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HUMAN RESOURCES
DIVISION

RELEASED

March 29, 1985

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RESTRICTED — Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Congressional Relations,

The Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

Subject: Legal Services Corporation Grants to
Establish Three New National Support Centers
(GAO/HRD-85-54)

In response to your October 31, 1984, request and later discussions with your office, we are reporting on the Legal Services Corporation's (LSC's) September 30, 1984, award of grants to establish three new national support centers. Specifically, we agreed to provide information on:

- LSC's grant-making procedures, such as performing a needs assessment and soliciting competitive bids, followed in establishing prior national support centers and the three new national support centers.
- The origin of the grants and the individuals involved in any activities between LSC and representatives of the grantees leading to the award of the grants.

We reviewed the LSC act and other applicable laws, LSC's regulations and policies, LSC studies and documents, and grantees' documents. We interviewed present and former LSC officials responsible for establishing national support centers as well as officials from the three new national support centers. (Our objective, scope, and methodology are detailed in enc. I.)

Some of the information contained in the report is based on oral comments, which at times were contradictory and difficult to corroborate due to individuals' poor recollection of specific dates, time frames, events, or meetings.

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In summary, we found that:

- The LSC act and regulations are silent about whether the Corporation has to establish formal grant-making procedures, except that LSC is required, at least 30 days before approving a grant to initiate legal assistance, to publicly announce its intention to award the grant, and to request comments and recommendations.
- LSC did not provide prior public notice of the three national support center grants. After the grant awards, LSC provided public notice and solicited comments on the three grants.
- In the past, LSC established national support centers based on studies that assessed national support needs, and it solicited proposals for meeting these needs from existing national support centers, legal services programs, and other organizations.
- In contrast, before the award of the three new national support center grants, LSC did not perform a needs assessment study, evaluate the legal assistance priorities identified by local legal services programs, or solicit proposals from existing national support centers or legal services programs.
- The three grants were awarded on September 30, 1984, to reduce LSC's projected year-end carryover funds, even though the LSC act does not require the Corporation to spend its appropriated funds by the end of the fiscal year.
- LSC funded the three grants from budget categories unrelated to national support centers. If funds had been transferred to the national support budget category, LSC's president said the Corporation would have been required to notify the House and Senate Appropriations Committees of a reprogramming of funds.

Enclosure I provides a detailed discussion of the results of our work.

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We did not obtain written comments on this report from LSC officials and other affected parties, nor did we discuss a draft of this report with them.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script, reading "Richard L. Fogel". The signature is written in dark ink and is positioned above the typed name and title.

Richard L. Fogel
Director

Enclosures - 4

C o n t e n t s

ENCLOSURE		<u>Page</u>
I	LEGAL SERVICES CORPORATION GRANTS TO ESTABLISH THREE NEW NATIONAL SUPPORT CENTERS	1
	Background	1
	Objective, scope, and methodology	2
	Development of the grants to new national support centers	3
	Advisory conference on policy choices	3
	Urban Legal Foundation	4
	Constitutional Law Center	6
	National Legal Center for the Medically Dependent and Disabled	8
	LSC grant and contract procedures and practices	10
	Needs assessment	11
	Solicitation of proposals	14
	Review of proposals	16
	Public notification of the national support center grants	17
	Funding of the three national support centers	21
	Three national support center grants made to reduce LSC's fund balance	21
	Grants funded from budget categories other than the national support category	22
	LSC considered reprogramming notifica- tion requirements in deciding which budget categories to use to fund the three national support center grants	23
II	AGENDA FOR LSC'S ADVISORY CONFERENCE ON POLICY CHOICES, CHICAGO, FEBRUARY 1984	25
III	FEBRUARY 6, 1984, LSC MEMORANDUM TO CHICAGO CONFERENCE PARTICIPANTS	27
IV	LIST OF ATTENDEES FOR LSC'S ADVISORY CONFERENCE ON POLICY CHOICES, CHICAGO, FEBRUARY 1984	28

ABBREVIATIONS

CLC	Constitutional Law Center
GAO	General Accounting Office
LSC	Legal Services Corporation
NLCMDD	National Legal Center for the Medically Dependent and Disabled
OFS	office of field services
ULF	Urban Legal Foundation

LEGAL SERVICES CORPORATION GRANTS TO
ESTABLISH THREE NEW NATIONAL SUPPORT CENTERS

In an October 31, 1984, letter, the Chairman, House Committee on the Judiciary, requested that we review the Legal Services Corporation's (LSC's) grant-making activities related to the award of grants to establish three new national support centers in September 1984. In later discussions with the Chairman's office, we agreed to provide information on:

- LSC's grant-making procedures, such as performing a needs assessment and soliciting competitive bids, followed in establishing prior national support centers and the three new national support centers.
- The origin of the grants and the individuals involved in any activities between LSC and representatives of the grantees leading to the award of the grants.

BACKGROUND

LSC was established by the Legal Services Corporation Act of 1974 (Public Law 93-355) as a private, nonprofit corporation to provide financial support for legal assistance programs for the poor in noncriminal proceedings. For fiscal year 1984, LSC received a \$275 million appropriation, of which about 96 percent was provided to over 300 organizations engaged in providing legal assistance. The fiscal year 1985 appropriation is \$305 million.

Among the organizations LSC funds are national support centers, which provide assistance and support to local legal services programs in particular areas of law, such as housing and mental health, or on the legal needs of specific groups of clients, such as the elderly and native Americans. The national support centers' activities are based on section 1006(a)(1)(A) and section 1006(a)(3) of the LSC act, which authorize the Corporation to provide financial assistance to programs furnishing legal assistance to eligible clients and to undertake directly, or by grant or contract, activities related to the delivery of legal assistance, including research, training, and technical assistance, and to serve as a clearinghouse for information, respectively. The assistance that national support centers provide includes representing eligible clients either directly or as co-counsel, providing training and technical assistance, and disseminating information.

Before September 30, 1984, LSC funded 17 national support centers. LSC inherited 12 of these centers in 1974, when the legal services program was transferred from the Office of Economic Opportunity, and funded 5 new centers between 1979 and 1981. In fiscal year 1984, the Corporation spent about \$6.7 million on the 17 national support centers and plans to spend about \$7.4 million on them in fiscal year 1985.

On September 30, 1984, LSC awarded grants to establish three new national support centers:

- Urban Legal Foundation (ULF).
- Constitutional Law Center (CLC).
- National Legal Center for the Medically Dependent and Disabled (NLCMDD).

