

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR 1997

HEARINGS BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTH CONGRESS SECOND SESSION

**SUBCOMMITTEE ON THE DEPARTMENTS OF COMMERCE, JUSTICE, AND
STATE, THE JUDICIARY, AND RELATED AGENCIES**

HAROLD ROGERS, Kentucky, Chairman

JIM KOLBE, Arizona	ALAN B. MOLLOHAN, West Virginia
CHARLES H. TAYLOR, North Carolina	DAVID E. SKAGGS, Colorado
RALPH REGULA, Ohio	JULIAN C. DIXON, California
MICHAEL P. FORBES, New York	

NOTE: Under Committee Rules, Mr. Livingston, as Chairman of the Full Committee, and Mr. Obey, as Ranking Minority Member of the Full Committee, are authorized to sit as Members of all Subcommittees.

**JIM KULIKOWSKI, THERESE MCNAULIFFE, JENNIFER MILLER, and KIM WOLTERSTORFF,
Subcommittee Staff**

PART 8 RELATED AGENCIES

	Page
Commission on Security and Cooperation in Europe	1
Legal Services Corporation	17
Maritime Administration and Federal Maritime Commission	93
Equal Employment Opportunity Commission	141
Securities and Exchange Commission	203
Commission for Preservation of America's Heritage Abroad	236
Commission on Immigration Reform	249
Competitiveness Policy Council	254
Federal Trade Commission	257

Printed for the use of the Committee on Appropriations

U.S. GOVERNMENT PRINTING OFFICE

COMMITTEE ON APPROPRIATIONS

BOB LIVINGSTON, Louisiana, *Chairman*

JOSEPH M. McDADE, Pennsylvania
JOHN T. MYERS, Indiana
C. W. BILL YOUNG, Florida
RALPH REGULA, Ohio
JERRY LEWIS, California
JOHN EDWARD PORTER, Illinois
HAROLD ROGERS, Kentucky
JOE SKEEN, New Mexico
FRANK R. WOLF, Virginia
TOM DeLAY, Texas
JIM KOLBE, Arizona
BARBARA F. VUCANOVICH, Nevada
JIM LIGHTFOOT, Iowa
RON PACKARD, California
SONNY CALLAHAN, Alabama
JAMES T. WALSH, New York
CHARLES H. TAYLOR, North Carolina
DAVID L. HOBSON, Ohio
ERNEST J. ISTOOK, JR., Oklahoma
HENRY BONILLA, Texas
JOE KNOLLENBERG, Michigan
DAN MILLER, Florida
JAY DICKEY, Arkansas
JACK KINGSTON, Georgia
FRANK RIGGS, California
MIKE PARKER, Mississippi
RODNEY P. FRELINGHUYSEN, New Jersey
ROGER F. WICKER, Mississippi
MICHAEL P. FORBES, New York
GEORGE R. NETHERCUTT, JR., Washington
JIM BUNN, Oregon
MARK W. NEUMANN, Wisconsin

DAVID R. OBEY, Wisconsin
SIDNEY R. YATES, Illinois
LOUIS STOKES, Ohio
TOM BEVILL, Alabama
JOHN P. MURTHA, Pennsylvania
CHARLES WILSON, Texas
NORMAN D. DICKS, Washington
MARTIN OLAV SABO, Minnesota
JULIAN C. DIXON, California
VIC FAZIO, California
W. G. (BILL) HEFNER, North Carolina
STENY H. HOYER, Maryland
RICHARD J. DURBIN, Illinois
RONALD D. COLEMAN, Texas
ALAN B. MOLLOHAN, West Virginia
JIM CHAPMAN, Texas
MARCY KAPTUR, Ohio
DAVID E. SKAGGS, Colorado
NANCY PELOSI, California
PETER J. VISCOSKY, Indiana
THOMAS M. FOGLIETTA, Pennsylvania
ESTEBAN EDWARD TORRES, California
NITA M. LOWEY, New York
RAY THORNTON, Arkansas
JOSÉ E. SERRANO, New York

JAMES W. DYER, *Clerk and Staff Director*

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR 1997

TESTIMONY OF MEMBERS OF CONGRESS AND OTHER INTERESTED INDIVIDUALS AND ORGANIZATIONS

FRIDAY, MARCH 29, 1996.

COMMISSION ON SECURITY AND COOPERATION IN EUROPE

WITNESS

HON. CHRISTOPHER H. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. TAYLOR. The Subcommittee on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies will come to order.

Our first witness is Congressman Christopher H. Smith.

Mr. SMITH. Thank you very much, Mr. Chairman. I would ask that my full statement and budget submission be a part of the record.

Mr. TAYLOR. Without objection it will be placed in the record.

OPENING STATEMENT OF REPRESENTATIVE CHRISTOPHER H. SMITH

Mr. SMITH. Thank you.

I'll summarize my statement and then go to questions. Very briefly, Mr. Chairman, the Commission on Security and Cooperation in Europe, better known as the Helsinki Commission, is a unique independent agency of the United States Government established in 1976. The Commission's mission is to monitor compliance with emphasis on human rights and humanitarian issues by the participating States of the Organization for Security and Cooperation in Europe. Each of the 54 countries which are part of the OSCE have signed the Helsinki Final Act and its subsequent agreements.

The Commission is chaired by myself, and co-chaired by Senator Alfonse D'Amato. The chairmanship rotates from the Senate to the House, with each Congress.

The Commission continues to have the responsibility, the international credibility and the expertise to make a significant difference on issues that threaten the peace, security, and stability of Europe and to promote U.S. national interest in this critical region.

The Commission is unique in composition and is made up of nine Members of the House, nine Members of the Senate, and three Members of the Executive Branch. This allows it to affect both U.S. foreign policy and congressional support for specific policies, while its expert practice on public diplomacy vigorously advances American values, ideals, and principles in an international context.

