearly need to reach an understanding with the Legal Services Corporation, and I hope to do this in the context of the interagency agreement we are developing with them.

Question 4. The Administration on Aging is now funding some national projects which provide technical assistance and training to States and area agencies on aging. These model projects, however, will not be continued indefinitely. Assuming these projects are needed in the future, would the Administration on Aging plan to continue these programs on a permanent basis?

Response. AoA will continue to support projects responsive to the stated technical assistance and training needs of State and area agencies on aging in the legal services area. These projects might be awarded to organizations that currently have awards with us for this purpose, or to other organizations with expertise in this area.

Question 5. One of the witnesses at the hearing suggested that the Administration on Aging should have a designated person assigned to legal services. Would you favor specific authority for the Administration on Aging to employ an attorney to supervise the Administration on Aging's activities in developing legal services? If so, would this require legislation or could this be achieved through other means?

Response. I believe that we should have an attorney who is familiar with legal services on our staff supervising our activities in the legal services area. We are currently negotiating with the Legal Services Corporation to have them detail an individual with these qualifications to us to handle these responsibilities. I believe we can provide effective leadership in the legal services area.

ITEM 3. INFORMATION MEMORANDUM AND ATTACHMENTS FROM HON. ARTHUR S. FLEMMING TO VARIOUS STATE AGENCIES, DATED AUGUST 25, 1975

To: State agencies administering titles III and VII of the Older Americans Act of 1965, as amended.

Subject: Model project grants for the development of legal services for the elderly.

Content: Among the model project grants recently awarded by the Administration on Aging were 11 totaling over \$1 million designed to foster the improvement of legal service programs for the elderly, especially to contribute to the capacity of State and area agencies on aging to increase the availability and raise the quality of such services in their jurisdictions.

The objectives of this program are:

I. *To inaugurate a process which will ultimately result in the inclusion of a legal service component within each of the comprehensive coordinated services structures being developed through the State and area agencies on aging.*

The efforts projected to achieve this objective include: (a) technical assistance to State and area agencies in the establishment, development, expansion, and support of an evolving network of legal services activities focused on the needs of older persons, and (b) technical assistance to State and area agency staff in gaining the understanding of the substantive aspects of law expected to impact on older persons, also planning more effectively for legal services needs of the older persons in their jurisdictions.

II. *To initiate a process which will help insure that such legal services activities designed to meet the needs of older persons, can be staffed with adequately trained professional and paraprofessional personnel.*

The efforts planned to accomplish this include: (a) technical assistance to legal service providers, through the State and area agencies on aging, by development of training materials and assistance in the effort to insure the provision of quality services; (b) development of curricular materials, both learning and teaching, for use in programs for training paraprofessionals in the legal issues confronting older persons. Such materials are to be suitable for use by university extension services, community colleges, special post-secondary education training programs, and on-the-job reinforcement; (c) development of training materials suitable for use in law schools, clinical law programs and attorney refresher. Such materials include handbooks and/or casebooks on law issues confronting the aging, as well as other appropriate legal training materials.

III. *To support a limited number of innovative model projects.*

It is our intention that these projects, working with and through the appropriate State and area agencies would: (a) expand accessibility to trained legal service personnel through the effective use of volunteers and paralegals; (b) create opportunities for trained older persons to take an active role in the provision of legal assistance to other older persons; (c) meet the needs of special disadvantaged groups; and (d) supplement activities carried out under objectives I and II.

A list of the grantees, giving the name of the project director, the amount, the geographic focus and the address for each project is attached. A more comprehensive technical assistance memorandum will follow that provides additional information about these legal service grants.

We regard this development as a very significant one within the field of aging. We are giving it a very high priority in our list of priorities. Any help you can give the grantees will be deeply appreciated.

ARTHUR S. FLEMMING.

[Attachments]

LIST OF LEGAL SERVICES PROJECTS

(1) Jonathan A. Weiss (\$50,000; HEW Region I, State and area agencies), Legal Services for the Elderly Poor, 2095 Broadway, New York, N.Y.

(2) Douglas M. Crockett (\$33,406; Willimantic, Conn.), Connecticut Aging Legal Services, 746 Main Street, P.O. Box D, Willimantic, Conn.

(3) Margaret Stone Brodsky (\$85,000; Washington, D.C.), National Retired Teachers Association/American Association of Retired Persons, Senior Citizens Legal Assistance Office, 1909 K Street, N.W., Washington, D.C.

(4) David Marcello (\$70,432; Primarily Metropolitan New Orleans and also Louisiana State), Louisiana Center for the Public Interest, 700 Madison Blanche Building, Suite 1222, New Orleans, La.

(5) Mike Gilix (\$47,322; Palo Alto and vicinity), Senior Adults Legal Assistance, 2211 Park Boulevard, Palo Alto, Calif.

(6) Paul Nathanson (\$225,000; Technical assistance in a variety of forms to State and Area Agencies in locations not covered by other grantees), National Senior Citizens Law Center, 1709 W. 8th Street, Los Angeles, Calif.

(7) David Marlin (\$249,607; Technical assistance to State Agencies and localities in HEW Regions I (excluding Connecticut, III and IV)), Legal Research and Service for the Elderly, National Council of Senior Citizens, 1511 K Street, N.W., Washington, D.C.

(8) Donald P. Rothchild (\$75,860; Washington, D.C.), George Washington University, National Law Center, 716 20th Street, N.W., Washington, D.C.

(9) Steven Pepe (\$91,032; Primarily Michigan and other parts of the nation), University of Michigan Law School, 917 Legal Research Building, Ann Arbor, Mich.

(10) William R. Fry (\$150,000, National Focus), National Paralegal Institute, 2000 P Street, N.W., Suite 600, Washington, D.C.

(11) Susan Stofkoper (\$121,000; Sacramento, Calif.), California Office on Aging, 455 Capital Mall, Sacramento, Calif.

(1) PROJECTED ACTIVITIES OF AOA LEGAL SERVICE GRANTEES

Grantee	(1) Development of training materials for-						(2) Technical assistance to State and area agencies		
	State and area agencies	Para-legals	Law students	Legal service personnel			Para-legal use	Program development	Substantive law
				Free legal service personnel	Social service personnel	Private bar			
1. National Council of Senior Citizens.	X	X	X	X	X	X		X	X
2. University of Michigan Law School.	X		X	X		X		X	X
3. Legal Services for Elderly Poor (New York, N.Y.).	X	X		X	X			X	X
4. George Washington University Law School.	X	X	X		X				
5. National Retired Teachers Association and American Association Retired Persons.		X						X	X
6. State of California	X	X			X		X		
7. Palo Alto Senior Adults Legal Assistance.			X			X			
8. National Paralegal Institute.	X	X			X		X		
9. National Senior Citizens Law Center.	X			X	X			X	X
10. Louisiana Center for Public Interest.	7		X		X	X		X	X
11. Connecticut Aging for Legal Services.	X				X			X	X

(2) PROJECTED ACTIVITIES OF AOA LEGAL SERVICE GRANTEES

Grantee	(3) Training personnel		(4) Provision of legal services to the older persons by—			
	State and area agency personnel	Paralegals	Students	Legal service person	Social service person	Private bar
1. National Council of Senior Citizens.	X	-----	X	X	-----	X
2. University of Michigan Law School.	X	-----	-----	X	-----	X
3. Legal Services for Elderly Poor (New York, N.Y.).	X	-----	X	X	-----	-----
4. George Washington Law School.	-----	X	X	X	X	-----
5. National Retired Teachers Association and American Association of Retired Persons.	-----	X	-----	-----	-----	-----
6. State of California.	X	X	-----	X	-----	-----
7. Palo Alto Senior Adults Legal Assistance.	-----	X	X	-----	-----	-----
8. National Paralegal Institute.	X	-----	-----	X	-----	-----
9. National Senior Citizens Law Center.	X	-----	-----	-----	X	-----
10. Louisiana Center for the Public Interest.	X	-----	X	-----	X	X
11. Connecticut Aging for Legal Services.	X	-----	-----	X	X	-----

(3) PROJECTED ACTIVITIES OF AOA LEGAL SERVICE GRANTEES

Grantee	(5) Litigation	(6) Technical assistance to lawyers	(7) Direct community education	
			Material	Training
1. National Council of Senior Citizens.	X	X	-----	?
2. University of Michigan Law School.	-----	-----	?	?
3. Legal Services for Elderly Poor (New York, N.Y.).	X	X	X	X
4. George Washington Law School.	-----	-----	X	X
5. National Retired Teachers Association and American Association Retired Persons.	X	-----	-----	X
6. State of California.	-----	-----	-----	-----
7. Palo Alto Senior Citizens Legal Assistance.	X	X	X	X
8. National Paralegal Institute.	-----	X	-----	-----
9. National Senior Citizens Law Center.	X	X	X	-----
10. Louisiana Center for the Public Interest.	X	X	X	X
11. Connecticut Aging Legal Services.	X	X	X	X

ITEM 4. LETTER FROM SENATOR EDWARD M. KENNEDY TO THOMAS EHRlich¹ DATED OCTOBER 1, 1976

DEAR MR. EHRlich: Once again, I want to commend you for an excellent presentation at the Committee on Aging's hearing on "Improving Legal Representation for Older Americans." You provided a valuable addition to our overall hearing record.

As soon as a transcript of the proceeding is available, a copy will be sent to you for any necessary editing.

I was unable to ask all the questions that I intended to raise at the hearing because I had to attend a bill signing ceremony at the White House. For this reason, I would appreciate a response to the following questions:

(1) It has been estimated that persons 65 or older account for only about 6 to 7 percent of all clients in the legal services program. Yet, they constitute almost 24 percent of the adult poverty population. What steps, if any, does the Corporation plan to take to redress this imbalance of services to elderly clients?

(2) On August 13 the Legal Services Corporation solicited proposals to test out alternative legal delivery systems, including judicare, vouchers, prepaid

¹ See statement, p. 258.

legal insurance, and contracts with law firms. I understand that these demonstration projects are to be awarded prior to October 1. Do any of the demonstration projects focus on the delivery of legal services to the elderly poor? If not, do you anticipate that any future demonstration projects would fulfill this mission?

(3) Does the Corporation plan to use the increased funding for Fiscal 1977 to strengthen legal representation for the elderly?

Thank you and best wishes.

Sincerely,

EDWARD M. KENNEDY.

ITEM 5. LETTER FROM SENATOR EDWARD M. KENNEDY TO THOMAS EHRLICH, DATED OCTOBER 12, 1976

DEAR MR. EHRLICH: I would appreciate it if you would respond to the following questions for the Committee on Aging's hearing record on September 29 on "Improving Legal Representation for Older Americans."

(1) Of the 2,300 legal services lawyers, how many are specialists in legal problems of the elderly?

(2) Approximately 25 percent of the adult poor (persons aged 18 or older) are older Americans (65 or older). Have you considered designating a specialist in each office to focus on the legal problems of the elderly?

(3) What is the Legal Services Corporation doing to provide training for legal services attorneys in areas which affect the elderly, such as Social Security, Railroad Retirement, Supplemental Security Income, and others?

(4) Is the legal services program taking steps to provide information to the aged about the availability of legal services? Have you considered establishing legal services projects or making legal services attorneys available at scheduled hours at elderly housing projects, nutrition sites or senior citizen centers? Has the Corporation considered mobile units, particularly in rural areas?

These questions are in addition to those I submitted in my letter to you, dated October 1, 1976. I'd appreciate a reply by November 1.

Once again, I wish to thank you for your cooperation and your valuable contribution to the Committee's study.

Sincerely,

EDWARD M. KENNEDY.

ITEM 6. LETTER AND ENCLOSURES FROM THOMAS EHRLICH TO SENATOR EDWARD M. KENNEDY, DATED OCTOBER 29, 1976

DEAR SENATOR KENNEDY: Enclosed are the responses to the questions you asked in your letters to me of October 1 and October 12. If there is any further information we can provide to complete the record of the hearing, please let us know.

Cordially,

THOMAS EHRLICH.

[Enclosures]

RESPONSE TO QUESTIONS CONTAINED IN SENATOR KENNEDY'S LETTER OF OCTOBER 1, 1976

1. *What steps, if any, does the corporation plan to take to redress this imbalance of services to elderly clients?*

Recent informal surveys done by the corporation indicate that the figures on the proportion of legal services clients who are elderly vary greatly from program to program, from as little as 5 percent to as much as 15 to 20 percent. Last week, we received figures from a program in Waco, Tex., demonstrating that 12.5 percent of their clients were 65 or older, and 22.5 percent were 55 or older. The Appalachian Research and Defense Fund of Kentucky has sent us figures showing that the percentage of the clients over age 55 served by their four offices are respectively 14.8, 17.8, 14.1, and 16.9.

It is not clear, therefore, whether and to what extent an imbalance exists. The 6 and 7 percent figures that you cite are apparently based on a 1969

Office of Legal Services survey. We have not been able to determine how those figures were derived. There is reason to believe that legal services programs have significantly expanded services to the elderly since 1969. The advent of the SSI program in 1974, for example, has resulted in substantial activity by legal services programs to secure the benefits of the law for older persons. Creation of the National Senior Citizens Law Center in 1972 to support litigation on behalf of the elderly has increased the capacity of local programs to handle legal problems of the elderly in areas such as pensions, nursing homes, social security, and protective services, in addition to SSI.

As we have already indicated to the committee, the corporation is putting into place a program reporting system that will give us much more precise information about the extent of services for the elderly. Again, however, we emphasize the substantial amount of impact work done by legal services programs that benefits the elderly. Such activity is not reflected in statistics regarding the age of individual clients.

We do not suggest that we are able to provide anything approaching an adequate level of service to the elderly poor. We are taking steps that will enable local programs to respond more fully to their special needs:

(a) Existing legal services programs, particularly those that are least well-funded, will be receiving significant increases in operating funds during fiscal year 1977. In addition, new programs will be started in areas that have never had legal services before, particularly in the South, Southwest, and Midwest. These added funds will enable programs to serve more clients, including elderly clients, and to engage in the kinds of community education and outreach activities that are especially important in reaching older persons. Further, \$1.8 million has been set aside for "special needs." Programs can apply for these funds for special projects to serve the elderly, if that is the locally determined priority for the use of such funds.