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of this assignment was to obtain information on (1) LSC's grant-making procedures, specifically those concerning the establishment of new national support centers; (2) the procedures LSC followed and the individuals involved in the award of grants to the three new national support centers on September 30, 1984; and (3) the procedures LSC followed in establishing previous national support centers.

To determine LSC's grant-making procedures, we reviewed the Legal Services Corporation Act, other applicable laws, and LSC's regulations and policies and discussed LSC's policies with present and former LSC officials responsible for making grants.

To determine the procedures LSC followed in awarding grants to the three new national support centers, we:

- Reviewed LSC documents related to the grants, and other national support centers.
- Interviewed present and former LSC officials involved in soliciting, reviewing, evaluating, and approving the grants.
- Reviewed documents and interviewed officials at the office of each of the grantees.

--Interviewed 12 of the 20 participants in LSC's February 18, 1984, advisory conference on policy choices in Chicago. The 12 participants included all 7 LSC staff members who attended the conference and 5 of the 13 non-LSC participants who were judgmentally selected.

To determine the procedures LSC followed in establishing previous national support centers, we

- interviewed the former LSC official responsible for establishing the prior national support centers and
- reviewed LSC studies and documents related to identifying support needs and selecting national support centers.

Some of the information in this report is based on oral comments, which at times were contradictory and difficult to corroborate due to individuals' poor recollection of specific dates, time frames, events, or meetings.

Our review was made in accordance with generally accepted government audit standards, except that we did not obtain written comments on this report from LSC officials and other affected parties, nor did we discuss a draft of this report with them.

DEVELOPMENT OF THE GRANTS TO NEW NATIONAL SUPPORT CENTERS

Although the origins of the three national support center grants differ, the idea of establishing new national support centers originated at a February 1984 LSC conference on policy choices. Each of the formal grant proposals was submitted within 6 weeks of the end of fiscal year 1984 and awarded on September 30, 1984.

Advisory conference on policy choices

On February 18, 1984, LSC sponsored an advisory conference on policy choices in Chicago. The conference was organized by two LSC staff members, Paul Reddick and Timothy Baker, who had worked on the Corporation's evaluation of national and state support centers. (See enc. II for the meeting's agenda.)

According to a February 6, 1984, memorandum to the conference participants (see enc. III), LSC was concerned that recent legislative and judicial restrictions were limiting LSC's

authority to make grants and require LSC grant recipients to comply with the LSC act. Specifically, LSC was concerned that a January 31, 1984, court decision prevented LSC from limiting national support center activities, because LSC's 1983 and 1984 appropriations acts required LSC to maintain the funding of existing grantees until LSC had a board of directors confirmed by the Senate. At the time, LSC had not had a confirmed board since January 1982. As a result of this concern, LSC's office of field services (OFS) was evaluating alternative methods the Corporation could use to enforce the LSC act. LSC invited a number of lawyers, professors, and judges to participate in a conference to help LSC assess these alternatives. (See enc. IV for a list of the conference participants.)

Although one of the alternatives discussed at the conference was to establish new national support centers, we found no indication that specific grantees were discussed. The conference organizers said that LSC did not prepare minutes or a summary of the conference. As a result, we relied on the recollections of conference participants regarding the extent of the discussion on establishing new national support centers. These recollections varied. We interviewed 12 of the 20 people identified as having attended the conference. (Those interviewed are identified in enc. IV.) We interviewed all 7 LSC staff members who attended the conference, as well as 5 of the 13 non-LSC participants whom we selected judgmentally. One said no discussion of new support centers took place, and four could not recall such a discussion. However, seven participants said that the issue of establishing new national support centers was discussed. For example, one of the conference participants said that the topic was discussed at some length, but was not the dominant topic at the conference. Another participant said the establishment of new national support centers received considerable discussion. A third participant said that it had become a "hot idea" by the end of the day.

Information on the establishment of the three new grantees, including their purpose as well as their contacts with and assistance received from LSC staff, follows.

Urban Legal Foundation

ULF is a nonprofit, tax-exempt corporation created in 1981 and based in Oakland, California. According to its articles of incorporation, the corporation's purpose is "to receive, administer and expend funds for charitable and educational purposes in connection with providing legal representation" for corporate or individual citizens on matters of public interest. ULF was

also created to engage in nonpartisan analysis, study, research, and consultation for the benefit of the public.

According to a proposal submitted by ULF's president, Thomas L. Berkley, his interest in providing legal services to the poor has been longstanding. Between 1971 and 1972, while a consultant to the legal services program of California's Office of Economic Opportunity, Mr. Berkley prepared a report recommending that legal services programs for the poor be delivered through a judicare model,¹ using private attorneys, rather than through the traditional staff attorney model.² However, this recommendation met with staunch resistance from legal services attorneys.

According to the ULF proposal, LSC's instruction on private attorney involvement in the November 29, 1983, Federal Register suggested that this earlier resistance might be declining. The instruction required LSC-funded programs to use 12.5 percent of their basic grants for private attorney involvement. The purpose of this instruction was to give private attorneys the opportunity to become involved in the delivery of legal assistance to eligible clients. Mr. Berkley said he thought LSC might be interested in funding a program of research, publication, education, training, and evaluation to encourage the creation and administration of legal services programs based on the judicare model.

ULF's president said he contacted and met with Robert McCarthy, the then-chairman of LSC's board of directors, in San Francisco during early 1984 to discuss his interest in seeking LSC funding for his project. On February 24, 1984, ULF's president, on the recommendation of LSC's chairman, said he met with LSC's president, Donald Bogard, and senior Corporation staff to discuss his proposal. ULF's president said that Mr. Bogard was receptive to his ideas, but expressed concern about how he would respond to pressure from legal services programs that might feel threatened by ULF's proposal. According to ULF's president, Mr. Bogard encouraged him to submit a proposal. However, ULF's

¹Under the judicare delivery model, attorneys in private practice are paid on a fee-for-service basis to provide legal services to eligible clients in a specified geographic area.

²The staff attorney model has been LSC's traditional method of delivering legal services to the poor. Salaried attorneys and paralegals on the program staff provide client services.

president said he received no commitment that the Corporation would fund the proposal.