As you know, it was created during the depths of the Cold War, but the Commission has conducted aggressive public diplomacy supporting many of those behind the Iron Curtain who were fighting for human rights and against totalitarian oppression.

According to leading dissidents, many of whom now are prime ministers, members of their parliaments, and presidents and other elected officials, they have said that the work of the Helsinki Commission was absolutely critical to keeping the hope alive, keeping alive human rights and the dream of democracy for the respective countries.

Unfortunately, 20 years after the signing of the Helsinki Accords, and more than six years after the disintegration of the Soviet Bloc and the initiation of economic and political reforms throughout the region, the problems the Helsinki process and the Commission were created to address, have not been solved. There are many, many unresolved issues. As we see, Communists are getting elected in many of these countries. People are turning away from basic human rights.

We just recently had a hearing with the former head of the Russian Human Rights Commission under President Yeltsin, Sergei Kovalev. He testified that in a few months democracy could be over in the former Soviet Union, in Russia. He said that the West had better wake up, that things could be changing and the use of the gulags, which were unfortunately what we thought was a vestige of the past, but we see it is not to be, could come back with a vengeance. I, as a Member of the Helsinki Commission, have been in the gulags. Some years back, a fellow Commissioner, Frank Wolf, and I were the first parliamentarians ever to go to the gulag and meet with political prisoners and human rights activists, and worked for the release of many of those individuals who were released. We went to Perm Camp 35. The Helsinki Commission gave us that entree.

Last year, we had some ten hearings and 21 public briefings, which are similar to hearings in substance. We have had a two-day seminar. Thus far, this year, we have had two hearings and a number of great things.

The Commission is very much a hands-on process. I routinely meet with visiting parliamentarians, speakers of the various parliaments and their visiting delegations who come in and meet because they know that the Helsinki Commission is part of a process. When the Helsinki Final Act was signed in 1975, the process wasn't over then.

There were a number of follow-on documents that have also been signed. The genius behind the process has been that we constantly meet in bi-lateral and multi-lateral forays to try to resolve differences and raise issues. I have been a Commissioner now for seven of my eight terms, and the Commission is an invaluable aid, I think, to promoting human rights and democracy abroad.

We are this year making a request of \$1,090,000 for fiscal year 1997. The level is identical to the Administration's request, and is also the same level that was appropriated in fiscal years 1995 and 1996. In fact, the appropriations level is lower than the 1993 and the 1994 figures. We have come down realizing that we are in an era of budget cuts, but now more than ever.

We need this Commission. If you have seen the good work, and I would urge you to look at the kinds of products that we routinely put forward. These documents written by the experts, the professional staff that are on this Commission, are very helpful by the way. I think the staff is grossly under-paid, but they really do bring an expertise to these issues. They often go to countries when there are elections. They serve as election monitors and do a very, very good job on that.

I strongly recommend that the Subcommittee approve this funding request.

[The statement of Mr. Smith follows:]

**Testimony of
The Honorable Christopher H. Smith, Chairman
Commission on Security and Cooperation in Europe
before the
Subcommittee on Commerce, Justice, State
Committee on Appropriations
March 29, 1996**

Mr. Chairman, I appreciate very much the opportunity to come before your Subcommittee on Commerce, Justice, State and present to you the appropriations request for the Commission on Security and Cooperation in Europe of which I am the Chairman in this 104th Congress. As the Chairmanship rotates between the House and the Senate with each Congress, the Co-Chair is currently the Senator from New York, Alfonse D'Amato.

On behalf of the Commission, I am requesting level funding of \$1,090,000 for Fiscal Year 1997. This is the same level of funding the Commission was appropriated in FY95 and was approved by the House and Senate for FY96. As you know, this level is lower than the appropriations level for FY93 and FY94.

As an overview of the Commission's work in the 104th Congress, I will summarize the extent of our hearings and briefings (the detailed listing is in the written submission which each of you have), the particular focus Commission has had on two unmitigated crises in the region and a glimpse of how the Commission fits into the greater role of U.S. foreign policy.

Unique Role of the Commission

First, I want to highlight for you the extraordinary nature of the Commission. While the Commission is an independent agency of the federal government, we share many more attributes with the legislative branch than we do with the executive branch. The Commission's leadership and most of its membership comes from the House and the Senate. The Commission's methods of operation most closely resemble those of a joint committee of Congress.

Most importantly, the Commission's composition, which is bicameral and bipartisan, the Commission's two-decade duration, and the Commission's relentless emphasis on human rights throughout the Helsinki process, demonstrate clearly and strongly the leadership of the United States Congress on behalf of the American people on issues of deeply held principle. While Administrations have changed and American foreign policy has shifted, the Commission has focused the power of enduring and fundamental American values and ideals on European issues, undisputedly one of the most critical areas for U.S. international relations.

The Commission has no executive branch functions, even though three of our Commissioners are high executive branch officials. We have no legislative jurisdiction, and therefore do not trench upon the areas of responsibility of the foreign policy, national security, and international trade committees of Congress.

Mr. Chairman, I would contend that we serve as a conduit through which Congress plays a more direct, prominent, and effective role in U.S. foreign policy formulation and execution than through any other institution. The Commission's activities prove to foreign leaders and foreign peoples that the American people really do care about what happens to them and how they act toward each other. Most international dialogue is conducted between foreign ministries and is too often insulated from the values and ideals of the citizens of each participating state. The American experience is unique in that our foreign policy, from Continental Congress forward, has always been imbued with our basic values and ideals. While this has caused numerous clashes and conflicts over the duration of this nation's existence, it has also brought us our finest moments. America stands strongest when it stands up for its principles.

The Commission brings to this process of discussion and criticism the implicit weight of American public opinion, using the tools of public diplomacy and legislative action (through legislative branch Commissioners acting in their individual capacities) to impress on our foreign interlocutors the seriousness of their actions or shortcomings. We urge them to return to compliance with their Helsinki obligations.