(b) Training of legal services program personnel will be significantly expanded during the current fiscal year, through the corporation's office of program support. The office is seeking proposals and recommendations from the national litigation programs, including the National Senior Citizens Law Center, for specific training sessions in substantive areas of the law, including those that have particular impact for the elderly. In addition, the office plans a very substantial expansion of training activities for paralegals, including encouraging the use of older persons as paralegals in local projects. This is particularly useful in expanding services to the elderly.

(c) The corporation is entering into a joint agreement with the Administration on Aging designed to maximize the resources of both organizations to improve legal services for the elderly. We are particularly interested in encouraging the use of the outreach, transportation, and community education activities of area aging agencies and title III and title VII grantees to inform more older persons of their legal rights and to get them to the legal services programs. We also hope to work out an arrangement to disseminate to legal services projects the materials prepared by AoA's model project, technical assistance, and training grantees.

2. Do any of the demonstration projects focus on the delivery of legal services to the elderly poor?

On September 30, the corporation awarded grants to 19 demonstration projects under the delivery systems study. All of the projects will include the elderly in their client groups. Three will place special emphasis on the elderly and one will serve only the elderly.

Utah Legal Services was awarded \$76,160 to provide specialized legal services to the elderly in the southern rural part of the State. This judicare project will utilize the existing aging network to reach eligible clients and will establish a WATS line to increase access for older persons. The National Senior Citizens Law Center will provide training and back-up materials for the judicare attorneys.

Judicare of Anoka County, Inc., was awarded \$97,000 to provide general legal services to eligible clients, with a special emphasis on reaching the elderly. The project will attempt to reach the elderly through the existing aging network in the county, but if it is clear after 6 months that this is not sufficient, it will hire an elderly staff person for more intensive outreach activity.

The Legal Aid Society of Birmingham will be funded to contract with the private law firm of Crittenden and Still to provide special services that the legal aid society does not generally offer. One-quarter of the \$40,000 grant is set aside to prepare wills and testamentary instruments for eligible clients who are elderly.

Group legal services was awarded \$56,000 to provide prepaid legal services to a selected group of clients in Los Angeles County. Those clients will be selected from Social Security Administration and public assistance roles, thus assuring that a significant portion of the clients will be elderly.

3. Does the corporation plan to use the increased funding for fiscal year 1977 to strengthen legal representation for the elderly?

As indicated in response to your first question, nearly \$29 million of the increased funding for fiscal year 1977 will be used to improve the capacity of existing programs to serve clients and to expand legal services to areas where there are now none. We expect that these funds will be used to support general legal services, since the corporation's mandate is to serve persons who are least able to afford legal assistance, regardless of their age, their race, or any other characteristic. We anticipate, however, that the increased funding will have particular impact on services for the elderly because, as programs reach more adequate funding levels, and have more staff to deal with client problems, they will be able to expand outreach and community education activities that are particularly important for elderly persons. As this committee knows, such costly activities have not been possible during the 5-year period of high inflation when legal services budgets were frozen.

Our response to your first question indicates other ways in which additional funds for fiscal year 1977 will improve services to the elderly.

RESPONSE TO QUESTIONS CONTAINED IN SENATOR KENNEDY'S LETTER
OF OCTOBER 12

1. How many elderly specialists are there?

Two points should be kept in mind in considering whether it is possible or most useful to designate "specialists" for the elderly:

(a) Most local legal services programs are not very large. Some have only one or two attorneys and the vast majority have less than eight. Small programs cannot afford to specialize in any area of the law. Moreover, some programs argue persuasively that they are able to provide better service by using a general practice model.

(b) Even when specialization is feasible and practical, experience has often shown that it is much more important to have specialists in substantive areas of the law, like SSI, medicare and medicaid, employment, or housing, that have particular impact for the elderly, than to have persons generally designated as specialists for the elderly. For example, a public benefits specialist thoroughly knowledgeable about medicare and medicaid is probably better able to help an elderly client with a health-related problem than is somebody charged generally with dealing with the problems of the elderly.

Of the approximately 260 legal services programs around the country, we estimate that at least 100 have designated "specialists" on legal services for the elderly. This is in addition to specialists in areas like SSI, health, employment, and housing that have special impact for the elderly. One of the items we have suggested for our joint agreement with the Administration on Aging is the designation of a legal services person in each State to serve as a liaison with the State aging agency. In addition, we would encourage each local legal services program to designate an individual to work directly with the area aging agencies and with title III and title VII projects.

2. Have you considered designating a specialist in each office?

As indicated in response to question number 1 above, we will encourage programs to designate individuals to serve as liaison with State and area aging agencies, to assure cooperation at the local level. The question of what kind of specialists, if any, a program should have is one that should be answered by the board and staff of the individual program, based on a determination of client needs and an assessment of the best way to respond to those needs in the community. To reiterate, the most urgent needs of clients, including elderly clients, in a given community might be better served by an SSI specialist, or a housing specialist, or a health law specialist or by

expanding the capacity of the staff to deal with general consumer and domestic problems, than by designating specialists for discrete client groups. That is a judgment that only local programs can make in consultation with their client communities.

It goes without saying that, if the corporation receives evidence that a program discriminates against the elderly poor, then an investigation would be made and corrective action taken if necessary. No such complaints have been received.

3. *What is LSC doing to provide training on issues affecting the elderly?*

A substantial amount of training of legal services attorneys and paralegals on issues affecting the elderly has taken place. As the committee knows, section 1006(a)(3) of the Legal Services Corporation Act prohibits the corporation from support of training through grant or contract, and this activity is now carried on by the corporation's office of program support.

Over the past 2 years, the National Senior Citizens Law Center in Los Angeles, a support center funded by the corporation, has conducted training for legal services lawyers in every region of the country. About 15 such sessions have been held, with attendance at each reaching as high as 100 to 120 persons from local legal services programs. The training sessions have focused on SSI, pensions, social security, protective services, age discrimination in employment, medicare, and nursing homes. The Senior Citizens Law Center has prepared materials for local legal services attorneys on substantive areas of the law including SSI, protective services, social security, nursing homes and age discrimination in employment. All of those materials have been distributed and are still available through the National Clearinghouse for Legal Services. The center has in draft now two publications, one on management of assets for older persons and the other on pension litigation.

The corporation already noted in its testimony to the committee on September 29, 1976, the work of other national litigation centers on substantive areas of the law affecting the elderly, particularly nursing homes, home health care, public benefits, and pensions, all of which assist local programs to improve their services to older clients.

The *Clearinghouse Review*, a publication of the corporation's office of program support reporting on developments in areas of the law affecting legal services clients, regularly publishes material on issues affecting senior citizens.

The corporation's office of program support plans to conduct training sessions on specific areas of poverty law and can hold such sessions on issues of particular impact for the elderly, as the need arises. In addition, the office provides "minigrants" to local legal services programs for their own staff training activities. The office has just recently awarded such a grant to Delaware County Legal Assistance in Chester, Pa. to train 22 senior volunteer advocates in the areas of social security, SSI, wills, and estates.

4. *Is the legal services program providing information?*

It is to just these questions that we hope the joint agreement with the Administration on Aging will be addressed. We do want to explore with AoA the possibility of developing community education materials for the elderly to inform them of their legal rights and the availability of legal services. It may be that such materials should be prepared at a State and local level, however, in order to provide elderly persons with locally applicable information. Many legal services programs prepare community education materials now, and this would seem to be a particularly fruitful area for cooperation between the programs and area aging agencies.

We do not think it appropriate or wise for the corporation to tell local legal services programs how to operate their offices on a daily basis. Many of the programs we fund do make attorneys and paralegals available regularly to speak at places where senior citizens live or gather, including housing projects, nursing homes, nutrition sites, and senior citizens centers. Some programs actually conduct intake interviews at such locations. We encourage such activity and hope to make that a subject of the joint agreement.

A local legal services program may use corporation funds to finance a mobile unit to serve the elderly, and could apply for special needs money for that purpose. The decision about whether that is an effective use of limited funds should be made by each program, according to the needs of its client community. The corporation featured such a mobile unit, operated by the Maricopa County Legal Aid Society in Phoenix, in its October/November 1976 newsletter. In that particular instance, funds available under the Older Americans Act were used to purchase the unit.

ITEM 7. LETTER FROM THOMAS EHRLICH TO SENATOR EDWARD M. KENNEDY, DATED OCTOBER 27, 1976

DEAR SENATOR KENNEDY: This is in response to your letter of October 13, suggesting ways to improve the availability of legal services for the elderly.

You ask whether it might be feasible to compile a list of private practitioners who have some expertise in areas of the law that affect the elderly and whose fees are affordable. Such lists could then be distributed in pamphlets available in senior citizens centers.

This is something that certainly might be explored with the local bar associations and particularly with the lawyer referral service. It is the kind of effort that the legal services development specialist of the State aging agency most appropriately could undertake. Local legal services programs do make referrals now, when a client whose income is above eligibility guidelines comes to the office for legal assistance. In addition, some programs have made arrangements with the local bar to handle certain types of cases for eligible clients, on a pro bono basis, in order to relieve the caseload of the attorneys in the legal services office. Thus, programs could certainly be helpful to the State legal services development specialist or to an area aging agency that was interested in compiling such information.

With regard to your suggestion about a poster campaign, the corporation has printed posters that can be readily adapted for local use and we are distributing them in quantities to local programs to be placed in community facilities, including senior citizens centers. A copy of that poster is enclosed, for your information. As you can see, there is a place on the poster for the local program to put its address, telephone number, office hours, and other identifying information.

You have submitted a list of questions as follow-up to my testimony on September 29. I am sending you our response under separate cover.

Your interest in improving legal services for the elderly is deeply appreciated and I look forward to continuing to work with you toward that goal.

Cordially,

THOMAS EHRLICH.

ITEM 8. LETTER AND ENCLOSURE FROM DAVID MARLIN¹ TO SENATOR EDWARD M. KENNEDY, DATED OCTOBER 22, 1976

DEAR SENATOR KENNEDY: During the course of my testimony on September 29, 1976, at the hearing on "Improving Legal Representation for Older Americans," I was requested by Staff Chief Counsel David A. Affeldt to respond to two requests.

First, I was requested to submit a list of the law schools now providing academic and clinical education programs relating to law and aging. An annotated list, plus a copy of an article from the *Gerontologist* on clinical programs, is attached.

Secondly, I was asked for the judgment of the National Council of Senior Citizens on whether a separate title should be created in the Older Americans Act to consolidate and develop AOA policy on legal counsel, representation and training.

We do not favor the creation of a new legal services title. It would not only distort the present structure of the Older Americans Act, but could also result in decreased rather than increased funding for legal services.

Under title III of the Act, State and area agencies on aging are responsible for assessing local needs and for developing a comprehensive social services support system for older persons within their areas. The 1973 amendments to the act specify that legal services are one of the social services which may be provided in this comprehensive support system. The 1975 amendments provide that legal services is a priority. Given the structure of title III, the creation of a separate title for legal services may obscure rather than reinforce the importance of including legal services in the title III planning process.

In addition, the creation of a separate title for legal services would also necessitate a separate appropriation. Although a separate appropriation would earmark funds for legal services, there is no assurance that every administration would request such an appropriation or that Congress would

¹ See statement, p. 333.

appropriate such funds. Legal services, as compared with other social services such as transportation, home care, and home repair, remains for many public officials a controversial and misunderstood service. Although it is unlikely that Congress would refuse to appropriate money for title III social services including legal services, it is possible that an appropriation request for legal services alone could fail.

Rather than creating a separate legal services title, I suggest that the following amendments to titles III and IV be considered:

(1) In section 305(b), delete the words "of some or all" so that the section reads as follows:

"(b) Every State plan shall provide for the establishment or maintenance of programs (including related training) for the provision [of some or all] of the following services designed to assist older persons in leading independent lives and avoiding unnecessary institutionalization:

"(1) Transportation services.

"(2) Home services, including homemaker services, home health services, shopping services, escort services, reader services, letter writing services, and other services designed to assist such persons to continue living independently in a home environment.

"(3) Legal and other counseling services and assistance programs, including tax counseling and assistance and financial counseling, for older persons.

"(4) Residential repair and renovation programs designed to enable older persons to maintain their homes in conformity with minimum housing standards or to adapt homes to meet the needs of elderly persons suffering from physical disabilities."

The effect of this amendment is to strengthen Congress's mandate to the States to develop programs in all four priority services areas. Under the existing formulation of the law, some States are avoiding responsibility for developing legal services, home care or residential repair programs by technically complying with the law through the funding of existing transportation programs.

(2) To section 308(a), add the following subsection (8):

"(8) enable state agencies on aging and other public and private nonprofit organizations to assist in the development of legal assistance and representation for older Americans."

At the present time, section 308 model project money provides essential support for the state legal services development grant program, the technical assistance efforts of five national contractors and several innovative legal services demonstration projects. This is attributable to the fact that both Commissioner Flemming and key members of the 94th Congress have consistently endorsed the use of model project money to expand and improve the delivery of legal services to the elderly. However, to insure the continued availability of model project money for such purposes, section 308 should be amended to specifically include legal services for the elderly as one of the model project priority categories.

(3) To Title IV-A, add the following Section 405:

"Training Programs for Older Persons, Sec. 405. The Commissioner may grant to any public or nonprofit private agency, organization, or institution or with state agencies referred to in section 304, and he may enter into contracts with any agency, organization or institution for the purpose of

"(1) developing educational programs for older persons in the areas of law; nutrition, health care and home repair;

"(2) training older persons in basic delivery skills."

As presently structured, Title IV-A authorizes training support only for persons who are *employed or preparing for employment* in the aging field. Proposed amendment No. 3 expands the potential beneficiaries of Title IV-A training support to include older persons themselves.