According to ULF's president, Mr. Bogard, and Gene Potack, LSC's director of field services, ULF's first proposal submitted to LSC, dated February 17, 1984, was unacceptable because its sole focus was the judicare delivery model. Mr. Potack said he told ULF's president that the proposal should be expanded to include other compensatory models of private attorney involvement.³

Over the next several months, ULF's president said he discussed revisions to his proposal with LSC staff and continued to inquire about the possibility of the proposal being funded. Mr. Bogard and Mr. Potack also visited ULF's Oakland office in early August 1984, according to ULF's president, to discuss the proposal.

ULF's president submitted a second proposal on August 21, 1984. Mr. Potack said that he revised ULF's August 21, 1984, proposal, after consulting with ULF's president, to place more emphasis on compensated models in addition to judicare and to delete criticism of the staff attorney model. The revised ULF proposal was attached to the September 30, 1984, letter from LSC's president awarding ULF a \$400,000 one-time grant beginning September 15, 1984, and ending September 14, 1985.

Constitutional Law Center

CLC is a nonprofit, tax-exempt corporation created on July 5, 1984, and based in Cumberland, Virginia. According to its articles of incorporation, the corporation's purposes include

- providing legal skills, technical assistance, and educational materials to legal services programs on matters relating to constitutional law;

³In addition to the judicare model, other compensatory models might include prepaid plans, contracts, and voucher systems. Under a prepaid plan, a set amount is paid to purchase a prescribed schedule of benefits for a group. Contracts could be with a law firm or individual attorney on a fee-for-service or flat-fee basis. The voucher model would allow individual clients or client groups to select private service providers.

- serving as a clearinghouse on constitutional law-related areas for legal services programs;
- publishing information on constitutional law-related areas; and
- providing legal assistance to those unable to pay for it in litigation pertaining to constitutional law-related matters.

CLC's executive director is Dr. James McClellan, a former constitutional law professor who from 1981 to 1983 served as chief counsel and staff director of the Subcommittee on Separation of Powers, U.S. Senate Committee on the Judiciary. Dr. McClellan is also director of the Center for Judicial Studies, a tax-exempt, public policy institution with offices in Cumberland, Virginia; Irving, Texas; and Washington, D.C. The Center was founded in 1983 to focus on the problem of judicial activism and seek to limit the powers of the federal judiciary.

Dr. McClellan said that he became generally interested in LSC's activities in the fall of 1983, when he was editing an article entitled "The Legal Services Corporation Scandal" for a Center for Judicial Studies publication called Benchmark. Although he had discussions with LSC staff, he said that he did not discuss national support centers with them at that time.

According to Dr. McClellan, his interest in obtaining LSC funds resulted from his participation in LSC's advisory conference on policy choices in February 1984. Five of the other 12 non-LSC conference participants (Robert D'Agostino, John Baker, Charles Rice, Jules Gerard, and William Harvey) are on the Center for Judicial Studies' advisory board. Three participants (Robert D'Agostino, John Baker, and Charles Rice) were on CLC's initial board of trustees; however, Jules Gerard has since replaced John Baker on CLC's board.

According to Dr. McClellan and James Streeter, the director of LSC's office of government relations, who knew each other from previous work they did for the Congress, they discussed establishing CLC in the late spring or early summer of 1984. According to both of them, Mr. Streeter told Dr. McClellan to prepare a grant proposal but cautioned that the Corporation may not have funds available for the proposal. LSC staff later gave Dr. McClellan copies of prior national support center grant proposals. In addition, according to Dr. McClellan, LSC provided information on the constitutional activities in which existing national support centers were involved, in order to assist in preparing CLC's proposal.

According to two LSC staff members, Timothy Baker, an assistant general counsel, and Joel Thimell, the assistant director of government relations, they visited Dr. McClellan, at his request, on two or three occasions during the summer of 1984, at the Center for Judicial Studies in Washington, D.C., to discuss his CLC proposal. Mr. Streeter said he also accompanied them on one occasion. At one meeting, they discussed the mechanics of applying for a grant and time frames for submitting a proposal. At another, Dr. McClellan obtained their oral comments on a draft proposal for CLC. Dr. McClellan said that he revised his proposal to address their comments. According to Mr. Thimell, he, Mr. Streeter, and Mr. Baker later reviewed the revised proposal and suggested some technical revisions.

The CLC proposal was formally submitted to LSC on August 20, 1984. On September 30, 1984, LSC's president notified Dr. McClellan that CLC would receive a \$337,000 one-time grant beginning September 15, 1984, and ending September 14, 1985.

National Legal Center for the
Medically Dependent and Disabled

NLCMDD is a non-profit organization incorporated on September 5, 1984, and based in Indianapolis, Indiana. According to its grant proposal, NLCMDD was established specifically to serve as a national support center for the legal services community to

- provide legal skills, management training, and other related support services for legal services programs;
- provide educational materials, technical assistance, and research to increase the legal services community's understanding of the legal and medical issues of the impoverished medically dependent and to equip them to protect the rights of such people;
- cooperate in providing legal assistance to those needing it but unable to pay for it; and
- serve as a clearinghouse for information related to the rights of the medically dependent and disabled.

NLCMDD's president and chief executive officer is James Bopp, Jr. According to Mr. Bopp's proposal, he has litigated more than 30 cases involving medical/legal issues. Mr. Bopp said he is also the general counsel for the National Right to Life Committee.

Mr. Bopp said that his interest in the legal issues concerning the treatment of medically dependent and disabled people dates back to his involvement in the Infant Doe case in April 1982. This case involved the denial of medical treatment for a newborn suffering from Down's Syndrome and a blocked esophagus. According to Mr. Bopp, this case popularized the issue of denial of medical treatment. As a result of this experience, Mr. Bopp said he believed there was a need for an organization to deal with this issue, and he began promoting this idea.

Sometime in July or early August 1984, Mr. Bopp learned that a friend of his, Robert Frank, had been appointed LSC's general counsel. Mr. Bopp said he and Mr. Frank had been undergraduate students together Indiana University. According to both individuals, Mr. Frank, in an early August 1984 telephone conversation, encouraged Mr. Bopp to submit a grant proposal to LSC.

According to Mr. Frank, the idea for soliciting a grant proposal from Mr. Bopp originated at an August 3, 1984, meeting in Indianapolis with William Harvey, former LSC board chairman, and Donald Bogard, LSC's president. According to Mr. Frank, Mr. Harvey raised the idea of a support center for the medically dependent and disabled, and mentioned Mr. Bopp as an expert in this area. At the mention of Mr. Bopp's name, Mr. Frank said he told Mr. Harvey and Mr. Bogard that he knew Mr. Bopp. Mr. Frank said he was told to contact Mr. Bopp, inform him of the possibility of LSC funding, and determine if Mr. Bopp was interested.