The Commission formally reports to Congress on compliance issues and is a major source of information not just for Commissioners but for the Congress as a whole. We thus inform the American public, the Congress, and executive branch policy makers about issues that concern all of us. This is a dynamic process that enhances Congressional power, prestige, and effectiveness in substantive ways.

Summary of Hearings and Briefings

Undaunted by the demanding congressional calendar last year, the Commission held 10 hearings and 21 public briefings. Already this year, we have had 2 hearings and 6 briefings. The focus of these events focused on a range of very important crises that are looming on the horizon of U.S. foreign policy and the Organization for Security and Cooperation in Europe -- Russia's military conflict in Chechnya; the war in Bosnia and the accompanying slaughter of untold numbers; the perpetration of war crimes against innocent civilians and eventually the negotiation of the Dayton Agreement; the violation of human rights in Turkey; the progress of democracy and protection of human rights in both Georgia and Albania; the political developments in Russia; and religious liberty throughout the region.

Applicability of Lessons from OSCE to Other Regions of the World

As you know, the Appropriations Committee report on the FY96 Appropriations instructed the Commission to "prepare an analysis of the strengths and weaknesses of the structure of the OSCE and ascertain the feasibility of such a structure in other geographic regions. We were glad to have an official reason to systematically focus on this question which has been the subject of discussion for years. I understand that this was of particular interest to Committee member Jim Lightfoot, particularly with respect to the Asia/Pacific region. Interestingly enough, I had raised the same question -- about the region of Southeast Asia and China -- about 8 years ago

On November 13 - 14, 1995, the Commission convened a two-day seminar to examine whether the OSCE holds lessons for other parts of the world. Members of the Commission introduced the various segments of the seminar. Rep. Jim Lightfoot introduced the panel which examined Asia and suggested that creation of a U.S. Commission to monitor human rights issues in Asia be considered. There was a general consensus that while the OSCE model held some insights for Asia, including an enhanced role for NGOs, it would be very difficult to envision its effectiveness in the vast and varied Asia-Pacific region. Some believed that human rights linkage would not be effective in Asia where bi-lateral or sub-regional dialogue has been the most widely accepted and effective method of multilateral cooperation.

Generally, it was felt by many of the participants that the OSCE model, to varying degrees, has relevance for all regions. Some existing regional forums already address numerous issues encompassed by the OSCE, while others, which lack "human dimension" components, could collectively develop mechanisms to address such issues as civil and political rights, conflict prevention, migration and confidence-building measures. While it was generally agreed that such collective frameworks could help resolve deep-seated problems, the question remained as to whether governments using internal repression or involved in bilateral disputes would welcome outside attention. Of course, the question was similar in 1975 when the original 35 countries signed the Helsinki Final Act.

The OSCE experience has demonstrated that the effectiveness of a regional structure depends upon the political will of its individual members. How the ideals and mechanisms of the Helsinki process might be put into practice elsewhere will ultimately be determined by regional leaders, and, where representative governments hold sway, by the people.

Particular Focus on the Situation in Bosnia

In the past year, the Commission has continued to focus heavily on the situation in the Balkans, and the Bosnian conflict in particular. The violent disintegration of the former Yugoslavia has represented both the greatest humanitarian nightmare and the greatest threat to the original Helsinki principles with which the Commission has had to contend in its 20 years of existence. While the Dayton Agreement, signed in December 1995, brought the fighting aspect of the conflict to an effective end, serious tensions and threats persist even as efforts to begin the process of reconciliation and reconstruction are undertaken with the OSCE will play a major role.

A priority for the Commission is the basic documentation of atrocities and human rights violations associated with the conflict in Bosnia-Herzegovina or the related forms of repression elsewhere in the former Yugoslavia. In doing so, the Commission serves as a channel to make the Congress and the general public aware of what is really happening in this troubled corner of Europe. For example, in December 1995 the Commission held a hearing on mass graves in Bosnia and Croatia, which drew particular attention to the terrible fate of thousands of innocent human beings, especially in the UN-designated safe haven of Srebrenica in July 1995. Another hearing, earlier in the year, examined how the ethnic cleansing, including mass executions, torture and rape, was so systematic that it must be considered genocide.

Although the International Criminal Tribunal for the Former Yugoslavia is a UN organ, it originated with a proposal prepared by an OSCE mission, and subsequently introduced at the UN. Efforts to hold war criminals personally accountable for their actions are also inextricably tied to the post-war conflict prevention and resolution efforts entrusted, in part, to the OSCE. Accordingly, the Commission has played an active role in bringing public attention to the establishment of the Tribunal and the barriers it faces in achieving the goals that have been set for it.

Commission Publications

Mr. Chairman, in addition to the sizeable and thorough reports on compliance with the Helsinki principles, the Commission publishes a timely and targeted monthly report or newsletter called the *CSCE Digest*, which has been an effective means of complying with our fundamental mandate of monitoring compliance. The document has become a very professional, pertinent and primary source of communication and useful resource for our constituency.

With the electronic revolution coming of age, the Commission has joined in the effort to make all our publications available to countless researchers, potential dissidents, governments which are sensitive to reporting on their actions. As reform efforts here in Congress appropriately address the extensive costs of publishing hearings and documents, and understandable restrictions are being imposed, the electronic distribution of our "products" via the House of Representatives Gopher and, in the coming weeks, the Commission's own web site on the INTERNET, the value of our documentation will be accessible to more and likely new potential users.

Budget Scrutiny

At the direction of the Co-Chair and myself, and in keeping with the budgeting reforms throughout the House and Senate, the management of the Commission has taken aggressive action to conserve costs in the running of the Commission. The Commission continues to have the highest return for the investment.

A number of expenditures have changed significantly as fees are now applied to basic services such as stuffing and mailing service, and the added costs of managing the transcriptions for hearings and briefings. As more and more changes are made in the way Congress operates, we will have to constantly be vigilant and flexible with our budget allocations.

Conclusion

The Commission continues to have the responsibility, the international credibility, and the expertise to make a significant difference on issues that are of potential threat to the peace, security, and stability of Europe, and to promote U.S. national interests in this critical region.