As the above amendments would, I believe, advance Congress's often articulated goal of ensuring adequate legal representation for the elderly, I urge consideration of them.

Sincerely,

DAVID H. MARLIN.

[Enclosures]

LISTING OF CLINICAL/SEMINAR PROGRAMS SERVING THE ELDERLY

(1) Denver Senior Citizens Law Project, Legal Aid Program of Metropolitan Denver, 912 Broadway, Denver, Colo., George Hacker.

The law student program in Denver operates out of the Legal Aid Office, with Legal Aid supervision. Legal Aid requires a commitment of two quarters of the trimester for participation, and a time commitment of 10-15 hours per week. Students handle intake and follow-up on cases, and conduct outreach to shut-ins, all with attorney supervision. There are presently two students participating in the program; if there were more of them, they would probably also work in the area of nursing homes. There is no written description of the program available.

(2) University of Michigan Law School, Ann Arbor, Mich., Steve Pepe.

Approximately ten students from the University of Michigan Law School act as attorneys for the elderly, in administrative and judicial proceedings. In the course of the program, the students attend training seminars, have individual supervision sessions with the director of the program, and participate in an outreach program. They commit 20-25 hours per week to the program, for 7 credits of law school value.

(3) Duke University, Department of Law, Durham, N.C., Jim Lewis.

The program for the elderly at Duke is primarily a seminar course, as part of which students spend a few hours per week at Legal Aid or at the Older Americans Centers. This clinical component consists of giving informational speeches at senior centers and rendering legal assistance. No student has ever taken a case as far as litigation, but it is possible, since there is a state third-year practice rule.

(4) Waxter Senior Center, 861 Park Avenue, Baltimore, Md., Ann Pecora.

The Waxter Center is a large senior citizen center which provides varied services, one of them legal services provided by a sole attorney. Law students assist the attorney in all phases of legal work: office and field interviewing, legal research, negotiations, and, potentially, in litigation under third year practice rules. Students, presently six, put in varied hours per week, for a total of 50 hours per credit.

(5) PEP (Protection for Elderly Persons), 1806 Adams Mill Road, N.W., Washington, D.C., Prof. Donald Rothchild or Eric Sirulnik.

PEP, operated by the George Washington University Law School, runs a storefront office for the elderly in northwest Washington, D.C. There are currently three separate organizations working under the PEP storefront umbrella. The George Washington Consumer Protection Center (Consumer H-E-L-P) provides 12 law students and one faculty advisor to conduct initial interviews with the elderly, provide advertising for the PEP Center, and enlist, train, counsel, and supervise Senior Citizen Aides and Volunteers who work at the storefront. The National Council of Senior Citizens has placed 5 Senior Aides at PEP, who are trained as paralegals. The third organization, Community Legal Clinic, presently has 20 students at PEP, providing legal services and handling cases for individuals.

(6) Syracuse Law School, Ernest I. White Hall, Syracuse, N.Y., Prof. Richard Ellison.

The Syracuse Law School elderly clinical program presently exists only on an ad hoc basis as part of the overall clinical program. The elderly component was previously run by Bob Brown, who is now a professor at the University of Detroit.

(7) University of Detroit School of Law, 651 E. Jefferson Avenue, Detroit, Mich., Bob Brown.

There are plans for an elderly rights seminar as well as a three-hour elderly clinical program open to students enrolled in the Seminar, and run in conjunction with the Wayne County Legal Aid Society under an Older Americans Act Title III grant.

(8) Stanford Law School, Stanford, Calif., Mike Gilfix.

Stanford Law School students participate in the Senior Adults Legal Assistance program in Palo Alto, California.

(9) Louisiana Center for the Public Interest, 700 Maison Blanche, New Orleans, La.

In conjunction with Tulane and Loyola Law Schools, the Louisiana Center for the Public Interest conducts a seminar/clinical program for social work and law students focused on the needs of the elderly. This course, "Legal Problems of the Elderly," involves a weekly four hour commitment to work in the LCPI offices as well as a weekly two hour classroom experience. The uniqueness of the LCPI program is the integrated social work and legal services approach to the problems of older persons.

(10) University of Kentucky, Room 209, Dean's Office, Lexington, Ky. A substantive law seminar on the legal problems of the elderly is being offered for the first time during the 1976-77 academic year by Carolyn Bratt. Ms. Bratt intends to expand this seminar into a seminar/clinical program as soon as funds become available.

CLINICAL TRAINING AND LEGAL SERVICES FOR OLDER PEOPLE:
THE ROLE OF THE LAW SCHOOLS¹

(By Joseph D. Harbaugh, LLB, LLM²)

In early Fall of 1973, a man entered a newly formed law office in downtown San Diego, seeking the assistance of an attorney. Upon investigation, it was determined that the local District Attorney had issued an Order to Show Cause in a paternity action against the man. A staff attorney at the law office was assigned to represent the client and accompany him to court. During the course of the court hearing, the attorney for the defendant requested that a blood test be performed at State expense. The trial judge denied the request but indicated that he was inclined to order a sperm analysis to determine whether or not the defendant was impotent. At the conclusion of the hearing, the case was dismissed when the judge found the evidence insufficient to support a charge of paternity.

The resolution of this relatively minor dispute can hardly be cited as a landmark decision in American jurisprudence. Certain facts about this case, however, cause it to stand out from the other ordinary matters on that crowded lower court docket, facts that indicated an alteration in the delivery system of legal services. In the first place, the law office where the client sought assistance was located in a new Senior Citizens Service Center supported by a \$60,000 grant from the Southern California First National Bank. Second, the client was a 71-year-old man whose limited retirement income qualified him for the free legal services that were offered by the Senior Citizens Law Clinic. Third, the attorney who represented the 71-year-old client in the paternity case was a 24-year-old woman who was a third-year student at the University of San Diego Law School and enrolled in a clinical program that provided the bulk of the legal staff for the Law Clinic.

The fact that a law student actually appeared in court on behalf of any client, much less an aged client, is a phenomenon of recent vintage. Prior to 1957, only one state, Colorado, permitted students to directly assist clients. By 1968, a total of 14 jurisdictions had enacted student practice rules. Between 1969 and 1970 another 16 states added such statutes to their legislative books. (CLEPR, 1973).

CLINICAL EDUCATION IN A LAW SCHOOL SETTING

Although legal education in the USA began in a clinical setting with students "reading the law" in a lawyer's office, it moved relatively quickly to the classroom in a university-affiliated law school. When Christopher Columbus Langdell assumed the deanship of the Harvard Law School in 1870, he instituted a pedagogical technique that has dominated legal education to the present day and guaranteed that a substantial distance would be maintained between the law student and the law client, between neophyte lawyer and the courtroom. Langdell claimed that the most efficient and effective method of learn the law was to read and analyze the decisions of appellate court judges. Thus, Langdell asserted that all lawyers needed to know was contained in law books and that the law library was the lawyer's laboratory.

¹ Paper presented at the 28th annual scientific meeting of Gerontological Society, Louisville, Oct. 29, 1975.

² Associate Dean and Director of Clinical Studies, Temple Univ. Law School, Philadelphia.

By 1910, when the foundation of medical education trembled upon the release of the Flexner Report calling for a greater emphasis on the clinical training of physicians, the legal profession had smothered opposition to the case method and rallied behind the Harvard model of the academic training of lawyers. The report to the Carnegie Foundation on the American law school experience recorded the academic lawyers' prevailing view that clinical work for law students should be restricted to the analysis of appellate-court decisions (Redlich, 1914).

It was not until the mid-1960s that clinical legal education was to experience a rebirth. On the heels of the creation of the Office of Economic Opportunity's Legal Services Division came a rekindling of interest in the practical training of law students. Sparked by the Council on Legal Education for Professional Responsibility (CLEPR), law schools tentatively began to create clinical programs for academic credit. The American Bar Association encouraged their development by adopting a model student practice rule which has now been enacted in whole or in part in 46 states, the District of Columbia, and the Commonwealth of Puerto Rico (CLEPR, 1976). Generally, these rules permit third-year law students to represent indigent civil or criminal clients as long as an attorney supervises the students' work.

ABSENCE OF CLINICAL PROGRAMS FOR THE ELDERLY

Even though there has been a dramatic surge in both legal assistance for the poor and clinical programs in law schools, older people, as an identifiable group in need, have not been the beneficiaries of this increase in available services. While the Survey of Legal Services Programs (Legal Services Corp., 1976) by the Legal Services Corporation reports that there are now slightly in excess of 2,250 *full-time* lawyers in legal services programs, less than 150 can be marked as specialists in law pertaining to the aged. These specialists are located in 87 communities and include both full- and part-time people (National Senior Citizens Law Center, 1975). Better than 90% of the approximately 150 approved American law schools have viable clinical programs for academic credit. Yet, only 6 schools (Dickinson, Duke, George Washington, St. Louis, Tulane, and Washington Universities) were reported to have clinics that concentrate on the legal problems of the aged (CLEPR, 1973). As noted below, however, at least 2 other schools (University of San Diego and University of Baltimore) also have such programs. At best, there are less than 10, or about 2%, devoted to aging out of more than 420 separate clinical programs.

Directly related to this unawareness is the fact that law schools have failed to educate their students in those areas of the law that most affect the elderly. Although every law school has courses in taxation, corporations, and securities regulation, rarely can one be found to have offerings in Social Security regulations, Medicare, or governmental entitlements. Without basic training in these intricate areas of the law, it is not surprising that few lawyers are found to be specializing in these problems, particularly when the financial rewards are minimal.

Law schools and legal service programs are also faced with the task of delivering legal assistance to older clients. Lawyers in private or public practice and in law school legal clinics have traditionally waited patiently in their offices until a client walked in with a legal problem. Indeed, they are restrained by the Code of Professional Responsibility from seeking out those that need legal help for fear that solicitation of clients would demean the profession. Since older people as a group are both restricted in their ability to travel and reluctant to seek out assistance, lawyers are forced to meet the challenge by reaching out of their offices to locate the elderly in need of their services.

Overriding all of these other concerns, however, is the ever-present problem of financial resources. In addition to inheriting Langdell's case method, today's law schools have the dubious honor of being the trustees of his approach to educational economics. In comparison to all other forms of professional training, legal education is incredibly inexpensive from an institutional point of view (Swords & Walwer, 1974). While medical, dental, and even music schools enjoy a student/faculty ratio of 8 or 4 or even 2 to 1, law school ratios run between 25 and 30 to 1 (AALS, 1976). Although this

may be academically sound in large case method classrooms, it is both intolerable and reckless in a clinical program. In order to provide adequate supervision for dynamic clinic offerings, law schools must seek outside funding, a new venture for most institutions. Consequently, it is understandable that most law school clinics have not specialized in their clinical programs, since this would constrain and restrict their funding opportunities.

EXISTING CLINICAL PROGRAMS IN LAWS PERTAINING TO THE AGED

In the midst of this gloomy report of weak excuses, there is a ray of hope. In the past 4 years, more than a half dozen law schools have initiated clinical programs that deal directly with the legal problems of older people. Some of these are bold, multifaceted ventures, while others are at best tentative, and a few have even been withdrawn for lack of financial support. Although all the models described here are different, having been developed independently of each other, there are some common attributes. Every program awards students academic credit in varying amounts for participation in the clinic. Each clinic delivers direct legal services to aged clients. The respective programs are directed by a full- or part-time member of the law school faculty. Each one is beset with problems and deficiencies.

The first program was initiated by Prof. Travis Lewin at Syracuse University Law School. It was also the first to succumb to financial pressures. Originally funded by the Shimper Foundation, a local family philanthropy, the clinic was an outgrowth of the Syracuse University All-Gerontology Center, a multidisciplinary effort to study the problems of the elderly. In 1972, 6 law students joined social work, psychology, architecture, medicine, public administration, and home management students in an intensive analysis of issues facing older people. By 1973, the students increased to more than 20, and the Law School appointed a visiting professor to direct a spinoff legal clinic that would deliver legal services to aged clients. The project operated out of the Law School's clinic office in downtown Syracuse but soon expanded to include home visitations when it became obvious that this approach was necessary. The students concentrated on cases that dealt with Social Security, Workmen's Compensation, Supplemental Security Income (SSI), and property tax problems. Efforts were expanded to include legislative advocacy with law students forming a part of an interdisciplinary team that researched, drafted, and supported bills in the New York legislature on barrier-free design for public buildings, conservatorship laws, and property tax exemptions for older people. The law students also cross-registered for courses in the other professional schools and met in a lawyer-skills training course. For some strange reason, the latter course failed to emphasize the special transactional skills lawyers must possess to effectively assist older people. Unfortunately, the Syracuse clinic died in the Spring of 1975 when the Shimper Foundation failed to renew the grant because of its own economic problems.

1973 was a banner year for clinical programs concentrating on questions pertaining to the elderly. San Diego, George Washington, and Duke Universities all entered the field at about the same time. In 1973 and 1974, the University of San Diego placed 7 to 10 students a semester in the downtown Senior Citizens Service Center under the supervision of a young lawyer assisted by a number of retired people who acted as paralegals. Although the students received 3 academic credits for their work in the clinic, the Law School did not maintain a classroom component to deal with the substantive legal issues that the students faced in their cases. Student participation dwindled in 1975, although plans are underway to encourage increased enrollment in the clinical program on law and the aged.

VARIED APPROACH AT GEORGE WASHINGTON UNIVERSITY

Prof. Erik Sirulnik of George Washington University Law School directs the most ambitious clinical effort to date. The recipients of a recent \$70,000 Title III (Older Americans Act) grant, the George Washington University Aged Clinic involves more than 100 law students a year who represent more than 1,500 older people with legal problems. Sirulnik is assisted by two other lawyers in the supervision of two divisions of the Clinic. In the litigation division, students represent elderly clients in the Small Claims and Landlord

and Tenant parts of the District of Columbia Superior Court. Students assist older plaintiffs and defendants in such matters as consumer cases, contract problems, tort claims, and housing disputes. In the nonlitigation phase of the Clinic, the emphasis is upon representation of senior citizens before administrative agencies such as the Social Security and Veterans Administrations. These students also aid clients who need wills drafted and estates planned and who have disputes with nursing homes. In addition to the financial investment in the Aged Clinic, George Washington University has made a substantial academic commitment to the program. Students are entitled to receive up to 8 academic credits for their work in the Clinic, and efforts are being made to increase this to 11 credits. Students gather each week in a 2-hour seminar session, 1 hour of which is devoted to the study of substantive law affecting older people and the other to a group analysis of the open cases on which the students are working.