Mr. Bogard said that he could not recall any discussion of new national support centers or Mr. Bopp at the meeting. However, he said he had worked with Mr. Bopp in the Indiana Attorney General's Office, and that Mr. Bopp had assisted in his campaign for Attorney General of Indiana.

Mr. Harvey said he recalled discussing the establishment of new national support centers, but could not recall if specific national support centers were discussed. He did say, however, that if he expressed an idea, it would have been to establish a support center to address the legal needs of newborns with birth defects. He acknowledged that he knew Mr. Bopp, but does not recall mentioning his name at this meeting.

According to Mr. Bopp and Mr. Frank, they met at Washington National Airport in August 1984 to discuss Mr. Bopp's ideas for NLCMDD. Mr. Frank was accompanied by Timothy Baker, an assistant general counsel at LSC, who was knowledgeable about the

LSC grant-making process from his previous work in OFS. According to Mr. Bopp, Mr. Frank gave him copies of the LSC act, regulations, and quarterly reports prepared by some of the existing national support centers. According to Mr. Baker, after the meeting he gave Mr. Bopp copies of proposals used to justify the establishment of some existing national support centers.

Mr. Bopp later obtained Mr. Baker's oral comments on a draft of the NLCMDD proposal. Mr. Bopp said that the comments indicated that the proposal looked fine and complied with LSC regulations, but suggested some minor revisions.

Mr. Bopp formally submitted the NLCMDD proposal to LSC on September 6, 1984, 1 day after incorporating the center. On September 30, 1984, LSC's president notified Mr. Bopp that NLCMDD would receive a \$337,000 one-time grant beginning September 15, 1984, and ending September 14, 1985.

LSC GRANT AND CONTRACT PROCEDURES AND PRACTICES

Section 1006(a) of the LSC act authorizes the Corporation to enter into grants and contracts for legal assistance and for activities related to the delivery of legal assistance, such as research, training and technical assistance, and serving as an information clearinghouse. Section 1007(a)(2)(C) requires recipients, including local legal services programs, to adopt procedures for establishing and implementing priorities for providing legal assistance. In establishing these priorities, recipients must consider the relative needs of eligible clients for assistance, including needs for support services. This section of the act also requires LSC to insure that legal services programs receive appropriate training and support services, so that they can provide legal assistance to significant segments of the eligible client population. Although LSC established prior national support centers based on studies identifying national support needs, it did not perform a similar needs assessment study before awarding grants to the three new national support centers.

The LSC act and regulations are silent about whether LSC has to establish formal grant-making procedures, such as assessing needs or soliciting and evaluating proposals. Section 1007(f) of the act, however, requires that, at least 30 days before entering into a contract or approving a grant where legal assistance will be initiated, LSC publicly announce the grant or contract and request comments and recommendations. LSC did not provide prior public notice for the three new national support

center grants because LSC had not historically provided public notice before establishing previous centers.

Needs assessment

Although the LSC act and the regulations are silent about whether the Corporation has to perform a needs assessment before awarding grants or contracts, LSC established five prior national support centers between 1979 and 1981 based on studies that assessed national support needs. These studies included the views of legal services program attorneys and others on eligible clients' support needs.

According to an August 11, 1980, LSC paper on national support policies, a 1978 Corporation study of national support identified the following critical unmet national support needs: (1) family law, (2) immigration, (3) mentally handicapped, (4) veterans, (5) federal access issues, (6) physically handicapped, (7) rural, (8) prisoners and other institutionalized, (9) social security, (10) public job programs, (11) state access issues, (12) community education and client-related activity, (13) state and local tax, (14) transportation, (15) environment, including land issues and urban environmental problems, and (16) issues relating to the 1980 census. Between 1979 and 1981, LSC's board of directors allocated funds to establish national support centers for the first five needs.

Section 1007(h) of the LSC act required LSC to study whether there were unmet support needs for veterans, native Americans, migrant and seasonal farmworkers, people with limited English-speaking abilities, and people in sparsely populated areas. LSC's section 1007(h) study, portions of which were published in 1979, 1980, and 1981, also assessed the needs of the elderly and handicapped. According to the methodology for this study, the Corporation gathered information on unmet support needs from the following eight sources:

1. Review of existing literature on legal services for, or legal problems of, groups of eligible clients.
2. LSC records.
3. Questionnaires to a sample of LSC-funded field programs.
4. Questionnaires to organizations and groups concerned with the interests of segments of eligible clients.

5. Information on cases handled by a sample of LSC staff programs.
6. Interviews with staff delivering legal services to specific segments of eligible clients.
7. Demographic information from the 1970 census.
8. Interviews with knowledgeable and interested persons with a national perspective.

LSC used this information to decide in which areas funds for new national support centers were needed.

According to Gene Potack, the director of field services, before the 1984 grant awards to establish three new national support centers, LSC did not perform any needs assessment study, such as the section 1007(h) study. LSC's president, Donald Bogard, said the determination of the need for the three new national support centers was based primarily on the personal assessments of Mr. Potack and another staff member.

Section 1007(a)(2)(C) of the LSC act requires LSC to insure that local legal services programs establish priorities for legal assistance based on the relative needs of eligible clients. This section also requires LSC to provide appropriate training and support services for priority needs for legal assistance.

According to LSC regulation 1620, which implements section 1007(a)(2)(C), the purpose of establishing priorities based on the views of eligible clients is to allocate resources economically and effectively. Each recipient is required to include an appraisal of support needs in its priority-setting process. The regulation requires each LSC recipient to submit an annual report to LSC summarizing these priorities.

According to Mr. Potack, however, LSC did not consider the priorities established by local programs in deciding whether to award grants to the three new national support centers. Further, Mr. Bogard and Mr. Potack said that they were not aware of any legal services programs that had identified the needs of the disabled newborn, on which NLCMDD was to focus, as a priority for legal assistance. Legal services programs are engaged in constitutional law cases and private attorney involvement activities.