1997 BUDGET REQUEST

Mr. TAYLOR. Thank you, Mr. Smith. I appreciate the comments that you have given us.

We have a couple of questions here. The budget for the 1997 request is exactly the same as it was in 1996. Can you tell us how this budget was formulated and why the figures are exactly the same?

Mr. SMITH. They are the best estimates of the requirements for fiscal year 1997. Again, we are looking at a straight line to keep the contingent of people that we have on board. When I took over the chairmanship, we downsized by two slots. I think all the committees experienced similar cuts. I chair the Subcommittee on International Operations and Human Rights, and we lost a slot there as well. The Commission has made those changes. Now, we are looking to keep the staff level as it is, frozen in place from last year. Most of the cost of our budget is salaries. Over 90 percent of the budget is attributable to salaries and benefits.

Mr. TAYLOR. Last year, the Senate Appropriations Subcommittee—then the Senate Committee on Foreign Relations initially zeroed out the CSCE and proposed report language that was later dropped, that questioned the constitutionality of the Committee.

How do you respond to those questions that the Senate raised last year?

Do you expect hostility in the Senate?

Mr. SMITH. On the last question first; we don't expect hostility. There was a full backing and debate on this issue in the Senate. When push came to shove Mr. Chairman, the validity and the worthwhile character of this Commission was made manifest. The effort to zero it out was defeated.

The issue of separation of powers was raised a number of years ago. The former chairman of the Commission asked the Congressional Research Service to look into it and to render a decision.

They came back with an analysis and the bottom line was—and this was dated November 3, 1986—"In sum, there seems to be little danger that the composition of, and the duties performed by, the CSCE would prevent either branch 'from accomplishing its constitutionally-assigned functions,' and accordingly, would not seem to 'disrupt a proper balance between the coordinate branches. . . .'"

We recently received a letter from Assistant Secretary John Shattuck who serves on the Commission, dated July 26, 1995. He states, "We have not experienced the constitutional difficulties mentioned in the Senate Committee report. Furthermore, we believe that Congress would be depriving itself of an important channel into the foreign policy decision-making process regarding the OSCE which impacts the important regions of Europe and Eurasia."

Again, having served on this Commission for seven of my eight terms in the House, this has always provided a great way of working in a collaborative way with the Administration. I have been to many of the meetings abroad in Europe, which maximize our impact in Europe. The Commission does no damage or harm to the separation of powers.

Mr. TAYLOR. Thank you, Mr. Smith. I appreciate your presentation.

Mr. SMITH. Thank you very much, Mr. Chairman.

[The following questions were responded to for the record:]

Questions for the Record
Submitted by Chairman Harold Rogers

Question: Your budget request for FY 1997 is at the level of appropriations for FY 1995 and FY 1996. Can you tell us how this budget request was formulated? And, how will that budget level affect your work?

Answer: In my judgment, level funding will allow the Commission to continue to do its work at an acceptable level of operations. I am concerned that many of our professional staff remain underpaid, considering their education and experience levels and their responsibilities. However, in view of the unresolved federal budget deficit reduction debate, I cannot ask for an increase in our budget. A reduction in our budget, however, would likely force either salary reductions or termination of employment for some of our personnel and would dramatically hinder our ability to operate. Salaries and personnel benefits comprise 91.4% of our FY97 appropriation request. We are about as lean as we can be and still meet our obligations under our authorizing statute. Commission staff is very small, so small that loss of one professional would mean that some important area of our responsibilities would be unmet. Loss of an administrative position would literally cripple us.

Question: Your budget justification indicates that spending for every category, from personnel to equipment will be exactly the same as in FY 1996. Would you know why that is?

Answer: Mr. Chairman, as you know, the Commission has been operating under continuing resolutions and we have taken careful measures to limit all spending to the barest minimum, refraining from certain expenditures which we had planned for this year. Considering most of the budget is designated for salaries and personnel benefits, the remaining less than 9% of the budget is designated for basic services such as hearing transcripts, professional contract expenses, office supplies and telephone service. These are expenses which remain fairly constant from year to year.

Question: In January of this year, GAO issued an opinion, validating a practice whereby, in addition to the appropriation from this Subcommittee, CSCE receives administrative and other support from the House of Representatives. Could you describe generally, the kinds of support CSCE receives from the House of Representatives?

Answer: The Commission receives its office space, its office furnishings, its office equipment, its utilities (except long distance telephone service), and general infrastructure support (meaning the Commission's space is maintained by the Architect of the Capitol and the Commission has access to all generally available House services) from the House on a non-reimbursable basis.

Question: In your budget justification, you state that the "Commission's organic act deems the Commission to be a 'committee of the Congress' for certain limited purposes. Is this the reason that administrative support is provided to the Commission by the House?

Answer: With the change in control of the House and the subsequent detailed review of House administrative practices, the House Office of Finance asked the General Accounting Office to review the basis for the present arrangement for support of the Commission's operations. Following a detailed review that included examining the history of the Commission, all appropriations acts and accompanying reports, and House practices, the GAO Office of General Counsel wrote, in part, as follows in an opinion letter serial number B-270745, dated January 3, 1996:

"Although the Commission's appropriation is available for its 'necessary expenses', the consistent practice of the House since the Commission's creation has been to provide substantial administrative support including office space and general office furnishings to the Commission. This practice appears to have developed in response to a statement in the House report accompanying the Commission's organic act that the 'Committee hopes that the Congress will be able to provide suitable administrative support to the Commission' H. Rep. No. 1149, 94th Cong., 2d Sess. 6 (1976). A review of the Commission's budget requests and justifications in support of its appropriations and included in the House report on each appropriation bill, shows that nearly all of the funds requested are for personnel related costs. . . . Thus, over the years, Congress has funded personnel and other operating expenses out of the Commerce, Justice, and State appropriations acts, while it has provided office space and furnishings through appropriation accounts available to support the committees of the House.