Beyond the law student clinic, George Washington University has inaugurated a Paralegal Training Program for Retired People with a class of 25 elderly students. These future paralegals are between 65 and 68 years old, some with only high school diplomas and half of them retired federal government workers. The students attend classes in such subjects as legal research and interviewing, office management and referral practices, and Social Security, housing, and SSI law 3 days a week during their first semester. Following this academic phase, each paralegal student is paired with a senior law student, and the team works in one of the public housing centers in Washington. There the paralegal trainees assume responsibilities in such diverse areas as will drafting, fair hearing administrative matters, income tax assistance, and the like. Placement plans are underway to locate the graduates in part-time jobs with the National Capitol Housing Administration, Neighborhood Legals Services, and similar agencies. Without a doubt, George Washington University has the most extensive program for the aged of any law school in the nation.

Duke University, on the other hand, has a much smaller but more academically intense program on behalf of the elderly. Begun in 1973, this program was stimulated by the efforts of George Maddox, Director of the Center for the Study of Aging, and supervised by Howard Gelt, now the Acting Director of the Human Resources Administration of the State of Colorado. Students in the Clinic receive 4 academic credits for their combined fieldwork and classroom responsibilities. Working out of the Center for the Study of Aging, the students represent older patients of the Center who are faced with a variety of legal problems ranging from Social Security and SSI to estate planning and taxation matters. Law students have access to members of other professional disciplines who form the staff of the Center to assist them in the development of their cases. In addition to this direct representation phase, the Duke Clinic in Law and the Aged has an active legislative component which has already had considerable success at the State Capitol in Raleigh. It is, however, the classroom portion of the Duke Clinic that is unique among law school efforts in this field. The pedagogical theory that supports this program is that in order adequately to train law students in the legal problems of the elderly, they must be concurrently exposed to lawyering skills development, to a study of the law that directly affects senior citizens, and to the scholarly research of complementing professional disciplines. Through the use of simulation and gaming techniques, students combine skills training in interviewing, counseling, and administrative and legislative advocacy with the analysis of the legal principles involved in Social Security pension laws and right-to-die legislation. At the same time they investigate aspects of social economics and the physiological and psychological effects of aging. The breadth of the Duke academic program provides the law students with an understanding of the range of problems facing older people and thus places legal issues in proper context.

In the past 2 years, two other law schools started law projects for the elderly. At the University of Baltimore Law School, Prof. William Weston directs a multiple division program that provides outreach home service as well as a full-time office in a nearby multipurpose complex. Beyond the legal aid program of direct representation in contested legal cases, the Law School, in conjunction with the Business School, operates a special Tax Clinic to assist older people with their federal, state, and local tax problems. The

School also runs an education series for older people in consumer law, SSI, Medicare, and the like, seminars for social workers to pinpoint the differences between legal and social problems of the aged, and a continuing education program for lawyers on legal issues affecting the elderly. About 10 students per semester receive up to 6 credits on the basis of 50 hours of fieldwork per academic unit. Although there is no classroom phase of the program, student representation has been provided to more than 200 clients in the past year. Moreover, the School has arranged to refer older clients who can afford to pay a fee to a special panel of the Baltimore Bar who have agreed to develop expertise in problems of the aged, thereby broadening the legal services base for senior citizens.

Under the direction of Prof. David Marcello, the program at Loyola University Law School in New Orleans has the largest staff, expanded with the assistance of an AoA model projects grant in 1975 to include four attorneys, two social workers, and two secretaries. It is the only clinic that combines training for law students and graduate social work students working in teams. It is also the only program that draws students from more than one academic institution. Law students from Loyola and Tulane and social work students from Atlanta University and the University of Louisiana participate in the project.

Conceived in May of 1974 as the Louisiana Center for the Public Interest, a nonprofit corporation supported by funds from the local Area Agency on Aging (AAA), a private foundation, and the Council on Legal Education for Professional Responsibility, it has assisted more than 400 older clients with a variety of legal problems. It is also actively engaged in legislative advocacy in support of such bills as conservatorship, expanded voting rights for handicapped aged, and consumer legislation relating to hearing aid sales and open advertisement of drug prices. The basic delivery scheme has the social work students visiting the 15 local nutritional centers and interviewing aged people to discover legal or social problems. Students from both disciplines join forces for follow-up work in appropriate cases. The classroom component concentrates on substantive lectures in areas of the law critical to older people. The principal weaknesses in the program are that the law students only receive 2 academic credits, there is little or no skills training, and the social work students are not specifically instructed to recognize and isolate legal issues.

DEVELOPING MODEL AT TEMPLE UNIVERSITY

The final program described here is still in the development stage. A combined classroom and fieldwork experiment under the direction of Prof. Dolores Sloviter will be launched at Temple University Law School in the coming academic year. The academic component, which focuses on state and federal legislation affecting the elderly, has been in operation for the past year. Next year satisfactory completion of this course will be a prerequisite to enrolling in the clinical phase of the program. The fieldwork portion of the project is still undergoing analysis, but it will definitely include the direct representation of older people faced with legal problems involving income and health maintenance and other forms of benefits and entitlements.

In August, 1975, the Law, Education, and Participation Project (LEAP) at Temple Law School was awarded a Title I (HEA) grant to develop and conduct the Consumer and Legal Rights of the Elderly Program. Led by Sharon Browning, the project is designed to help older persons learn about and to understand the law as it affects their lives. The 10-week, 2-hour class sessions held in senior centers in Philadelphia include instruction in such areas as contracts and money management, advertising and shopping frauds, landlord/tenant relations, age discrimination, entitlement programs, and wills and probate practices. During its first year, the LEAP staff has trained more than 200 seniors and plans to conduct sessions for an even larger number next year. If funding becomes available, Temple Law Center will train 15 older persons, identified through the LEAP seminars, as paralegals. These paralegals will then be placed in nutrition and senior centers throughout Philadelphia and will work with the clinical faculty and law students to provide legal services for the elderly.

ESSENTIAL COMPONENTS OF EFFECTIVE CLINICAL PROGRAMS

Though this is not an all-inclusive listing of clinical programs involving old age and the law, the other law schools operating clinics duplicate in whole or in part the services provided by these seven. We can see that there are a number of models in the very early stages of development. It is too soon to seek a paradigm, but some elements stand out as important. Law school programs must grant sufficient academic credit to allow the clinical student to explore the full range of legal issues in a project for the aged. Schools must be willing to commit sufficient resources to guarantee adequate professional supervision of the fledgling lawyers. Academic components should emphasize skills development and interdisciplinary study as well as a review of the appropriate substantive law. The delivery system must include an outreach component in order to locate and serve those elderly with legal problems.

One last thing is also very clear. Law school legal clinics devoted to the problems of the aged are an effective and efficient method of delivering legal services to the elderly poor. By harnessing the energy, enthusiasm, and talent of law students, we can be assured of quality legal services for our public or private investment. By any cost-benefit analysis, a properly conceived and operated law school clinic provides low-cost, high-quality legal services for older people.

The response of the nation's law schools, although too little and very late, has at least tended to be positive. With encouragement and support, the law school clinic may yet develop into a major system for the delivery of legal services for older people.

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ITEM 9. AMERICAN BAR ASSOCIATION: SPECIAL COMMITTEE ON FEDERAL LIMITATIONS OF ATTORNEYS' FEES REPORT TO THE HOUSE OF DELEGATES; SUBMITTED BY F. WILLIAM McCALPIN¹

RECOMMENDATIONS REGARDING FEES FOR ATTORNEYS REPRESENTING CLAIMANTS BEFORE FEDERAL AGENCIES

The Special Committee on Federal Limitations on Attorneys' Fees recommends that the house of delegates support the following concept for adoption by the U.S. Congress:

1. The Congress should enact a statute governing attorneys' compensation for each Federal agency when contingent fees are not already provided for by statute.

2. As a first step in implementing point 1 of this recommendation, the Congress should adopt the following scheme for attorneys' compensation in the Veterans Administration:

¹ See statement, p. 271.

(A) The rating board which hears veterans' claims in the first instance shall award attorneys' fees when appropriate, such fees not exceeding \$10.

(B) The Board of Veterans Appeals which hears veterans' claims de novo shall determine attorneys' fees based on the following factors (The first seven factors have been taken from the American Bar Association's *Code of Professional Responsibility*, DR 2-106):

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the attorney or attorneys performing the services.

(C) The award of attorneys' fees by the Board of Veterans Appeals shall be subject to review by the Administrator of the Veterans Administration.

(D) The determination of attorneys' fees by the Administrator of the Veterans Administration on review as provided for in C shall be subject to review by the Federal district court of the judicial district in which the claim is processed or in the Federal district courts in Washington, D.C.

REPORT ON RECOMMENDATION

The Committee on Federal Limitations on Attorneys' Fees believes that the Congress, once veterans' claims have been passed upon at the Rating Board level, should require allowance of a reasonable attorney's fee based upon recognized and usual criteria for services rendered beyond the Rating Board level and consider factors such as the nature of the claim and the amount of the claim in tailoring fee compensation statutes to each federal agency. With respect to the Veterans Administration, the Committee recognizes that the current \$10.00 fee limitation pursuant to statute (38 U.S.C. 3404) effectively prevents any meaningful participation by attorneys in the prosecution of VA claims. Since veterans' awards may be claimants' exclusive or only substantial means of support, especially with respect to disability claimants, it is important to preserve the award to the greatest extent possible. Since many claimants are successful at the Rating Board level (viz., the hearing of first instance), on balance it would be wise to preserve the \$10.00 limitation, especially since representatives have not been shown to be more effective than claimants in securing awards at the Rating Board level.

By contrast, Veterans Administration data have shown that the representative has been more effective than the claimant at the Board of Veterans Appeals. Moreover, the claims which reach the Board of Veterans Appeals are usually more difficult to present than the claims resolved at the Rating Board level because of the need of preparing a proper record, especially since experience has shown the claimant should be prepared to challenge the procedural or substantive fairness at the Rating Board level. Therefore, since an attorney would be effective and often necessary at the Board of Veterans Appeals, the limitations on attorneys' fees should be relaxed as indicated above to encourage attorney participation. In determining fees, consideration should be given to the following: The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney; the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; the time limitations imposed by the client or by the circumstances; the nature and length of the professional relationship with the client; the experience, reputation, and ability of the attorney or attorneys performing the services [and, the financial ability of the claimant to compensate the attorney]. Finally, the Committee believes that review by an independent body, namely, the federal courts, is essential in ensuring the effectiveness of the fee compensation scheme.

BACKGROUND

One approach an attorneys' compensation statute can take is to provide *omnibus* guidelines governing the compensation to be awarded to attorneys representing claimants before all federal agencies. This approach is desirable to the extent that it gives all claimants an equal opportunity to secure counsel, regardless of which agency they petition for redress. Indeed, it is difficult to argue that an airline should be able to secure an attorney to represent it before the FAA, while a veteran should be denied similar protection before the VA. Conversely, it appears unjust that attorneys specializing, say, in aviation matters, are encouraged to participate in agency decision-making, while others specializing in different areas are precluded from participating. Therefore, the following omnibus model statute provides equal protection both for claimants and attorneys:

FEES FOR LEGAL SERVICES

(A) A lawyer shall not enter into an agreement to charge, or collect an illegal or clearly excessive fee.

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

(The first seven factors have been taken from the American Bar Association's *Code of Professional Responsibility*, DR 2-106.)

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.

(2) The likelihood, if apparent to the client that the acceptance of the particular employment will preclude other employment by the lawyer.

(3) The fee customarily charged in the locality for similar legal services.

(4) The amount involved and the results obtained.

(5) The time limitations imposed by the client or by the circumstances.

(6) The nature and length of the professional relationship with the client.

(7) The experience, reputation, and ability of the lawyer or lawyers performing the services.

(8) [The financial ability of the claimant to compensate the attorney].

(Inclusion of this factor in the scheme will depend on whether the claimants or the agency pays the attorney's fees. This matter is distinct from the issue of whether the ceiling on fees should be raised, and it will be considered by the Committee in a subsequent report.)

A fundamental problem with any omnibus statute is that it ignores special problems in certain agencies. For example, veterans sometimes may be adequately represented before the Veterans Administration by service organizations; Congress may want to discourage attorneys from participating in the agency process and charging claimants for their participation when service organizations could adequately represent the claimant. Moreover, the omnibus statute ignores the situation where an aggrieved party brings a small claim before an agency and an attorney, representing the claimant invests considerable time in the matter at issue; it would be quite difficult to balance the interest in compensating the attorney for his time, since compensation to the attorney if deducted from the claimant's recovery could defeat the purpose of the claim. Also, the system may want to recognize the various degrees of sophistication among claimants in determining the relationship between attorney and client. The veteran with a limited education seeking disability benefits from the VA may be more vulnerable to possible abuses by some attorney than a corporate executive seeking redress before the SEC.

A parenthetical point which is essential to any statute regulating attorneys' fees is that the agency's award of fees must be subject to judicial review. ("In any . . . overhaul [of administrative agencies], specific attention should be paid to making the administrative process more open and simple, requiring that major administrative decisions be accompanied by an articulation of reasons, *subject to judicial review* of the fairness and reasonableness of the decision, and affording interested persons access to relevant information within the agency so that they may have an opportunity to develop an adequate record for agency decisions." [Emphasis added], *Law and a Changing Society*,

II, at pp. 8-9, American Bar Association, June, 1975.) If abuses do indeed exist in the process by which attorneys are compensated for services before federal agencies, such abuses will not be eliminated, even with adoption or reform statutes, unless the procedures adopted for implementing the provisions of the statute are reviewable by an independent judicial body.