According to Mr. Bogard, the Corporation's determination of the need for three new support centers was based largely on the

assessment of Mr. Potack and another OFS staff member, Beverly Bunn.⁴ Mr. Potack said that the CLC and NLCMDD proposals were the best proposals he had seen and, in his opinion, demonstrated a need for the centers. Ms. Bunn said that her assessment, performed in early September 1984, was based on a review of the proposals and LSC files and documents regarding existing national support center activities. She said she did not contact any existing national support centers or field programs as part of her assessment. Ms. Bunn said she concluded that the CLC and NLCMDD proposals adequately documented the need for their services and would not duplicate services provided by existing national support centers. She said she also believed that CLC and NLCMDD possessed an expertise that would be useful to legal services programs and that did not exist among national support centers.

According to Ms. Bunn, she believed the ULF proposal would provide needed assistance in the private attorney involvement area and would be appropriate as a national support center. She said she based her views on the ULF proposal and her prior experience as a private attorney.

According to Mr. Potack, LSC's assessment of the proposals did not consider the findings of an LSC-funded study of support needs of legal services providers. The study, performed by the National Opinion Research Corporation and dated March 1984, concluded that legal services professionals have many support needs, but that they were obtaining needed assistance from existing LSC-funded support centers and were very satisfied with the assistance they received. The study also found that there were few unmet support needs.

Mr. Potack said he discounted the study's findings because he believed the study's survey was biased by a National Legal Aid and Defender Association June 1983 memorandum to legal services programs before the survey was performed. In his view, this memorandum warned legal services programs that the survey was intended to give LSC information to defund existing support centers and encouraged programs to provide favorable assessments of existing support centers.

⁴Ms. Bunn was the manager of the substantive research and support unit, who was responsible for monitoring national support center activities at the time LSC decided to establish the three new centers.

In a June 24, 1983, memorandum to legal services program directors and others, the National Legal Aid and Defender Association's executive director, Clinton Lyons, indicated that LSC retained the National Opinion Research Corporation to conduct a study of support centers "to determine if future funding of the centers is warranted based upon the quality of their work and the needs of field programs." The memorandum requested survey respondents, before responding to the survey, to "assess carefully whether in representing your clients you have been assisted by one or more of the following support center activities and whether the availability of such activities in the future could be useful in your ongoing work." The memorandum contains a list of areas in which support centers assist legal services programs. Finally, the memorandum asked those receiving it to "discuss it with your colleagues to assure that everyone is alert to the possibility of being called, in order that the survey accurately reflects the extent to which the field values state and national support."

Solicitation of proposals

The LSC act and the regulations are silent on whether LSC has to solicit proposals before awarding grants. Although LSC had solicited proposals from existing support centers, legal services programs, and other organizations before establishing prior national support centers, LSC did not perform a similar solicitation before awarding the three new national support center grants.

Although the LSC act and regulations are silent regarding solicitation of proposals, the former director of LSC's research institute, Alan Houseman, who was responsible for national support centers, said that the Corporation solicited proposals from various groups for national support activities. For example, he said that when an additional \$1 million became available for national support in fiscal year 1979, LSC requested existing national support centers to provide detailed analyses or applications for using additional funds. In addition, all field programs were notified of the available funds and were given the opportunity to apply. He said that organizations identified in LSC's unmet support needs studies were also notified of the availability of funds and given the opportunity to apply. As a result of these solicitations, he said that LSC received about 20 proposals from non-LSC-funded organizations, from which three new national support centers were funded.

According to Mr. Potack, the director of field services, LSC did not solicit proposals from any organizations before

awarding the three new national support center grants. However, the Corporation received unsolicited proposals for private attorney involvement projects from the National Bar Association, the Mississippi Pro Bono Project under the sponsorship of the Mississippi State Bar, and the Central Florida Attorneys Council on Legal Services for the Poor. According to Mr. Potack, these proposals focused on pro bono⁵ projects, rather than the compensated models on which the ULF proposal focused.

According to Mr. Potack, LSC did not receive any proposals for establishing national support centers similar to those submitted by CLC and NLCMDD. He said LSC had previously funded activities similar to those proposed by CLC and NLCMDD. Specifically, he said that LSC had funded an access to justice project through the National Legal Aid and Defender Association, which provided some support services on constitutional law issues, not unlike CLC's proposed activities. This project received LSC funds between 1979 and 1981. However, according to Mr. Houseman, who was responsible for this project, the access to justice project focused on such issues as attorney's fees, jurisdiction of the federal courts, and other situations that might limit access to the courts which differ from the substantive constitutional law issues, such as equal protection, due process, and first amendment rights, on which CLC proposed to focus.

According to Mr. Potack, LSC had also funded a disability law national support project through the Disability Rights Education and Defense Fund for a 9-month period ended January 31, 1982. According to the Fund's director, the support project focused on the whole range of civil rights issues affecting the disabled. While the director was not certain that the support project had been involved in any Infant Doe type cases, he believed such cases were within the project's scope of activities. He said the Fund had explored the possibility of more LSC funding in late 1982 or early 1983, but had been told that LSC was not in the business of funding new national support centers. He said that if he had known that funds were available for services to the medically dependent and disabled, he would have applied.

⁵Pro bono models use volunteer private attorneys to provide legal services to eligible clients without charging a fee.

Review of proposals

Although LSC's act and regulations are silent on whether LSC has to follow any established procedures in reviewing and evaluating proposals for grants and contracts, historically the Corporation used a review committee composed of LSC staff, representatives of legal services programs, and eligible clients to evaluate proposals for new national support centers. However, according to Mr. Potack, LSC's director of field services, LSC did not use representatives from field programs or eligible clients to evaluate the proposals for the three national support centers in September 1984. Instead, the proposals were reviewed internally by Corporation staff members.

According to an August 11, 1980, LSC paper on national support funding options for fiscal year 1981, LSC's then president, Thomas Ehrlich, and board of directors, in 1978, adopted a policy establishing national support as a "major priority" for future LSC funds. The policy provided that LSC convene a "Review Committee on National Support" to review proposals and workplans for new national support centers and recommend to LSC staff proposals that the Corporation should fund. In fiscal year 1980, the review committee on national support, consisting of 14 program representatives and clients and 6 representatives of various LSC offices, recommended that the Corporation fund certain national support centers.

According to Mr. Potack, LSC did not include either representatives of legal services programs or eligible clients in the review of proposals that led to the award of the three national support center grants on September 30, 1984. As discussed, LSC did not receive any proposals similar to CLC and NLCMDD. As a result, the review process conducted by Mr. Potack and Ms. Bunn did not involve a comparison of proposals.