"We see no reason to disturb what has been a consistent practice of the House. Here, where the statutory direction is indefinite, a consistent unchallenged practice that gives meaning to the indefinite terms should not be disturbed absent cogent reasons. Norwegian Nitrogen Co. v. United States, 288 U.S. 294, 315 (1933). The Commission's similarities to a congressional committee supports in a certain sense the past practice. Since this situation involves what is essentially a congressional operation, and given the legislative history noted earlier, we think we can safely assume that Congress has been aware that House appropriations cover the cost of administrative support including capital equipment. This practice has at least to this point apparently proven satisfactory to all parties. We see no cogent reasons under the circumstances to disturb it."

Question: Last year, the Senate Appropriations Subcommittee at first zeroed the CSCE, citing duplication with State Department activities, and then the Senate Foreign Relations Committee report proposed language, later dropped, that questioned the constitutionality of the Commission and proposed striking the Executive Branch Commissioners. How do you respond to these issues that the Senate raised last year?

Answer: The suggestion that having Executive Branch members of the Commission in some way is a "breach of the separation of power" simply holds no water, as was

determined when that particular provision (section 602) was considered in the House-Senate Conference.

This issue was addressed 10 years ago when the question was raised with the American Law Division of the Congressional Research Service. The analysis (dated November 3, 1986) concluded, "In sum, there seems to be little danger that the composition of, and the duties performed by, the CSCE would prevent either branch "from accomplishing its constitutionally assigned functions," and accordingly would not seem to "disrupt the proper balance between the coordinate branches...."

From the Administration's point of view, let me quote from correspondence from the U.S. Department of State (signed by Commissioner John Shattuck, Assistant Secretary for Democracy, Human Rights and Labor) dated July 26, 1995. The letter was addressing this particular provision of the Senate bill. The letter states, "We have not experienced the constitutional difficulties mentioned in the Senate Committee Report. Furthermore, we believe that Congress would be depriving itself of an important channel into the foreign policy decision-making process regarding the Organization on Security and Cooperation in Europe (OSCE), which impacts the important regions of Europe and Eurasia...."

As noted in my statement, the Commission has no legislative jurisdiction, and therefore does not trench upon the areas of responsibility of the foreign policy, national security, and international trade committees of Congress.

Question: The FY1996 House Appropriations report language requested that you take a look at how the Organization on Security and Cooperation in Europe might be applicable to other regions of the world. What are the conclusions of that study?

Answer: On November 13 - 14, 1995, the Commission convened a two-day seminar to examine whether the OSCE holds lessons for other parts of the world. The seminar featured six moderated panels, comprised of OSCE and regional experts, academics, and NGO representatives who examined potential relevancy of the OSCE in Asia, Africa, the Middle East and Latin America.

Generally, it was felt by many of the participants that the OSCE model, to varying degrees, has relevance for all regions. Some existing regional forums already address numerous issues encompassed by the OSCE, while others, which lack "human dimension" components, could collectively develop mechanisms to address such issues as civil and political rights, conflict prevention, migration and confidence-building measures. While it was generally agreed that such collective frameworks could help resolve deep-seated problems, the question remained as to whether governments using internal repression or involved in bilateral disputes would welcome outside attention. The OSCE experience has demonstrated that the effectiveness of a regional structure depends upon the political will of its individual members. How the ideals and mechanisms of the Helsinki process might be put into practice elsewhere will ultimately be determined by regional leaders, and, where

representative governments hold sway, by the people.

A more detailed summary is included in the written budget submission.

Question: Finally, can you give us some examples of how the work that you do has made a difference in the troubled regions of Europe?

Answer: The Commission has been the only Congressional entity to focus in detail on the crisis in Chechnya, an issue that affects not only the region itself, but has far-reaching implications for the future of Russian democracy. In the 104th Congress, the Commission has examined the Chechen crisis in four hearings with high caliber witnesses, such as former political prisoner and ranking member of the Russian Duma, Sergei Kovalev, Dr. Elena Bonner (Sakharov Fund), a representative the Chechen-American Society, and internationally recognized specialists on the former Soviet Union to examine the Chechen crisis. The senior State Department official for the New Independent States has also testified on U.S. policy in Chechnya. In addition, the Commission has initiated correspondence on Chechnya between the Congress and President Yeltsin of Russia, President Clinton and Secretary of State Christopher. The Commission was also consulted on language contained in related legislation.

In the past year, the Commission has continued to focus heavily on the situation in the Balkans, and the Bosnian conflict in particular. The Dayton Agreement, signed in December 1995, brought the conflict to an effective end, creating a new period where reconciliation and reconstruction will be the focus and where the OSCE will play a major role.

A priority for the Commission is the basic documentation of atrocities and human rights violations associated with the conflict in Bosnia-Herzegovina or the related forms of repression elsewhere in the former Yugoslavia. In doing so, the Commission serves as a channel to make the Congress and the general public aware of what is really happening in this troubled corner of Europe. For example, in December 1995 the Commission held a hearing on mass graves in Bosnia and Croatia, which drew particular attention to the terrible fate of thousands of innocent human beings, especially in Srebrenica in July 1995. Another hearing, earlier in the year, examined how the ethnic cleansing, including mass executions, torture and rape, was so systematic that it must be considered genocide. Commission briefings documented controls on the press in Serbia and Montenegro, the military power balance in the former Yugoslavia, efforts to prosecute war criminals, problems with elections and democratization in Croatia (which Commission staff observed), and, most recently, the prospects for elections later this year in Bosnia. The latter topic is actually the focus of a series of briefings, two held so far, because of the central role the OSCE itself is playing in the preparation for the elections, and the simple fact that the elections will be the most critical post-Dayton development in Bosnia.

Questions for the Record
Submitted by Rep. Michael P. Forbes:

Question: Please explain why there is a carryover every year and the measures the commission has instated to steadily decrease the amount that is being carried over.