An alternative to the omnibus statute approach is the adoption of a number of statutes tailored to each agency. In determining the role which attorneys should play in the various agencies, draftsmen of the fee compensation statutes should consider.

(1) The claimant's ability to represent himself before the agency;

(2) The extent of a service organization's ability to represent the claimant;

(3) The claimant's access to fair and equal representation by the service organization;

(4) Cases in which the special competence of attorneys can be of value, particularly where the perfection of an adequate record at the agency level may be essential to the claimant's rights;

(5) Whether certain statutory limitations on attorneys' fees effectively deny the claimant legal representation in agency matters.

In determining whether a service organization is competent in representing claimants before an agency, special attention must be given to the skills involved in successfully prosecuting a claim. For example, where cases involve substantial investigation of medical or public records, and preparation of countervailing proof, an attorney's training and skills can be expected to surpass the ability of a lay service representative to effectively represent claimants. Obviously, where claims involve complicated legal issues, service organizations often are not adequate substitutes for trained attorneys.

Perhaps, the agency on which the most attention has focused in recent years with respect to limitations on attorneys' fees is the Veterans Administration. The statute limiting compensation to attorneys representing claimants before the VA to \$10.00 effectively removes the attorney from the decision-making process in VA matters. The following exposition reflects the various factors which must be considered in tailoring attorneys' compensation statutes to each federal agency.

The Veterans Administration has a \$17,829,454,000 annual budget (P.L. 94-116, Oct. 1975). It ranks fifth in expenditures by federal agencies. (HEW—\$118 billion; Defense—\$93 billion; Treasury—\$43.4 billion; Labor—\$22.6 billion). The four major categories of programs administered by the Veterans Administration are: readjustment benefits, health services, compensation and pensions, and life insurance. The first three categories account for ninety-seven percent of the VA's budget (Veterans Administration, "Budget in Brief: Fiscal Year 1974," page 21).

The VA's disability program has been a focal point of criticism in recent years. In November, 1972, the *Armed Forces Journal* obtained data on the percentage of retirements resulting from disability by rank and branch of service as of June 30, 1971 (Brook Nihart, "Disability Retirement: Some Facts," *Armed Forces Journal*, November, 1972). Data showed that in every branch of service, two to three times as many generals had been retired for disability (31% on the average) as had colonels and majors (14%), although generals were only slightly older at retirement than majors (Nihart, *supra*). Colonels and majors had higher rates of disability retirement than senior noncommissioned officers (12.5%) who retired at about the same age (Nihart, *supra*). The highest rate appropriately went to those who had the most exposure to combat [junior officers (60%), and lower-ranked enlisted men (41%)] (Nihart, *supra*.) Interestingly, more Air Force generals were retired for disability (45%) than lower-ranked enlisted men (Nihart, *supra*).

In 1972, Senator Proxmire asked the GAO to determine how many Air Force generals, retired for disability, had received flight pay. The GAO found that during the period from 1967 to 1972, 337 generals retired from the Air Force, and 130 of them (40%) retired on 30% or more disability. Of these, 97 (75%) received flight pay during the year immediately preceding their retirement. (Letter from Comptroller General of the United States to Senator William Proxmire, Aug. 23, 1972).

The various studies suggest that there may be some inequality in the VA's administration of its disability retirement program; there may be several rea-

sons for these inequities, including the inability of less sophisticated persons to present their case to the VA as compared with others. It therefore appears that attorneys could be useful and at times indispensable to the determination of disability claims in order to ensure equal treatment of claimants. The attorney can investigate the manner in which the VA handles his client's claim and, when appropriate, challenge the VA with respect to equal application of the laws and its regulations. Moreover, since disability benefits are granted only when the disability arises as a result of a service-connected impairment, the attorney can procure medical records to strengthen his client's case, a task which a service organization may be unable or unwilling to do.

Another pervasive problem in the Veterans Administration which attorneys could effectively monitor is the manner in which it determines who will and will not receive benefits. The problem is most critical in the exercise of the VA's discretion as to whether those with less than honorable discharges will receive veterans benefits. From 1964 to 1972, more than 175,000 servicemen were dismissed from the service with less than honorable discharges. Of the various discharges, bad conduct and dishonorable discharges were rare, accounting for no more than 1% of the total discharges. ("Types of Discharges Issued to Enlisted Personnel by Fiscal Year 1950-1972," Office of Assistant Secretary of Defense [Manpower and Reserve Affairs], Aug. 31, 1972.) Such discharges are imposed only by general or special courts-martial. The middle echelon of discharges is the undesirable discharge. Like the honorable and general discharges, it is administrative, but like bad conduct and dishonorable discharges, it may carry heavy penalties in civilian life. Undesirable discharges are given most often for drug use, homosexual acts, conviction by civilian authorities, and offenses involving "moral turpitude."

Contrary to widespread belief, federal law does not bar the Veterans Administration from dispensing benefits to veterans with less than honorable discharges. The VA is in a position, for example, to extend educational assistance to veterans who, because of a lack of education or training, are perpetually unemployed. But because of the way the VA has applied the law, and the way it interprets its social functions, the agency has not made such assistance available.

Benefits are available by federal law to all veterans who receive discharges "under conditions other than dishonorable." Anyone who receives an honorable or general discharge is unambiguously entitled to benefits. Anyone who receives a dishonorable discharge is unambiguously excluded from benefits, as is someone issued a bad conduct discharge by a general court-martial. Undesirable discharges and bad conduct discharges issued by special courts-martial constitute the "gray area." If a veteran has one of these—and more than six out of every seven Vietnam veterans with less than honorable discharges do (38 USC 101 (2))—the VA makes an independent determination of whether or not it was issued under dishonorable conditions. The agency has adopted its own rules on this question. A discharge issued for mutiny, spying, or homosexual acts is automatically considered to be under dishonorable conditions. In addition to the specific categories of discharges that the VA has determined to be under dishonorable conditions, the agency has adopted two rather broad and subjective criteria in its eligibility decisions. A discharge is considered to have been issued under dishonorable conditions if it stemmed from an offense involving "moral turpitude" or was the result of "persistent and willful misconduct." (Starr, *The Discarded Army*, at pp. 176-177). The determination is made on a case-by-case basis without the assistance of any published and definitive guidelines. The only guideline would appear to be an unwritten presumption that the service imposes less than honorable discharges only for acts of moral turpitude or persistent and willful misconduct, because the VA hardly ever comes to any other conclusion. For example, a recent study by the VA indicates that 93% of the veterans with less than honorable discharges who applied for educational benefits were denied them. (Letter from Mr. Stratton Appleman, Assistant Director, Public Information Office, Veterans Administration, to Raymond Bonner, dated January 18, 1973.)

Ordinarily, the VA keeps no statistical records on benefit applications from veterans with undesirable and bad conduct discharges. A study of a five month period in 1972, however, noted that only 1,305 applications for educational benefits were received from men with less than honorable discharges. Of these,

91 were approved. During this same period, more than 4,000 veterans with less than honorable discharges applied for unemployment compensation (although the benefits are dispensed by the Labor Department, eligibility decisions are made by the VA). Of the 4,000 men who applied, 3,400 were found ineligible. Ninety-seven of the cases involved veterans with drug-related discharges; six of these were approved. (Starr, *The Discarded Army*, at p. 179).

The per se rules which the VA has adopted with respect to servicemen with less than honorable discharges appear to be a violation of congressional intent. Some argue that service organizations can adequately protect and represent those allegedly unfairly denied benefits because of less than honorable discharges. It would appear from the statistics herein mentioned, however, that the American Legion, the VFW and other service organizations have not been particularly effective in prosecuting such claims. This is an area ripe for the watchful eye of the attorney in assuring that congressional intent is implemented and those entitled to benefits are treated equally.

The VA's disability program is another area in which the attorney could be quite useful, since the considerable discretion involved in processing disability claims makes the program susceptible to unequal treatment among veterans. For example, a regulation provides that a veteran can be classified as totally disabled if he is "unemployable" and he achieves a certain percentage rating under a rating schedule (38 C.F.C. 4.16-17). The concept of "unemployability," however, as described in the regulations, is rather imprecise, sometimes resulting in a lack of uniformity in practical application. (The regulations define unemployability as "unable to secure or follow a substantial gainful occupation." 38 C.F.R. 4.16.)

Similarly, in order for the veteran to participate in the disability compensation program, he must have at least a 60% disability on the rating schedule, to two disabilities totaling 70% with one equal to 40% (38 C.F.R. 4.16). A determination of disability under the rating schedule requires many subjective determinations, including the degree of social impairment due to psychoneurotic disorders. Even in the disability cases where medical disputes predominate, subjective determinations must be made in arriving at the percentage of disability pursuant to the rating schedule, and without the assistance of a trained attorney a veteran may not be able to effectively guard against unequal treatment.

The need for trained attorneys to represent veterans before the VA is highlighted by the complex procedure involved in processing claims, especially in the disability program. Over 350,000 disability claims are made each year to the 57 regional offices of the VA. (Popkin, *Study of Five Disability Programs*, at p. 6). The claims are heard in the first instance by rating boards comprised of three members with at least GS-12 status. One member is a doctor, one is a legal specialist, and the third an occupational specialist. The legal specialist need not be a lawyer and the occupational specialist need not have vocational expertise. Though hearings are permitted, they are rare. No cross-examination is permitted before the Rating Board. If the claimant is dissatisfied with the decision of the Rating Board, he files a Notice of Disagreement (NOD) which initiates an appeal to the Board of Veterans Appeals (BVA). (The BVA consists of three members, one doctor and two lawyers. The BVA has a staff of 18 doctors. It allows no cross-examination; rather the reviews are conducted like informal conferences.) Forty thousand NOD's are filed each year in disability cases, constituting 80% of all NOD's. One-sixth of the claims are approved by the Rating Board after the NOD is filed. Interestingly, one-third of the appeals are dropped by the claimant after filing his NOD; this suggests, perhaps, that many dissatisfied veterans are unable to cope with the complicated procedures involved in processing claims.

A legal representative can be especially helpful in prosecuting certain claims, as in service-connection claims where vocational evidence is important. Service-connection cases often involve past medical history which the veteran's record may not fully reveal. Since attorneys are trained in the art of investigation, their assistance could be quite valuable. Similarly, where vocational evidence is important, the veteran's records may not be helpful to the extent that they do not contain information with respect to his work history; again, a trained attorney can be useful in gathering evidence for presentation before the Board.

William Popkin, Professor of Law at the University of Indiana, prepared a

comprehensive report for the administrative conference in which he examined one year of BVA cases (fiscal 1972) which reviewed Rating Board decisions from the Indianapolis office of the VA. (Popkin, "A Statistical and Legal Analysis of the Role of Representatives in Administrative Decision-Making based on a Study of Five Disability Programs [Feb. 27, 1975]. The study contains the following disclaimer: "This report was prepared for the Committee on Grant and Benefit Programs of the Administrative Conference of the United States. It is one of three parts to be prepared for that Committee. It has not been reviewed or approved by the Committee or the Conference. It represents the views of the author only. It should not be used for quotation or attribution without this disclaimer.") Popkin's study supports the contention of this Committee that the effective marshalling and presentation of evidence can markedly improve a claimant's chances of success. His study demonstrates that a claimant has a significantly better chance of prevailing at the BVA level when new evidence is submitted to the Board. In service-connection cases, for example, when no additional evidence is submitted, claimants representing themselves were more effective than service representatives in prosecuting claims. When new evidence is presented to the BVA, the chances of a claimant prevailing jump in service-connection cases from 44% to 52%, and in rating scheduled cases from 32% to 48%. (Success rate with a service representative: 35%; Success rate without a representative: 57%. Popkin, at pp. 33, 34.)

These statistics suggest that new evidence has a significant effect on the outcome of cases at the BVA level. Moreover, it appears that service representatives have not availed themselves of the opportunity to present new evidence. In service-connection cases, for example, service representatives submitted new evidence in only 12% of the cases (Popkin, p. 35). Since attorneys are trained in the art of gathering and presenting evidence, it seems likely that their assistance would improve the veterans' chances of successfully prosecuting their claims, especially since service representatives often do not submit new evidence to the BVA. (In service-connection cases, service representatives submitted new evidence in only 12% of the cases. Popkin, p. 35.)

RECOMMENDATION

The claimant cannot always rely on the service organization to represent him before the Veterans Administration. It appears that service organizations may discourage claimants from bringing "harder" cases before the VA. Also, the service organizations may be unwilling to fully and fairly represent certain types of claimants such as those with less than honorable discharges. Therefore, to equalize the ability of a claimant to secure redress before the VA, attorneys can be valuable in some representative capacity. We must, therefore, determine the capacity in which attorneys can serve. In determining that, we must be sensitive to the claimant's desire to retain as much money as possible from the award which he receives from the VA. On the other hand, in order to secure the award, he may need the assistance of an attorney. Legal representatives can be helpful at different levels of the administrative proceedings where certain issues are involved. For example, representatives can be especially helpful when matters involving issues not contained in the veteran's service records are in dispute. Generally, when marshalling and presenting new evidence is necessary in the prosecution of a claim, it appears that the representatives can be most helpful. Moreover, legal representatives can be helpful in alerting the VA to unequal treatment of certain claimants.