Mr. Potack said, however, that LSC received several proposals for private attorney involvement projects, in addition to the ULF proposal. He recommended funding the ULF proposal because he believed ULF had a sincere interest in developing compensated delivery models. He believed the other proposals were from people who supported pro bono delivery models and would not have supported the director's effort to promote alternatives. Mr. Potack said LSC was interested in funding alternative delivery systems, such as compensated models, in order to involve more private attorneys in the delivery of legal services.

Public notification of the
national support center grants

Section 1007(f) of the LSC act requires that LSC provide at least 30 days' prior public notice of grants, contracts, or projects that will initiate legal assistance. Three opinions from LSC's office of general counsel, before the award of the three national support center grants, indicated that this section of the act applied to grants to local programs or projects engaged in legal assistance. LSC did not, however, provide prior public notice of the three new national support centers because the Corporation had not historically provided public notice when it established prior centers. After the three grant awards, LSC's president, Donald Bogard, on October 22, 1984, provided public notice and solicited comments on the grants, because he decided that the Corporation's past practices may not have been proper.

Section 1007(f) of the LSC act provides that:

"At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly, and shall notify the Governor, the State bar association of any State, and the principal local bar associations (if there be any) of any community where legal assistance will thereby be initiated, of such grant, contract, or project. Notification shall include a reasonable description of the grant, application or proposed contract or project and request comments and recommendations."

The act defines legal assistance as "the provision of any legal services consistent with the purposes and provisions of this title."

A January 14, 1976, memorandum from LSC's acting general counsel, David Tatel, concluded that this section applied to "grants, contracts or other corporate projects involving the provision of legal assistance," but not to activities relating to "research, the purchase of supplies and services for the Corporation." The memorandum also indicates that the purpose of this section was "to give the public an opportunity to comment on grants and contracts for legal assistance activities."

According to a November 30, 1983, LSC office of general counsel memorandum, "the publication requirements of Section 1007(f) are fairly straightforward." The memorandum indicates that LSC must give public notice at least 30 days before approval of a grant application or execution of a contract.

In a September 5, 1984, memorandum requested by Mr. Bogard, LSC's general counsel, Robert Frank, concluded that LSC must comply with the notice requirements of section 1007(f) of the act. The memorandum states

"The legislative history supports an interpretation that notice must be given prior to approving a grant, contract or initiating a project that provides legal assistance. This is further supported by the purpose of the notice requirement, which is to give Governors, bar associations, and other interested parties the opportunity to comment upon, and submit recommendations concerning, programs or projects that the Corporation wishes to establish in their States and communities."

The memorandum goes on to state that examples of grants, contracts, or other projects that provide legal assistance, and therefore require 30 days' prior public notice, include the establishment of national support centers that provide support to basic field programs and supply, through co-counseling or otherwise, some direct representation.

According to Mr. Bogard, his decision to award the three new national support center grants without prior public notice was based on an OFS review which disclosed that historically LSC had not published notice when it established prior centers. Although Mr. Bogard was aware that this review conflicted with the general counsel's interpretation of the applicability of the act's prior public notice requirement, he said he did not discuss the matter with Mr. Frank before the grant awards.

According to Mr. Potack, the director of field services, he did not contact former LSC officials to determine the rationale for their decision not to provide prior public notice for previously established national support centers. However, according to Alan Houseman, the former director of LSC's research institute, who was responsible for LSC's establishment of prior national support centers, at the time the prior centers were established he was unaware of the notice requirement because he was not usually involved in grant-making activities. These activities had been previously handled by OFS. Mr. Houseman said that now that he is aware of the notice requirement, he

believes it applies to national support centers, and notice should have been given before the prior centers were funded.

On October 17, 1984, LSC's general counsel, Robert Frank, submitted another legal opinion to Mr. Bogard, which indicated that the three national support center grants were subject to the notice requirements of section 1007(f) as interpreted in the general counsel's September 5, 1984, opinion. The October 17, 1984, opinion continued that the national support center grants are for the initiation of "legal assistance" within the meaning of the act and constitute the "provision of legal assistance" as broadly defined in Massachusetts Law Reform Institute v. Legal Services Corporation, 581 F. Supp. 1179 (D.D.C., 1984). The general counsel recommended that the grants be revoked and that LSC give proper notice as required by section 1007(f).

According to a December 31, 1984, letter to Congressman Barney Frank, in mid-October 1984 Mr. Bogard concluded, after reviewing the statute and some of the legislative history, that LSC's past practice may not have been an adequate guide in deciding not to provide prior public notice of the national support center grants. As a result, Mr. Bogard said he decided not to issue any funds to the grantees and to publish notice in the Federal Register. The notice was published on October 22, 1984. Mr. Bogard said he also requested an outside legal opinion, because there was a difference of opinion between senior staff members on the notification issue.

The December 4, 1984, outside legal opinion concluded that based on past LSC practice, the Corporation's award of three national support center grants without prior public notice was a reasonable interpretation of section 1007(f). The outside legal opinion, however, recommended that the Corporation provide prior public notice for all future projects initiating either direct delivery of legal services or support activities, because the LSC act is unclear whether national support centers are within the definition of "legal assistance" under section 1007(f).

According to one of the firm's attorneys who prepared the outside legal opinion, the opinion's conclusion that national support centers are not primarily engaged in providing legal assistance was based on a review of the three grant proposals in question and did not consider the extent to which other national support centers provide legal assistance. The attorney also said that the opinion's conclusion that the Corporation's decision not to provide prior public notice was reasonable was based on an LSC memorandum showing that LSC had not historically published notice of its intent to fund national support centers.

The attorney added that he did not attempt to contact former LSC officials to determine the rationale for LSC's past practices.

According to a March 13, 1984, memorandum summarizing the results of OFS' monitoring of existing national support centers, national support centers were intended to "serve as co-counsel with local attorneys in cases of strategic importance," as well as provide training and other services. Further, the memorandum indicates that since 1976, LSC has funded national support centers under its authority in section 1006(a)(1)(A) of the LSC act, the same authority LSC uses to fund basic field programs for providing direct legal assistance, rather than section 1006(a)(3), which authorizes LSC to fund activities related to the delivery of legal assistance, such as training and technical assistance.

The CLC and NLCMDD proposals indicate that they intend to provide direct legal assistance or co-counseling, among other functions. The ULF proposal indicates that it intends to assist private attorneys who deliver legal services to the poor, but does not mention providing direct legal assistance or co-counseling.