Answer: Personnel compensation and personnel benefits combined total \$995,760.00, or 91.4% of the Commission's FY97 budget request, the same as our FY96 level. In FY95, the Commission actually spent \$978,519.00 on personnel compensation and personnel benefits, a total of \$11,919.00 or 1.2% more than requested in those categories for FY95. However, other expenditures totaled \$102,145.00, a total of \$38,355.00 or 27.3% below the planned level. The Commission thus missed its budget target, spending \$26,436.00, or 2.4%, less than expected. That amount added to the carryover to FY96. The Commission underspent its FY95 target because of the transition in control of the Commission as a result of the November 1994 election and its impact on Commission activities.

So far in FY96, the Commission has spent less than expected. This is because operations have been conducted very conservatively under repeated continuing resolutions, and because of an as yet unchanged 95% apportionment received from the Office of Management and Budget. However, when the FY96 budget situation is finally resolved, the Commission expects to spend up to the projected level of \$1,138,260.00. The carryover from FY96 to FY97 is projected to be \$69,449.00.

Question: Please outline for me what role the Commission played in Bosnia during the war?

Answer: The Helsinki Commission has played an active role regarding Bosnia-Herzegovina during the course of the conflict there, but unlike most others, the Commission was following the situation there well before the conflict and tried to focus attention on the potential for violence. In 1990, the Commission staff observed the first multi-party elections in what was then still a Yugoslav republic. In March 1991, one year before the war, a congressional delegation organized by the Commission visited Sarajevo in addition to Belgrade and Zagreb, and expressed concern about the future of Bosnia-Herzegovina. One year later, in the aftermath of the Croatian phase of the conflict, the Commission staff observed the independence referendum in Bosnia-Herzegovina, and, in a report of its findings, called for urgent action to be taken to prevent the conflict in Bosnia from escalating. During this same period, Commission leaders had met regularly with Bosnian officials and sought to have an international presence in Bosnia-Herzegovina to deter aggression.

Once the conflict began, the Commission was a major forum in the U.S. Congress for Members, both House and Senate, to learn about what was happening and to advocate

certain policy responses. Since the war in Bosnia began, the Commission has had 16 hearings focusing on various aspects of it, from documenting the genocide and related atrocities, to the humanitarian and refugee concerns to the potential for the spreading of the conflict to various policy responses being considered by the United States. It has also held dozens of briefings, meetings with various officials and press conferences for Members, as well as organized two congressional delegation visits to Sarajevo and another three to countries neighboring Bosnia-Herzegovina. This is in addition to the numerous time spent by certain Members on legislation regarding Bosnia and the former Yugoslavia based on their active involvement on the issue with the Commission.

Because Bosnia has been at the forefront of U.S. foreign policy in the 1990s, and the U.S. Congress has a definite role to play in determining what this policy should be, the Commission's role in organizing these events, and in simply providing information to members of Congress and their staff, has been of enormous value.

Question: How involved is the Commission in prosecuting war crimes in Bosnia?

Answer: Since 1992, Commission members have been strong proponents of an international criminal tribunal that would be able to hold individuals personally accountable for the atrocities they have committed during the Yugoslav conflict -- without imposing collective guilt on an entire people or ethnic group.

Early on in the conflict, the Commission encouraged the U.S. Delegation at OSCE meetings to voice concern over on-going humanitarian law violations, as well as to seek agreement on OSCE language that would make clear that war criminals would be held personally accountable for their actions. In many respects, the OSCE -- including four of the five permanent members of the U.N. Security Council -- served as an incubator, nurturing support for a war crimes tribunal for Yugoslavia. In fact, the original proposal for the International Criminal Tribunal for the Former Yugoslavia originated with a proposal prepared by an OSCE mission in 1992 and subsequently introduced by the (then-) Swedish Chairwoman-in-Office at the United Nations. (The Tribunal was ultimately established as a U.N. organ out of a belief that only the Security Council had the legal authority to establish such a mechanism in the absence of a treaty-based system established by consent.)

Since the Tribunal's creation, Commission staff, serving as members of U.S. Delegations to OSCE meetings, have also worked to enable Chief Prosecutor Goldstone and his staff to utilize the OSCE process as a vehicle for raising specific concerns. At the 1995 OSCE human dimension review meeting, for example, the OSCE secretariat had, initially, excluded Goldstone from speaking in his official capacity until Commission staff intervened. Goldstone has used his OSCE intervention not only to bring public attention to problems the Tribunal was having with U.N. headquarters in New York, but also to announce the Tribunal's first public indictment proceeding.

In Washington, the Commission has actively sought to ensure that information about war

crimes is made available to the public and to congressional decision-makers. For example, the Commission has held numerous hearings on the crisis in the former Yugoslavia: one in late 1991; two in 1992; six in 1993; three in 1994; and five in 1995. Almost all of these hearings have included testimony addressing the nature and scope of war crimes; several have focused on legal or technical problems associated with establishing a war crimes tribunal. In 1995, the Commission held two hearings focused specifically on prosecuting war crimes: one addressing the question of whether genocide was an intentional goal in this conflict (and, if so, whether it can be proved before the Tribunal), and the second dealing with the problem of identifying and exhuming mass grave sites. The Commission also held a public briefing in 1995 on questions related to cooperation with the Tribunal, including funding and U.S. implementing legislation.

The Commission also regularly fields a substantial number of inquiries from congressional offices and the public about the Tribunal's on-going investigations and prosecutions, and has periodically issued a briefing paper on war crimes issues since 1992. The most recent briefing paper, issued in March 1996, describes the Tribunal's structure, the status of investigations, the level of cooperation by key governments with the Tribunal, and includes a chart of all indicted suspects.

Question: Does the Commission interact at all with the U.S. troops in Bosnia?