As a means of balancing the claimant's desire to retain as much of the award as possible and the need for an attorney in successfully prosecuting a claim, the Committee recommends the following: The \$10 fee limitation should be preserved at the Rating Board level. (The statute should maintain the \$10.00 limitation for attorneys' fees at the Rating Board level because in some cases, a relative or friend of the claimant who is an attorney may offer gratuitous assistance. The goal of the statute is not to exclude attorneys at the Rating Board level. Rather, the statute seeks to preserve the claimant's award to the greatest extent possible. Where preservation of an award is possible with legal representation, the attorney should not be excluded from participation.) There is some evidence that the Rating Board will often give the veteran the benefit of the doubt in certain matters (Popkin, at p. 40). For those who fall in this

category, the services of an attorney would be unnecessary since claimants would have to pay attorneys' fees when representation would have been unnecessary. Therefore, in recognition of those who could successfully prosecute a claim either without legal representation or with representation by a service organization, on balance the system at the Rating Board level probably operates most effectively without the assistance of attorneys. A different story, however, exists at the BVA level. Those who are dissatisfied with the decision of the Rating Board may be unable to secure adequate representation from a service organization for various reasons. Moreover, statistics, such as the 7% success rate of those with less than honorable discharges who petition the VA for educational benefits (Popkin, supra, p. 9), indicate that the Rating Board has established certain unfair procedures; such procedures may go undetected by the BVA without the help of an attorney who can alert the BVA to specific procedural problems. Therefore, the Committee recommends that the guidelines set forth in the recommendations on pages 1 and 2 of this report be implemented at the BVA level so that claimants can secure legal counsel to represent them and to protect their interests.

This is the first of a series of reports by the Committee. This report focuses on the need for reform in the Veterans Administration with respect to federal limitations on attorneys' fees. The Committee will submit another report on the manner in which attorneys' fees will be paid. Also, the Committee will continue to examine other federal limitations on attorneys' fees* and submit future reports to the House of Delegates.

Respectfully submitted,

JAMES D. FOLIART
 JOHN E. JAQUA
 RUSSELL D. MANN
 VERNON X. MILLER
 MARTIN J. PURCELL
 JOHN B. WALSH
 LOUIS G. DAVIDSON, *Chairman.*

FEBRUARY 1976.

LIMITATION ON ATTORNEYS' FEES UNDER FEDERAL STATUTES AND REGULATIONS

Statutory provisions		
Statute	Subject	Limitation
5 U.S.C. 8127	Government employees claims for injuries	Approval of Secretary of Labor.
7 U.S.C. 499g	Perishable agricultural commodities	Approval of Secretary of Agriculture.
11 U.S.C. 205(c)	Railroad reorganization	Approval of Interstate Commerce Commission.
(2), (12).		
14 U.S.C. 413(c)	Coast Guard lifesaving service claims	\$10 maximum.
15 U.S.C. 79g(d)	Public utility holding companies, issues, and acquisitions.	Securities and Exchange Commission approval transaction conditioned on approval of fees.
(4), 79j(b)(2).		
18 U.S.C. 3006A	Counsel appointed in criminal cases	Maximum hourly rate and maximum total fee.
22 U.S.C. 277(d)-21	Reimbursement for appropriated land pursuant to 1964 United States-Mexican convention.	Up to 10 pct.
22 U.S.C. 1623(f)	Claim before Foreign Claims Settlement Commission.	Do.
(Supp. IV, 1969).		
25 U.S.C. 70n	Attorneys for Indian tribes	Absent approved contract, Indian Claims Commission may approve up to 10 pct.
25 U.S.C. 31	Certain contracts with Indians	Approval of Secretary of Interior and Commissioner of Indian Affairs.
25 U.S.C. § 81a	Cancellation of attorneys' contracts with Indians.	Approval of Secretary of Interior of attorneys' contracts predating § 81.
25 U.S.C. § 81b	Continuation of attorneys' contracts with Indians.	Contracts predating § 81 may be continued unless subsequently approved contracts on same matter.
25 U.S.C. § 82	Payment of attorneys for Indians.	Approval of Secretary of Interior and Commissioner of Indian Affairs upon receipt of sworn statement, detailing services rendered.
25 U.S.C. § 82a	Payment of attorneys by tribes themselves (excepting claims against United States).	Approval of Secretary of Interior of payment of fees on certain claims of five named tribes.
25 U.S.C. § 85	Contracts respecting tribal funds or property in hands of United States.	Consent of United States.
25 U.S.C. § 476	Rights of tribes to employ legal counsel	Secretary of Interior must approve counsel and fee.
28 U.S.C. § 2678	Federal tort claims	For claims accruing after Jan. 17, 1967, 25 pct of judgment or settlement after commencement of court action; 20 pct of administrative award, compromise, or settlement.
(Supp. IV, 1969).		

* Attached hereto is a compilation of Limitations on Attorneys' Fees under various federal statutes and regulations as of March 11, 1974.

LIMITATION ON ATTORNEYS' FEES UNDER FEDERAL STATUTES AND REGULATIONS—Continued

Statute	Subject	Limitation
30 U.S.C. § 938	Prohibition of discrimination against miners suffering from pneumoconiosis.	Determined by Secretary of Labor.
31 U.S.C. § 243 (Supp. IV, 1969).	Military Personnel and Civilian Employees Claims Act of 1964.	10 pct of award.
33 U.S.C. § 928	Longshoremen and harbor workers' claims	Labor Department or court approval required.
38 U.S.C. § 784(g)	Veterans' insurance claims	Court may allow up to 10 pct of award or a reasonable fee.
38 U.S.C. § 3404(c)	All veterans' claims	Up to \$10 per claim allowable by Veterans Administrator.
42 U.S.C. § 406(a) (Supp. IV, 1969).	Social Security Act	Secretary of Health, Education, and Welfare prescribes maximum fee.
42 U.S.C. § 406(b) (Supp. IV 1969).	do	Court rendering judgment favorable to client may allow up to 25 pct of the amount of the past due benefits as fee.
42 U.S.C. § 1714	Claims of U.S. employees outside the United States.	Approval of Secretary of Labor.
43 U.S.C. § 1619	Alaska Native Fund Disbursements	Approval of Chief Commissioner of Court of Claims. Up to \$2,000.
45 U.S.C. § 3551	Railroad unemployment insurance claims	Approval of Railroad Retirement Board or court.
46 U.S.C. § 1225	Contracts under the Merchant Marine Act	Filing of retainers and expenses with Secretary of Commerce according to rules of the Secretary.
50 U.S.C. App. § 20	Trading With Enemy Act	Up to 10 pct if approved by President or his agent or court; appealable to district court in cases of unusual hardship.
50 U.S.C. App. § 1985	American-Japanese evacuation claims	Up to 10 pct allowable by Attorney General.

Administrative Regulations

Source	Subject	Limitation	Statutory basis
8 CFR § 2923(a)(1) (1973).	Immigration proceedings.	Disbarment for grossly excessive fees.	8 U.S.C. §§ 1103, 1362.
12 CFR § 4013 (1973)	Import-Export Bank	Bank approval as condition of loan	12 U.S.C. § 635.
13 CFR §§ 103.13-5(c), 103.13-6 (1973).	Small Business Administration.	Contingent fee only if in reasonable relationship to services; SBA may require agreement permitting SBA to reduce fees it deems unreasonable.	15 U.S.C. § 634.
20 CFR 404.973-404.975 (1973).	Old-age and survivors insurance.	Approval by Secretary for representation before Social Security Administration.	42 U.S.C. 406, 1302.
25 CFR §§ 71.1(a), 72.5, 72.24 (1973).	Indian's attorneys and their fees.	Approval of Bureau of Indian Affairs; payment out of award, or under certain conditions from tribal funds in U.S. Treasury.	25 U.S.C. §§ 81.476.
31 CFR § 10.28 (1973)	Internal Revenue Service.	No unconscionable fees	5 U.S.C. §§ 301, 551-558 (Supp. IV, 1969).
32 CFR §§ 1.500-1.509, 7.103-20 (1973).	Armed Services procurement contracts.	Fees must be reasonable not contingent; covenant against contingent fees applies to securing of contracts.	5 U.S.C. § 301 (Supp. IV, 1969), 10 U.S.C. § 3012.
38 CFR §§ 14.638, 14.639, 14.650-59 (1973).	Claims before Veterans' Administration.	With VA approval, \$2 to \$10 per claim; possible appeal; no fee for unrecognized attorney; automatic nonrecognition of attorney charging illegal fees.	38 U.S.C. §§ 210 (b), (c), 3401-3404.
38 CFR §§ 36.4312 (1A), 4313(b)(v) (1973).	Veterans' loans	Reasonable and customary fees allowed; 10 pct or up to \$250 is permitted for liquidation of loans after default.	38 U.S.C. §§ 212(a), 1804.
41 CFR § 1-1.503 (1973).	Government contracts	Covenant of no contingent fees, with stated exceptions.	40 U.S.C. § 486(c).
R.E.A. Bulletin 400-4 (1959).	Telephone loans	R.E.A. approval; up to \$17.75 per hour for appearances.	7 U.S.C. § 901 et seq.
R.E.A. Form 739 (1957)	Electrification loans	R.E.A. approval of fees out of loan funds.	7 U.S.C. § 901 et seq.
45 CFR 500.3 (1972)	Foreign Claims Settlement Commission.	Maximum percentages	50 U.S.C. App. 2001, 22 U.S.C. 1622.

ITEM 10. STATEMENT OF THE LEGAL SERVICES SECTION OF THE STATE BAR OF CALIFORNIA; SUBMITTED BY PAUL NATHANSON¹

The Legal Services Section of the State Bar of California consists of 550 attorneys and judges committed to "innovation, development, and improvement of systems to provide access to and delivery of legal services to the people of California in adequate quantity, of superior quality, and at a reasonable cost."

¹ See statement, p. 286.

The section commends the Senate Special Committee on Aging for holding oversight hearings on the issue of legal services for older Americans. The elderly have legal problems and concerns that are quite different from those of other age groups. Older citizens are more often the victims of consumer and administrative abuses calling for legal remedies and generally do not have the resources to be able to afford legal representation. We are sure that your hearings will develop increased evidence of the serious need that our older citizens have for legal services.

In June of 1974, we told Senator Tunney's Subcommittee on Representation of Citizens' Interests that:

"The private bar and law schools must assume greater responsibility for helping to improve the availability of legal service for our elderly citizens. Every local bar association should consider establishing a standing committee which will investigate and periodically review the problems of the elderly citizens in their area and then make recommendations as to how these problems can be resolved. Law schools in California should also be encouraged to design courses that deal with the particular problem of our elderly citizens and reassess all of their courses to insure that the problems of our elderly are covered in courses other than 'estates, probate, and taxation.'"

Since that time, the State bar has developed its own 5-point program for meeting legal problems of the aging. The 5-point program includes: (1) Project Outreach—a series of programs focused on meeting the legal needs of the elderly; (2) methods for financing and implementing these legal services; (3) educating attorneys to handle the legal problems of the aging; (4) educating the elderly about their legal rights and the legal services available to them; and (5) legislative action to remedy certain inequities facing the senior citizens. As part of the program, the bar has asked every local bar association in the State to become actively involved in developing or working with local programs for the elderly.

The legal services section was created to provide a mechanism for California attorneys and judges to focus their energy on this and other problems. Twenty-five percent of the section members already have expressed interest in the legal problems of aging. The section's executive committee has successfully lobbied the State Legislature to pass a bill that grants significant new rights to individuals who are subject to conservatorship and guardianship proceedings. Finally, the section's committee on the legal problems of aging already has united judges, professors, private practitioners, and legal services attorneys in developing a statewide program to deal with the legal problems of senior citizens.

We are keenly aware, however, that the legal services section can do only so much without creative legislative leadership in the U.S. Congress. We are highly appreciative of the efforts of Senators Church, Kennedy, Williams, and Tunney to educate their fellow Senators regarding the legal problems faced by our older citizens. We also wish to express our gratitude to Representative Brademas of Indiana for his work in assuring that the Older Americans Act would be amended to make legal services a priority. Much more needs to be done, however, if our older citizens are to receive the quality of legal care that they need. Only so much can be done by volunteer attorneys or by our underfunded legal service and legal aid programs. More money must be made available for the provision of legal services to seniors. We hope that as a result of these hearings you will draft new legislation which will provide more funds and resources in this important area. For as we said in 1974, the problems of the elderly are, in the final analysis, our problems.

NATIONAL SENIOR CITIZENS LAW CENTER PUBLICATIONS

Catalog No.	Title	Price
18. 193	Handbook Directory of Federal Headquarters Sources.....	\$2. 00
18. 194	Manual of Funding Sources and Models for Delivering Legal Services to the Elderly.....	7. 00
18. 320	Nursing Home Law Handbook.....	1. 25
18. 453	Age Discrimination.....	. 50
18. 454	Mandatory Retirement.....	. 50
18. 455	Consumer Problems.....	. 50
18. 456	Housing.....	1. 25
18. 457	Legislative Information.....	1. 00
18. 458	A Short Summary of Title II of the Social Security Act.....	1. 00
18. 459	Veteran's Benefits and the Elderly Veteran.....	1. 25
18. 460	Legal Issues Affecting the Older Woman in America Today.....	1. 25
	Materials on SSI and Social Security Disability.....	(!)
	Legal Services Guidebook on California Estate Planning.....	(!)

¹ To be advised.

Source: Available through National Clearinghouse for Legal Services, Order Department, 500 North Michigan Ave., suite 2220, Chicago, Ill.

Appendix 2

LETTERS FROM INDIVIDUALS

ITEM 1. LETTER AND ENCLOSURES FROM JAMES B. CARDWELL, COMMISSIONER OF SOCIAL SECURITY; TO SENATOR EDWARD M. KENNEDY, DATED NOVEMBER 24, 1976

DEAR SENATOR KENNEDY: Your letter of October 19 requests information regarding our plans for implementation of the SSI study group recommendation for establishment of an ongoing interrelationship with advocacy and legal aid groups.

We are committed to the idea of furthering our ongoing interrelationships with the consuming public and had no reservation about moving ahead to establishing such relationship with advocacy and legal aid groups. As a first step we invited representatives of a number of legal aid organizations to Baltimore. Our objective was to get their input into the development of the most effective mechanism for an interchange process.

At the first meeting this group indicated that they were not sufficiently representative of the universe we were trying to reach and asked for additional time to consider the problem. At our second meeting the group reaffirmed the fact that they were not representative of the legal aid communities but suggested that they nevertheless serve as the advisory group to SSA. We agreed that the meeting participants were not sufficiently representative of the groups involved, e.g., there were no black attorneys. We advised that the entire issue of how and with whom the study group recommendation would be implemented would be given further consideration. This was reflected in our reports of the meetings, copies of which were sent to each participant. Copies are also enclosed for your information.