As discussed, according to the former director of LSC's research institute, Alan Houseman, who was responsible for previously established national support centers, LSC should have provided prior public notice of previously established centers. He said that any lack of prior public notice was based on his unfamiliarity with the statutory notice requirement and grant-making process, rather than a decision that the notice requirement did not apply to national support centers.

In addition to the Corporation's decision not to provide prior public notice of the three national support center grants, Mr. Bogard did not provide prior notice to the board of directors or the Congress of his intent to award the grants. According to Mr. Bogard, such notice was not required because the LSC act authorizes him to make grants. However, LSC's board of directors and the Congress were provided prior notice of the Corporation's intent to fund earlier national support centers. For example, in February and March of 1980, LSC's then president, Dan Bradley, testified before the Corporation's House and Senate Appropriations Subcommittees that LSC was requesting a \$2.5 million budget increase to, in part, fund new national support needs that legal services programs and LSC had identified. This budget request had been approved by LSC's board of directors.

FUNDING OF THE THREE
NATIONAL SUPPORT CENTERS

Although LSC is not required to spend all of its appropriated funds by the end of the fiscal year, Mr. Bogard said he awarded the three national support center grants on September 30, 1984, to reduce the Corporation's projected year-end carryover funds. He said the grants were awarded from budget categories other than the national support category because transferring funds to the national support category would have required the Corporation to obtain the board's approval and comply with congressional reprogramming requirements, which may have prevented LSC from awarding the grants before the end of fiscal year 1984.

Three national support center grants
made to reduce LSC's fund balance

Section 1010(b) of the LSC act provides that funds appropriated to LSC are available until expended. As a result, the Corporation retains those appropriated funds that are not spent by the end of the fiscal year and may use them in future years. LSC is not required to return unspent appropriated funds to the Treasury.

According to Mr. Bogard, the Corporation had projected to carry over about \$3.5 million of its fiscal year 1984 appropriation into fiscal year 1985. However, in September 1984, LSC's projection increased to about \$13 million. The larger than expected carryover funds were the result, among other things, of unspent funds in the program development and experimentation, and program maintenance and improvement budget categories.

Mr. Bogard said he was concerned that the Corporation would be criticized for mismanagement if a large amount of funds were carried over to fiscal year 1985, rather than spent on providing legal services. As a result, he said he decided to transfer unspent funds from several budget categories to the basic field category to award grants to the lowest funded legal services programs. LSC's board approved this fund transfer on September 14, 1984, and notified LSC's Appropriations Committees of this reprogramming.

In a September 10, 1984, memorandum, Mr. Potack, the director of field services, advised Mr. Bogard that surplus LSC funds could be used to fund proposals other than the proposed grants to the lowest funded legal services programs. The memorandum identified the proposals the Corporation had received, including

the three organizations that ultimately received grants to establish new national support centers. According to Mr. Bogard, he subsequently decided to fund the proposals submitted by ULF, CLC, and NLCMDD.

Grants funded from budget categories other than the national support category

According to the director of field services and LSC's budget director and comptroller, the first discussion of how to fund the three proposals for new national support centers occurred at a September 12, 1984, meeting with LSC's president. However, these officials provided different information on who decided to fund these proposals from budget categories other than the national support category.

Mr. Potack, the director of field services, said that the ULF grant was funded from program development and experimentation funds because these funds were for private attorney involvement activities similar to those described in the ULF proposal. He also indicated that LSC's budget director decided to make the CLC and NLCMDD grants from program maintenance and improvement funds because the organizations were to provide training and technical assistance.

LSC's budget director, David Gessner, and comptroller, Charles White, said, however, that before the award of these three grants, they did not know the organizations that were to receive the grants and had not seen the grant proposals. According to these officials, they first learned that the Corporation planned to make grants, other than those to existing basic field programs, at the September 12, 1984, meeting with Mr. Bogard and Mr. Potack. They said that Mr. Potack indicated that he had some other grants he wanted to make and inquired where there were surplus funds that could be used to fund the grants. According to Mr. Gessner, Mr. Potack did not indicate to whom the grants were to be made or what activities the grantees would perform. Mr. Gessner said that there were surplus funds in the program development and experimentation and program maintenance and improvement budget categories. Mr. Potack indicated that one of the grants could be made from the program development category, and the other two could be made from program maintenance funds.

Mr. Gessner and Mr. White said they were not aware that the three grants were to establish national support centers until after the grants were awarded. They said the director of field

services was responsible for deciding how to spend funds in the two budget categories used to fund the national support center grants and that the comptroller's office was responsible only for recording these expenditures. They said that had they known the grants were to establish national support centers they would have recommended that the funds be transferred to the national support budget category before funding the grants.

LSC's fiscal year 1984 budget request explains that program maintenance and improvement funds are to be used "to improve technological capacities for legal services practice." The description indicates that these improvements will be accomplished through the bulk purchase of computer software and providing technical assistance to LSC grant recipients to enhance recipient productivity. LSC's president, director of field services, budget director, and comptroller all acknowledged that this description of the activities to be performed with program maintenance and improvement funds appeared unrelated to national support centers.

LSC considered reprogramming
notification requirements in
deciding which budget categories
to use to fund the three
national support center grants

Section 509 of LSC's fiscal year 1984 appropriations act (Public Law 98-166) requires LSC, and other agencies funded under the act, to provide the House and Senate Appropriations Committees 15 days' advance notice of the reprogramming of funds between programs or activities, if the reprogramming exceeds \$250,000 or 10 percent, whichever is less. LSC's budget director, David Gessner, said that the Corporation interpreted the 10-percent criterion as any transfer of funds that exceeds 10 percent of the funds in the budget category to or from which the funds are transferred. According to a House Appropriations Committee report (98-802) on LSC's appropriation, the reprogramming requirement is intended to keep the Committee informed of significant changes in the LSC budget they approved before the changes occur.

According to LSC's president, Donald Bogard, the first knowledge the Corporation had of the reprogramming requirement was when they were questioned about it during their Senate Appropriations hearing in the spring of 1984. LSC's director of government relations, James Streeter, said that after the hearing, senior Corporation officials engaged in extensive discussions of the reprogramming requirement. He indicated that he,

as well as LSC's acting deputy general counsel, Richard Bagenstos, and budget director, David Gessner, believed that the Corporation had to comply with the requirement. However, Mr. Streeter indicated that Mr. Bogard believed that the reprogramming requirement was unconstitutional, because it represented a legislative veto of LSC decisions.