Answer: The deployment of U.S. troops in Bosnia-Herzegovina has been only part of the Commission's focus on that country as a whole, and the Commission has served as a contact point for interested Members on issues surrounding the deployment. In addition, the Commission Co-Chairs have raised concerns about the mandate of the Implementation Force (IFOR), of which the U.S. troops are a part, specifically their role in reporting on evidence of war crimes and apprehending the alleged perpetrators of these crimes. The Commission is also seeking to organize a congressional delegation to Bosnia-Herzegovina this year that would examine IFOR activities and, of course, include meetings with U.S. military leaders on the ground.

WEDNESDAY, APRIL 17, 1996.

LEGAL SERVICES CORPORATION

WITNESSES

DOUGLAS S. EAKELEY, CHAIRMAN, BOARD OF DIRECTORS

NANCY HARDIN ROGERS, VICE CHAIR, BOARD OF DIRECTORS

ALEXANDER D. FORGER, PRESIDENT

CHAIRMAN ROGERS OPENING STATEMENT

Mr. ROGERS. The Committee will come to order.

This morning we would like to welcome the Chairman of the Board of the Legal Services Corporation, Douglas Eakeley; the Vice-Chair of the Board of Directors, Nancy Hardin Rogers; and the President of the Corporation, Alexander Forger; who are appearing before the Committee today in support of the budget request and activities of the Legal Services Corporation.

The LSC is requesting a budget of \$340 million for fiscal year 1997, an increase of 22 percent over the current operating level under the Continuing Resolution.

As you well know, fiscal year 1997 will be another austere year in terms of the amount of money this Subcommittee will have available to spend on discretionary programs. We are once again challenging all the agencies to make the most of Federal resources and to find ways to do their work more efficiently. In your case, it is equally important to leverage and mobilize non-Federal or private participation in meeting the goal of providing civil legal representation to the poor.

We have asked you to address how to make the most of Federal resources in an era of budget restraint to meet individual's civil representation needs, including: actions taken by both the Corporation and the field programs to streamline and prioritize; the improvements and efficiencies we can realize through changes in the delivery system such as timekeeping and competition; State, local, and private actions that can be taken to provide civil legal representation; and alternative methods such as hotlines, alternative dispute resolution and technology, to deliver services.

At this point, we will insert in the record each of your written statements, and we ask that you proceed with your oral statements.

Mr. Eakeley, you may begin.

OPENING STATEMENTS OF THE LEGAL SERVICES CORPORATION

Mr. EAKELEY. Thank you, Mr. Chairman, members of the Sub-committee.

We appreciate the opportunity again for being able to be here with you to speak in support of the Legal Services Corporation's fiscal year 1997 budget.

As the Chairman indicated, my name is Douglas Eakeley. I chair the Legal Services Corporation. I am an attorney in private practice in Roseland, New Jersey. With me are Nancy Rogers, who is our Vice Chair, and Alex Forger, President of the Corporation. Each of us will make very brief remarks and then we will proceed with the hearing. We have submitted our written testimony, and as the Chairman has indicated, that is already a part of the record.

With respect to specific actions requested by the Chairman at this hearing, I have asked both Nancy Rogers and Alex Forger to address them in their remarks, but since this is also our hearing with respect to our request for the next fiscal year appropriation, I would just like to outline the main points of our budget request for fiscal year 1997.

As you know, Mr. Chairman, we have asked for an overall appropriation for fiscal year 1997 of \$340 million in comparison to the \$278 million at which the Corporation is currently being funded under the Continuing Resolution, and compared to a post-rescission \$400 million in fiscal year 1996. In other words, we are asking you to restore just half of what has been cut from our appropriation this year.

We know that in times of diminished resources, all Federal spending must be carefully scrutinized. Nevertheless, we believe that in light of the overwhelming need for legal services on the part of low-income Americans and the priority that access to justice should command, an appropriation of \$340 million is both necessary and appropriate.

No matter how hard we try to foster the development of other sources of funding and more efficient ways of providing services, and we are making every effort to do so, as Mr. Forger will describe in a minute, the bottom line is that more Federal dollars will enable the Corporation and its grantees to represent more clients.

We have no statistics yet about the full impact of this year's funding cuts, but we know that local programs are being forced to close offices and lay off staff and turn away people in desperate need, and we ask you to provide us with a budget that will mitigate part of the effects of the cutback in funding, while reaffirming this Nation's commitment to the principle of liberty and justice for all.

We will seek to use those Federal funds as efficiently and effectively as possible. As in the past, we are seeking an allocation for management and administration which is equal to about 3 percent of the total appropriation. The Corporation has downsized substantially in the past year by about 30 percent, and we are asking that it be funded at a level that permits 70 employees, exclusive of the Office of the Inspector General, in comparison to a staffing level of 99 at this time a year ago. That staffing level, in effect, will permit us to do the many jobs with the priorities established by this Committee, and, indeed, help us to assure that Federal funds go as far as possible in securing access to justice for poor people.

We believe, however, that it is essential that the staff not be cut below this level, because we need that staff to do a credible job im-

plementing the new competition initiative and carrying out the Corporation's oversight functions.

On the particular issue of compliance monitoring, which we know has been of special interest to the Subcommittee, the Corporation has already taken steps to strengthen the role of outside auditors in the Office of the Inspector General by requiring programs to conduct their annual audits pursuant to the more stringent requirements of OMB Circular Number A-133 and by transferring responsibility of oversight of those audits to the Office of Inspector General. Because Congress has not yet determined whether the cost of these audits should be paid by grantees themselves, as they have been in the past, or by the Office of the Inspector General, we have listed a separate line item to cover the cost of the audits and their administration and oversight, rather than including this expense in management and administration or grants to the field.

Finally, with regard to funding for the field programs, which of course represents the heart of the program, our request is a great deal simpler than it has been in past years. In 1996, consistent with the pending appropriations bills, the Corporation ceased to fund a number of categories of service providers which had been funded in the past. Our budget request for fiscal year 1997 includes only three categories of service areas: general basic field, and the basic field areas consisting of two populations with special needs, Native Americans and migrants.