The kind of relationships and activities which need to be established are, of course, affected somewhat by the recent changes in the handling of regulations which are designed to promote broad public input into that process as well as the proposals of the HEW Task Force on Citizen Participation relating to decisionmaking. These were published in the *Federal Register* on November 10.

We have now decided that we will not establish a small advisory group representing the legal aid and advocacy communities but rather will establish a roster of individuals and organizations representing these groups and others particularly interested in the problems of the disadvantaged. We will, from time to time, invite representatives from this roster for the discussion of specific problems or areas of interest. The invitations will be issued on the basis of the particular interest and expertise of the members. The matter of compensation for those who participate in such meetings will be determined under a general policy of payment for expenses where there is a need for such payment.

We will be communicating this decision to the legal aid representatives who have previously met with us. These representatives will, of course, be included on our roster.

Sincerely yours,

JAMES B. CARDWELL.

[Enclosures]

REPORT OF MEETING, MAY 26, 1976, SOCIAL SECURITY ADMINISTRATION

INTRODUCTION

Convened by the Social Security Administration (SSA) and chaired by Thomas C. Parrott, Associate Commissioner for External Affairs, this meeting

was held to explore approaches which should be considered to establish and to maintain an effective system of two-way communications between SSA and the Nation's legal aid programs.

The meeting agenda and a list of meeting participants are attached.

Mr. Parrott and Mrs. Juni welcomed the seven legal aid attorneys and explained that the impetus for inviting them to meet with SSA came from a recommendation of the supplemental security income study group that SSA establish an ongoing relationship with legal aid and advocacy groups.

SSA recognizes that the development of a network of legal aid groups through which SSA and the legal aid community can interact has the potential for achieving specific goals. It can provide a means by which reliable information may be exchanged concerning laws, policies, and procedures, as well as information about consumer reactions and concerns so that misunderstandings can be avoided and program operations refined. It was emphasized that SSA's intent is to set up a mechanism that would not be a token venture but that would result in an effective, productive working relationship.

Mrs. Juni reviewed plans complementary to the proposed network of legal aid groups which are designed to take readings on trends and policies that might cause problems and which would provide for representation and input from the total SSA interested populations. Representatives of legal aid programs could participate in those activities. Included are plans to have a broad range of "weathervane" groups throughout the country for general consumer reaction to all aspects of the social security programs. Additionally, meetings in the field with organizations and individuals representative of the public will provide a forum for the discussion of issues involving SSA administered programs. (The first of these meetings will be held in the Denver region in October.)

THE LEGAL AID COMMUNITY

The legal aid attorneys were asked to clarify the legal aid community, what it is now and how it works.

There are approximately 800 legal aid offices providing direct service to clients. The Legal Services Corporation is providing financial support to 250 or 260 programs but any program may have more than one office. In addition, the Administration on Aging and the Office on Developmental Disabilities—in HEW's Office for Human Development—are supporting legal assistance provided special populations in their areas of concern. It was pointed out that there is nothing in the legal services resembling a network except very loose, informal communications.

The legal aid attorneys discussed the difficulties of achieving "representativeness" in the makeup of a network of legal aid groups for the proposed interaction with SSA. The interests of most legal aid offices lay in the supplemental security income (SSI) program: about one-third see SSI clients, title II is more "hit or miss," and very few medicare problems are taken to legal aid offices. With regard to title II, however, the attorneys agreed that probably 95 percent of the SSI problems overlap the title II disability program and that SSI and disability insurance are almost the entire SSA related workload of legal aid offices.

ESTABLISHING THE NETWORK

Most of the discussion dealt with how to organize a network of legal aid groups, both regionally and nationally. It was agreed that a start should be made with a national group, although there was considerable interest in first holding regional meetings to choose a national group and to deal with local operating problems.

The selection of legal aid representatives should largely be the responsibility of the legal aid community. Since paralegal personnel perform most of the direct work with clients they are an important consideration in achieving "representativeness."

This group of seven legal aid attorneys agreed to supply SSA with the names of people to make up the next group for a meeting in late July.

Key words in discussing the procedures through which the network would operate were openness, flexibility, and responsiveness. Stressed was the importance to legal aid people that when particular items are brought out they receive "real consideration."

This discussion indicated that there are definitely other important areas of concern besides SSI and disability insurance which should be considered in the formal meetings, and the network should have the flexibility to bring in different people when considering specialized problems.

The topic of financing for the meetings was mentioned but was not explored in any detail.

FEDERAL ADVISORY COMMITTEE ACT

The question was raised as to whether the operation of the proposed legal aid network will be an activity covered by the Federal Advisory Committee Act. SSA agreed to have the matter explored thoroughly and an opinion of the Office of General Counsel will be obtained.

THE COMMISSIONER'S OFFICE

The meeting closed after a brief talk by the Deputy Commissioner, Jarold Kieffer, who emphasized SSA's and his own commitment to establishing a continuing interchange with groups representing consumers. Mr. Kieffer indicated his interest in participating at greater length in the next meeting.

REPORT OF MEETING WITH LEGAL AID ATTORNEYS, JULY 27-28, 1976

The second meeting with the legal aid attorneys was opened by Associate Commissioner Parrott. The associate commissioner welcomed the group, reiterated SSA's interest and commitment in working with the legal aid community, and outlined the purposes of the meeting of assisting in the formulation of procedures needed to establish effective working relationships of SSA and legal aid programs. Mr. Parrott indicated that, from SSA's view, there were three purposes to the proposed network: (a) To provide a means by which information may be exchanged; (b) to provide a structure through which the legal aid community may identify problems and channel suggestions; and (c) to provide a means by which SSA can consult with legal aid lawyers on proposed changes.

Mrs. Juni then opened the substantive discussion. She stated that the purpose of the meeting was to develop a "mechanism that would work," to exchange information and provide structures for input. She noted that the legal aid representatives had not met their commitment in supplying SSA with names of additional persons to be included in the network and timely suggestions for an agenda. She stated that SSA was seeking identifiable gains from the operation of the network, and that this would require commitment, time, and effort from all parties concerned. Mrs. Juni stated that, although some small time was allotted in the agenda for a consideration of program problems, the first priority of this planning meeting was to outline in some detail the structure and functions of the legal aid network. Ms. Bader emphasized that, although the "ground rules" for the operation of the network should be clearly established, a certain flexibility would need to be built into network representation and operation.

Joel Cohen outlined the possible impacts of the Federal Advisory Committee Act on the operation of the network, and this discussion led into a consideration of other problems surrounding network representation and operation. Several legal aid representatives again pointed out that the small group in the room did not and could not "represent" the legal aid community as a whole, since there was no overriding "organization" among the legal aid lawyers. Thus, the criteria for selection of legal aid attorneys to participate in the network were difficult to determine. Mr. Kimbell felt that representation in the network was really a secondary problem; the key issue was what role would the network play. Ms. Blong stated this same concern and asked whether the network would play a role in policy development. Mrs. Juni responded by saying that part of the operation of the network would include an opportunity to make timely input and comment to the agency and to present the legal aid perception of problems of program operation. Mrs. Juni distinguished between an adversary and an advocate role for the network, saying that SSA did not want network meetings to become an adversarial free-for-all, but did expect the legal aid attorneys to be strong advocates for the positions they considered correct. Mutual respect should prevail.

Mr. Goar indicated that all questions about role or representativeness would be moot without a consideration of travel funds. Mrs. Juni responded by saying that SSA was not planning to provide reimbursement for additional meetings, but that SSA would assist in locating other sources of funding. Mr. Miller noted that the legal aid backup centers could pick up the travel cost for their staff who were part of the network, but the local legal aid offices would need outside assistance, at least for the travel costs, if not the per diem. Mr. Miller asked at what level the decision was made, and was told that it was an OEA decision consistent with other policies laid down by the commissioner. Mr. Miller indicated that the attorneys would probably appeal this decision.

Mrs. Juni asked whether the legal aid groups should be kept separate from other structures of consumer input. The general consensus was that the legal aid network should be a separate structure, although this structure would not preclude other persons or organizations from participating in network meetings if the need arose. There also seemed to be general feeling that network meetings should take place in Baltimore, to allow for ready access to SBA technical personnel, but this also did not preclude some meetings being held in other parts of the country if a specific and limited agenda is worked out in advance.

The session on Tuesday afternoon opened with a discussion by Dick Brown of OPO concerning claims manual distribution and availability of other SSA documents. At the present time, legal aid attorneys may receive claims manual chapters 12 and 13, "A" supplements, and disability insurance letters. Mr. Brown briefly outlined the present arrangements for claims manual distribution to legal aid attorneys, some problems, and possible plans for the future. Mr. Brown indicated that the agency was developing a unified system for issuing field instructions in addition to the policy and procedural information contained in the claims manual which would help relieve the problem of multiple instructions to the field. Mr. Goad asked about the role of regional program circulars and the distribution of central office responses to policy inquiries from a region. Ms. LePore described regional procedures to assure that the circulars do not decide national policy questions. Barry Powell further answered that all ten regions receive answers to any regional inquiry, to assure national uniformity of interpretation. Mr. Miller seemed to sum up the feeling of the legal aid lawyers by saying that there seemed to be too many sources of "law" in the field, and the local legal aid attorneys had access to too few of these.

Ms. Blong asked Mr. Brown why only claims manual chapters 12 and 13 were distributed to legal aid attorneys, when many topics of importance to SSI were contained in other claims manual chapters. Mr. Brown indicated that the claims manual should be reexamined to see what other sections might be needed, but that there were problems in distribution which also needed to be resolved. Mr. Miller then indicated that the National Senior Citizens Law Center (NSCLC) would probably find it difficult in the future to continue the role it has played in claims manual distribution. Finally, Mr. Brown indicated that the agency was attempting to place more claims manual information in the program regulations themselves. Concerning the regulations, Mr. Brown indicated that there was a "law and regulations" section of the claims manual, and indicated that work was needed to determine the volume and exact cost of making this available to legal aid attorneys.

After Mr. Brown concluded, discussion concerning network organization and operation was resumed. The legal aid attorneys proposed a network structure which would include: (a) A core group of legal aid representatives who would attend quarterly meetings. This core group was proposed to consist of four "national" legal aid representatives: National Senior Citizens Law Center (Miller); California Rural Legal Assistance (Abascal); National Health Law Program (Mullen); Center on Social Welfare Policy and Law (Blong); and four local legal aid representatives: James Weill (Legal Assistance Foundation of Chicago); Doris Falkenheiner (Legal Aid Society of Baton Rouge); Linda Bernstein (Community Legal Services, Philadelphia); and Steve Kimbell (Vermont Legal Aid). (b) The core group would develop and submit to SSA a list of 30 to 50 names of other legal aid attorneys with significant experience in SSA programs. This larger group could be called upon by the core group and by SSA to provide input and expertise. Discussion for the remainder of the afternoon revolved about issues associated with this proposal. Mrs. Juni noted that blacks and other minority groups were not represented on the proposed

network, and that this could be a significant problem. Mrs. Juni also indicated that such an arrangement would have to be approved by the Commissioner and the Department, and that the Federal Advisory Committee Act (FACA) might limit this arrangement or impose additional requirements. Thus, no final answer would now be possible. Other items to be researched were suggested, including the content of a "charter" under the FACA, the possibility of "subcommittees" or "workgroups" for analysis of specific problems, and alternate sources for funding the network.

The first presentation on Wednesday morning was made by Rose LePore concerning the SSA organization. Ms. LePore outlined the role and relationship of the central and regional offices, and the various bureaus and offices. This discussion proved to be the jump-off point for a rather complex discussion concerning the role of BHA vis-a-vis the rest of SSA, the precedential weight of appeals council and ALJ decisions, the relationship of such decisions to policy formulation, and allegedly inconsistent decisions on disability cases applying for title II and title XVI. Paul Muller of BHA responded generally to a number of these questions, and Mrs. Juni indicated that substantive questions of this type should be left to later meetings when there could be thorough preparation. The legal aid representatives seemed to agree that a discussion of issues surrounding BHA would be a priority for subsequent meetings.

The remainder of the morning session was devoted to a discussion of the mechanics of the communications process between SSA and the legal aid community and a listing of priority problems for subsequent meetings. The advantages and disadvantages of various existing publications were discussed, including the *Clearinghouse Review*, the *Poverty Law Reporter*, newsletters from NSCLC, and the Center on Social Welfare Policy and Law. Other potential mechanisms were outlined, such as letters or memoranda from SSA to network representatives on significant matters.

In addition to questions concerning the role and relationship of BHA to the rest of SSA, the legal aid attorneys listed a number of other priorities which they desired to be considered in network meetings: input on contemplated policy changes; the notice and reconsideration process; the application process; overpayment policy and procedures; representative payees; and outreach. Mrs. Juni emphasized the need for an organized system to identify agenda items and to distinguish between routine and special concerns representative of consumer interests. It will be particularly important to assure that "business as usual" is supported, that normal communications and day to day work continue between the various SSA and legal aid offices. However, for items that will be explored in depth at network meetings, the group indicated that the network representatives should raise and document the question in advance. SSA should furnish a response with pertinent materials, and then the matter would usefully be discussed at a meeting.

Wednesday afternoon was devoted to a presentation of two substantive areas, the Privacy Act and check replacement. Concerning the former, Dick Brown of OPO discussed SSA's present posture concerning the act, and along with Gerry Altman of OCC answered a number of technical questions regarding the act and the access it gives to legal aid personnel to the records of a beneficiary. Mr. Brown indicated that the agency would be clarifying the requirement of consent for receiving information.