According to Mr. Potack, LSC did not have to provide a reprogramming notice to the Appropriations Committees because the three national support center grants were funded from the program development and experimentation, and program maintenance and improvement budget categories--there was no transfer of funds to the national support category. Although Mr. Gessner agreed that the manner in which the national support center grants were made avoided providing a reprogramming notice, he indicated that the decision to use these budget categories was made by Mr. Potack and that he was unaware at the time of the decision that the grants were to establish new national support centers.

LSC's president, the director of field services, and the budget director agreed that the Corporation would have been required to notify the Appropriations Committees of a reprogramming if LSC transferred funds to the national support budget category in order to award grants to the new national support centers. Mr. Bogard said that providing the reprogramming notice may have prevented the Corporation from awarding the grants before the end of fiscal year 1984. However, he could not recall whether he discussed the reprogramming issue with LSC staff regarding funding the grants.

According to Mr. Potack, \$188,000 was transferred into the program maintenance and improvement budget category in order to fund two of the national support center grants from this category. He said no reprogramming notice was necessary for this transfer because the amount transferred was just below the amount that would have required reprogramming notification. Mr. Gessner said that the funds transferred to program maintenance were less than \$1,000 under the level that would have required a reprogramming notice. He could not recall, however, how the amount to be transferred was determined, but he recalled that the decision was made to keep the transferred funds below the level requiring a reprogramming notice. He said that this decision was consistent with the Corporation's informal policy to avoid actions requiring a reprogramming notice.

AGENDA

Chicago Conference -
Preliminary Review of State and National Support Reports

Hyatt Regency O'Hare
O'Hare International Airport
9300 West Bryn Mawr Avenue
Rosemont, Illinois
(312) 696-1234

<u>Date & Time</u>	<u>Activity</u>	<u>Room</u>
2/17 - 8:30 p.m.	Dinner: (optional)	Ventannas Restaurant Rooftop of Hyatt
2/18 - 9:00 a.m.	Opening Remarks -	Pan Am AB
9:10 a.m.	Videotape -	Pan Am AB
9:25 a.m.	Panel: "Corporation's efforts to Ensure Compliance with Congressional Mandates"	Pan Am AB

<u>Discussants</u>	<u>Topics</u>
- James Streeter, Director, Office of Government Relations	LSC Legislation
- LeaAnne Bernstein, Secretary of LSC and Assistant to the President	Regulations
- Laura Castellanos, Assistant - Substantive Research & Support Unit - Office of Field Services	Grant Conditions
- James Norell - Office of Government Relations	GAO Investigation
- Thomas Opsut - Director Office of Compliance and Review	Litigation/ Enforcements

10:15 - 11:00	Discussion	
11:00 - 11:15	Coffee Break	
11:15 - 12:30	Discussion	
12:30 - 1:30	Luncheon	Room Ozark B

1:30 - 1:45	Panel: "Current Evaluation Process of Support Services"	Pan Am AB
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DiscussantsTopic

- LeaAnne Bernstein - Secretary of LSC and Assistant to the President	NORC Study
- Paul Reddick - Grants Specialists - Office of Field Services	National Support
- Tim Baker - Assistant to Director of Field Services	State Support

1:45 - 3:00	Discussion
3:00 - 3:30	End of Formal Discussions
3:30 - 6:00	Discussion (optional)

**LEGAL SERVICES CORPORATION**MEMORANDUM

DATE: February 6, 1984
TO: Chicago Conference Participants
FROM: Office of Field Services
SUBJECT: Background Materials

The Office of Field Services is currently identifying and evaluating various program and grant formula alternatives that may be available to the Corporation in light of the severe limitations imposed by language in recent judicial decisions interpreting Congressional appropriations legislation. As you may know, these interpretations have become increasingly sweeping (cf. Senior Citizens Law Center, et.al. v. LSC; TAB G of the enclosed materials). An accumulation of such decisions could destroy the Corporation's ability to rationally and conscientiously administer the Act.

An advisory conference on policy choices has been scheduled to take place in Chicago on February 18, 1984. The purpose of the conference will be to focus attention on (a) defining the effect of these restrictions on the Corporation's future programing and (b) developing new mechanisms to evaluate support programming, and (c) alternative support provision.

The enclosed materials will prove you with the necessary background to understand the Corporation's current funding situation, and the basic legal context underlying the Senior Citizens Law Center decision. Please review these materials carefully so that we can most effectively base our day-long conference on this threshold level of understanding. Each participant will be reimbursed for up to two days' preparation time in advance of the conference.

The attached agenda identifies some of the principal issues on which we would benefit from your legal expertise. If you conclude that additional areas require special focus, please telephone Tim Baker (202) 272-4080 so that they can be scheduled for discussion, as well.

LIST OF ATTENDEES FOR LSC'S
ADVISORY CONFERENCE ON POLICY CHOICES
CHICAGO, FEBRUARY 1984

LSC Attendees

- * James Streeter, Director, Office of Government Relations
- * LeaAnne Bernstein, Secretary of LSC and Assistant to the President
- * Laura Castellanos, Assistant, Substantive Research & Support Unit, Office of Field Services (OFS)
- * James Norell, Office of Government Relations
- * Thomas Opsut, Director, Office of Compliance and Review
- * Paul Reddick, Grants Specialist, OFS
- * Tim Baker, Assistant to Director of OFS (now Assistant General Counsel)

Non-LSC Attendees

- * James McClellan, Director, Center for Judicial Studies
- Robert D'Agostino, Professor of Law, Delaware Law School
- Henry Karlson, Professor of Law, Indiana University
- * John Baker, Professor of Law, Louisiana State University, and former staff member of Senate Judiciary Committee
- Boris Kozolchyk, Professor of Law, University of Arizona College of Law
- Charles E. Rice, Professor of Law, University of Notre Dame Law School
- Hal Stewart Scott, Professor of Law, Harvard University

Randy E. Barnett, Assistant Professor of Law,
Chicago-Kent College of Law

- * Robert D. Frank, Special District Judge, Fourteenth
Judicial District, Oklahoma; Adjunct Professor of
Law, University of Tulsa

Jules B. Gerard, Professor of Law, Washington
University

- * William Harvey, Professor of Law, Indiana University
- * David Yensen, staff member of Senate Labor and Human
Resources Committee

Kendall Fleaherty, LSC consultant

*Conference participants interviewed.

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