Mr. Bert Rouse of OPO discussed the title II critical case processing and check replacement procedures, and Mike Johnson of OPO outlined the system and procedures for replacing SSI checks. There were a number of questions regarding the feasibility of using prepositioned checks in the district offices to replace missing checks, and Ralph Abascal was also interested in an evaluation of provision in H.R. 8911 for States to provide interim assistance in the case of lost, stolen, or missing checks. Mr. Abascal asked whether the department had any formal position on H.R. 8911. Ms. Blong commented that the handouts of the type distributed by OPO to summarize and explain check replacement would not be sufficient for subjects to be discussed at future meetings. She asked that for future meetings such summaries should be cited throughout to applicable SSA policy and procedures manuals. Mr. Trazzi pointed out that such "citation" to sources was possible in some cases, but not in others.

At various times throughout the 2-day meetings, the legal aid attorneys asked that all formal decisions and announcements for the network be made in writing to minimize the chances for misunderstanding and to insure that all were adequately informed. They asked that minutes be kept of future network meetings, and that formal reports be filed. SSA staff emphasized their

own desire to keep a formal record of network activities and information, and indicated at the end of the second day that a report of this planning meeting would be distributed.

ITEM 2. LETTER AND ENCLOSURE FROM WILLIAM O. GREEN, MABLETON, GA.; TO SENATOR EDWARD M. KENNEDY, DATED OCTOBER 1, 1976

DEAR SENATOR KENNEDY: I just had occasion to run across your article entitled "Care for the Aged: Our Last Minority" that appeared in the May-June, 1974 issue of *Case and Comment* [see enclosure]. Quite recently we had a very difficult experience in my office that is prompting this letter to you as a result of the expression of your concern in the article I just referred to.

Some few years ago a middle-aged gentleman suffered a heart attack and was confined to a nursing home. In the ensuing course of events this gentleman was confined for a brief period of time to one particular nursing home in Cobb County, Ga. The lack of care and attention that this man got while there is simply appalling. We know for a fact that he suffered a fall and a resulting fracture though nobody at the home knows about it even though he was confined to his bed and could not move himself at all. We know one instance where he was left propped up in a chair for about 24 hours. We know of many instances of physicians' instructions not being carried out. We have photographs of the most horrible ulcerations of the man's skin caused by lack of attention to his needs in the nursing home. This tale of horrors goes on and on.

He died.

To make a long story short, we advised the grieved widow of the difficulties in pursuing litigation like this (an administrator's suit as well as the death action against the nursing home) and she wanted it pursued anyway, not for the money that she might or might not get, but because of a very honest desire to have such an impact on that home and others like it that others could not be victims of this sort of maltreatment. I don't have the slightest question in my mind but that this was the sole motive that this lady had in pursuing this case.

The original tragedy notwithstanding, the thing I want to communicate with you about is this: After we got suit filed and we really began to get into the case, we uncovered the most bizarre charade of ownership and responsibility that I have ever heard of. Some con artist or artists somehow set up a series of corporate shells and, to again make a long story short, I will simply say there was nothing and no one to get at in this case. The nursing home is still operating under the protection of some sort of receivership and it is abundantly clear that the people primarily responsible for this situation are long gone and there are not any assets from which judgment could be satisfied even if it were ultimately obtained.

I think what I am trying to say is that I certainly would be in favor of some sort of registration requirement for these homes and some sort of mandatory financial responsibility requirement. I realize that a lot of our medical friends are highly critical of malpractice claims, but I do not think that any responsible person in or out of the medical field would deny that the assertion of malpractice claims is certainly a primary factor in bringing about a lot of safety features that we now have in the hospitals.

I realize full well that the present mood of the country is antiregulation, but it does seem to me that the deplorable state of nursing care facilities for the aged in this country cries out loud and clear for some kind of help.

Cordially,

WILLIAM O. GREEN.

[Enclosure]

[From *Case & Comment*, May-June 1974]

CARE FOR THE AGED: OUR LAST MINORITY

(By Senator Edward M. Kennedy)

In the mid-nineteenth century, the missionary James Moffat recorded in his diary his conversation with an old Hottentot woman whom he had found

abandoned in a desert: "Yes," she said, "my own children, three sons and two daughters have left me here . . . to die . . . I am very old, you see, and am not able to serve them. When they kill game, I am too feeble to help with carrying home the flesh. I am not able to gather wood and make a fire, and I cannot carry their children on my back as I used to do."¹

THE NADER REPORT

This scene unfortunately has its modern counterpart, as revealed in Ralph Nader's *Task Force Report on Nursing Homes*. Seeing old age as the "last segregation," the Nader group, led by six seniors and an instructor at Miss Porter's School in Farmington, Connecticut, has documented the tragedy of many of the one million elderly citizens institutionalized in the 24,000 nursing homes across the country.

Nursing homes represent only a part of the over-65 subculture, affecting five percent of the 20 million elderly Americans. The federal government pays 40 percent of a \$2.5 billion a year nursing home industry. Fifty chains of nursing homes now have their stock listed on Wall Street, and the elderly are treated in too many instances as digits in a profit and loss statement rather than as human beings.

The study group's main conclusion is that neither the government nor the nursing home industry nor the medical profession accepts responsibility for the quality of elderly health care. This disinterest is aggravated by a decentralized bureaucratic maze which ranges through a half dozen federal agencies, through multiple agencies in each of the states, and through local licensing and inspecting boards.

The bedsores and boredom of the aged can be traced through inadequate government programs and through the failure of national leaders to make a firm commitment to decent care for the aged. The medical profession appears to abdicate professional responsibility, and a profit-oriented nursing home industry appears willing to cut costs at the expense of its patients. Finally, our youth-oriented society is insensitive to the plight of elder Americans, rushing them to nursing homes regardless of the homes' quality.

The *Nader Report* first reveals the national disgrace of our treatment of the aged by tracing the history of efforts to enact legislation providing health insurance for all citizens, a struggle whose fate is still before the Congress. Attention is focused on the ebb and flow of support for national health insurance, the opposition being crystallized at various points by the American Medical Association, the American Hospital Association, and the American Nursing Home Association. Even partial victories in behalf of the aged have been hard-fought and few—the Social Security Act of 1935, the Hill-Burton Hospital Survey and Construction Act of 1946, Old Age Assistance in 1950, Social Security benefits for the disabled over age fifty in 1956, the Kerr-Mills bill in 1960—the forerunner of Medicaid—and Medicare and Medicaid in 1965. But no national policy was defined to offer strict enforceable standards and close inspection of the nation's nursing homes.

STANDARDS

A single nursing home, for example, may be inspected under three sets of standards—state licensing codes, Medicare standards, and Medicaid standards. The consequences of bureaucratic fragmentation are made clear: "in the absence of one agency clearly designated as responsible, and capable of assuming that responsibility, the public interest in insuring high-quality care in nursing homes has been frustrated."²

It should come as no surprise that 80 percent of the nursing homes that receive public tax dollars do not meet minimal federal standards. The reaction of a sympathetic Medicare inspector in Maryland is indicative of the attitude which persists at the state and local—as well as national—level: "the ultimate step of closing nursing homes is avoided because neither the homes nor the states has an alternative to offer the patients."³

¹ The Matabele Journals of Robert Moffat (J. Wallis ed. 1945).

² C. Townsend, *Old Age: The Last Segregation* 39 (1971).

³ *Id.* at 48.

This points again to the helplessness of the elderly patient who may be forced to choose between an inferior home or no home at all.

SUPERVISION AND INSPECTION

Nursing home inspections are often less revealing than they might be because of the almost universal practice of notifying homes well in advance of the inspection. The *Nader Report* found it not uncommon for homes to hire additional personnel for the inspection day in order to qualify under the staffing requirements, or to move staff members from floor to floor as the inspector made his tour. Deficiencies and poor conditions, whether camouflaged or not, are usually exacerbated by exorbitant costs, especially since older persons have less than one-half the income of younger people, while their medical expenses are three times as great.

Although doctors may attend individual patients, they neglect the home itself. With no medical supervision at all in many homes, the aged must fend for themselves. Female patients in urine-soaked nightgowns a week old, catheter tubes without urinal bags, bleeding from unattended wounds, call buzzers put deliberately out of reach, baths given but once a month, bedsores and urine burns, stale and even spoiled food are but a few of the agonies found by the Nader investigators.

Whether or not the many nursing home organizations deny that these horrors are widespread, the fact that they exist at all requires national attention and action, and their existence libels those institutions and administrations dedicated to the quality of care of their patients.

Most tragic of all have been the fatal consequences of the prevailing attitude of disinterest in and neglect of the health of our elderly citizens. On January 9, 1970, 32 patients died of smoke asphyxiation at Harmar House Convalescent Home in Marietta, Ohio. The scenario of death should not have been an unexpected one—deficient alarm signals, no fire evacuation procedures, doors too narrow to admit hospital beds, no water sprinklers or fire extinguishers, flammable and smoke-producing carpet.

Similar conditions in the enforcement of sanitation standards last year made Gould Convalesarium in Baltimore, Maryland, the scene of twenty-five deaths due to salmonella poisoning. Hearings later revealed that the home did not meet state requirements for kitchen hygiene or food handling. Disaster recently struck again, this time in a Homesdale, Pennsylvania nursing home, where in the words of Arkansas Congressman David Pryor "fifteen people met unforgivable deaths in a night of horror."⁴ The fire which extinguished those lives came just a few weeks after the Pennsylvania Association of Nursing and Convalescent Homes had strongly, and successfully, opposed a regulation tightening state regulations governing fire procedures.

ADMINISTRATION AND ENFORCEMENT

An important aspect of the nursing home scandal revealed by the Nader inquiry is the rôle of the administrator in maintaining high standards of care. Educational credentials or experience in the field have been virtually nonexistent among a large percentage of nursing home administrators. For that reason, this writer sponsored an amendment to require educational standards for nursing home administrators. Yet, as the study points out, it would be wholly consistent with current regulations to have "an eighteen-year-old high school dropout running a house for the elderly, with sole responsibility for hiring and directing personnel, managing food services, coordinating patient care activities, as well as handling business and financial arrangements and community relations."⁵

Another major problem is holding owners accountable for homes they operate. Ninety percent of all nursing homes are privately owned, profit-making operations. There are strong indications that stricter regulations are

⁴ Address by Congressman David Pryor, Women's National Democratic Club, Nov. 4, 1971.

⁵ C. Townsend, *Old Age: The Last Segregation* 82 (1971).

needed to prevent abuse by owners, particularly in instances such as those found by the Nader study where entrance contracts require patients to sign over all of their possessions to the nursing home—often even including the deed to their burial plot.

Perhaps the most startling revelation of the task force study concerns drug abuse. Nursing home patients are at times "direct victims of the irresponsible administration of drugs, unchecked prescriptions, unauthorized drug experiments, and the widespread practice of administering tranquilizers to keep the patients quiet."⁶ This situation requires immediate remedial action.

Both present and future members of the legal profession should by now be aware that they bear a significant responsibility to the elderly. The composition of local licensing boards may be in open violation of State licensing regulations. In Maryland, a nine-man board was at one time comprised of four owners of commercial nursing homes, plus a salesman of ambulance service and nursing home supplies. Yet, the study notes that Maryland law forbids board members to have any financial interest in nursing homes. As Nader and his associates report, "it was only when the family threatened to sue the home for negligence and the doctor for malpractice that the home released the woman from the contract and returned her property."⁷ It can only be hoped that our lawyers take up the responsibility to bring dignity to the nation's elderly.

STUDY GROUP RECOMMENDATIONS

The study group concludes with a number of important recommendations to upgrade the quality of nursing homes and elderly health care in general. They include strict federal enforcement of nursing home standards and regulations; the publication of quality ratings for homes receiving federal money; medical review of homes to ensure adequate policies and practices; improved training of nursing home aides; higher standards in the licensing of administrators; better means of identifying nursing home owners and holding them accountable for deficient practices; stricter control over the use of experimental drugs on patients; and an active program of alternatives for elderly citizens outside the nursing home, including adequate community housing, employment opportunities, and home care programs.

The *Nader Report* has painfully reminded us that the elderly represent one of the most wasted human resources in this country. No truly great nation can afford to abandon a commitment to end the present demoralization of growing old—what one writer has described as the process of disengagement. The anguish of this national disgrace is perhaps best summed up in a recent letter to Congressman David Pryor from a young nursing home employee. She writes:

"I am sick of the smell of urine and feces and the silent eyes of old people who have no one left; forced to die in a place that has no regard for their dignity or worth as human beings. . . . What is going on today is bad enough and we can't sweep our old people under the rug and pretend they don't exist. If we have the means to keep them alive we have the means to allow them to live a meaningful old age."⁸

CONCLUSION

We have subjected a vast portion of our elderly population to an institution itself sick, feeble, and in need of care. We have consistently ignored the special needs of what is perhaps America's last minority, a status which our aged seem to escape only in the death to which we rush them. That this minority is an ever-increasing one may be seen in the trend toward earlier retirement at a time when the average life expectancy is rising. As the number of elderly citizens increases, their health care needs expand by an even greater proportion. So also does our moral responsibility to meet those needs. We must not allow one million of our fellow human beings to live out their golden years as victims of a bleak and tarnished tragedy. We must instead restore to old age the dignity envisioned by the Roman philosopher Cicero: "For herein is old

⁶ *Id.* at 121-22.

⁷ *Id.* at 93.

⁸ *Id.* at 195-96.

age honest and honorable, in defending and maintaining itself, in saving itself free from bondage and servitude . . . even until the last hours of death."

ITEM 3. REPLY LETTER FROM SENATOR EDWARD M. KENNEDY TO
WILLIAM O. GREEN, DATED NOVEMBER 19, 1976

DEAR MR. GREEN: Your description of the nursing home to which your client's husband was confined is deeply disturbing. Unfortunately, similar tragedies are occurring in nursing homes throughout this country. As Chairman of the Health Subcommittee, I am giving serious consideration to the problems of licensure of nursing homes and strict federal regulation of their operations.

I have taken the liberty of bringing your letter to the attention of my Subcommittee and to the Special Committee on Aging.

Thanks for taking the time to write.

Sincerely,

EDWARD M. KENNEDY.

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