Before turning to Ms. Rogers, I want to thank you, Mr. Chairman, and the members of the Subcommittee for your long-standing bipartisan support for legal services for the poor on behalf of the entire board. We understand that these are difficult times and that you are faced with difficult choices, and we want you to know that we give the highest priority to making sure that we use the taxpayers' funds as efficiently and wisely as possible and consistent with the Congressional intent.

Thank you very much for the opportunity to testify. Now let me turn to Nancy Rogers.

[The statement of the Legal Services Corporation and biographical sketches follow:]

STATEMENT OF

**DOUGLAS S. EAKELEY
CHAIRMAN, BOARD OF DIRECTORS**

**NANCY HARDIN ROGERS,
VICE CHAIR, BOARD OF DIRECTORS**

**ALEXANDER D. FORGER
PRESIDENT**

LEGAL SERVICES CORPORATION

Presented to the

**SUBCOMMITTEE ON COMMERCE, JUSTICE
STATE, THE JUDICIARY, AND RELATED AGENCIES**

of the

COMMITTEE ON APPROPRIATIONS

OF THE

UNITED STATES HOUSE OF REPRESENTATIVES

April 17, 1996

Mr. Chairman and Members of the Subcommittee, thank you very much for the opportunity to testify. The Legal Services Corporation welcomes this opportunity to make the case for its mission, its effectiveness and its efficiency, and to address any concerns that you may have about the program.

The foundation of our FY 1997 Budget Request and our testimony today is our belief that the functions performed by the Corporation are essential to the well-being of our nation and that the present Legal Services delivery system is worthy of preservation.

The principle of "Equal Justice Under Law" is fundamental to our system of government, and all Americans have a stake in securing respect for the rule of law, which cannot be elicited unless the judicial system is both just and accessible to all citizens.

The Basic Structure of the Legal Services Delivery System Should be Preserved

We recognize that the Congress is looking closely at the funding and structure of all government programs, to determine whether their functions could be performed more effectively through changes in structure or methods of delivery.

We would like to begin by pointing out that the present structure of the Legal Services Corporation already embodies many of the principles that are being used to guide the "reinvention" of government programs: local control, public-private partnership, promotion of volunteerism, accountability to the taxpayers, elimination of layers of bureaucracy and unnecessary paperwork, and an emphasis on efficiency and effectiveness:

- In our FY 1997 Budget Proposal, as in the past, fully 97 percent of the

Corporation's budget goes directly to local programs that provide legal services to the poor, with only three percent going to the Corporation's centralized oversight, management and disbursement functions.

- For the size of its appropriation, the Corporation's staff is extraordinarily small: in our Budget Proposal we seek a staff of 86, including 16 in the Office of the Inspector General, to administer and oversee the entire legal services delivery system.

- Decisions about the allocation of legal services are made not by a bureaucracy in Washington but locally, by the Boards of Directors of independent, locally incorporated Legal Services programs, the majority of whose members are appointed by local bar associations.

- Services are provided not by government lawyers but by attorneys hired in their local communities, working in independent, private, nonprofit corporations, who are paid far less than their counterparts in either the public or the private sector.

- Local programs build upon their grants from the LSC with funding from additional sources. In 1994 grantees reported having received \$255 million from state and local governments, the private bar, other private contributors and other federal agencies.

- Local Legal Services programs further leverage federal funds through *pro bono* programs that involve private attorneys in the delivery of legal services for the poor. Basic field programs are required to devote an amount equal to one-eighth of their LSC grants to private attorney involvement. More than 130,000 lawyers are registered as volunteer attorneys in organized *pro bono* programs. In recent years they have been handling approximately a quarter of a million cases per year.

Moreover, at a time when Americans are concerned about the increasing litigiousness

of our society, the Legal Services delivery system offers a model of efficient resolution of disputes and avoidance of unnecessary litigation.

Most Legal Services cases are resolved through advice, brief services, administrative proceedings, or negotiated settlements. A number of programs have found that they can resolve cases of this type very efficiently through the use of Hotlines, systems in which interviews are done over the telephone and all records are kept on computers. Eliminating the cost of the face-to-face interviews and paper records means that these services can be provided far more rapidly and cheaply.

Contrary to the general image of lawyers as unduly litigious, only eight percent of Legal Services cases are resolved through litigation, and the majority of these are family law cases that by law must be decided by a court. Instead, legal services lawyers find other, more efficient ways to solve problems for their clients. The tremendous pressure they are under because of the need for their services makes them very aware that they must use their resources wisely. Litigation involving welfare programs, which has been the subject of controversy, represents less than two-tenths of one percent of all Legal Services cases.

The vast majority of cases handled by local programs are non-controversial, individual cases arising out of the everyday problems of the poor. Although they are sometimes referred to as "routine," such cases often represent matters of crisis for individual clients and their families. The possible consequences may be as serious as the loss of a family's home or its only source of income or the break-up of the family itself. Left unresolved, such problems can cost society far more than the cost of legal services to help address them.

The Corporation Has Made Major Changes in the Past Year

Since representatives of the Corporation last appeared before this Subcommittee, LSC's Board of Directors has made a number of significant changes in the structure of the legal services delivery system, either to implement legislative changes or in response to congressional suggestions. All of the changes are consistent with the expressed will of Congress.

1. Competition

On June 25, 1995, LSC's Board of Directors adopted a resolution directing LSC management to develop a system of competition in awarding LSC grants or contracts for legal assistance in order to ensure greater accountability and promote improvements in quality and efficiency among grantees. The resolution was based on legislative proposals which were eventually included in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996, (H. R. 2076), which required LSC to award FY 1996 grants on a competitive basis. Although the Conference Report was vetoed by the President, LSC has proceeded expeditiously with the implementation of the new system. A regulation governing the process has been published at 45 C.F.R. Part 1634.

The use of a competitive grant process to award all grants represents a major change in the LSC delivery system. Under the Legal Services Corporation Act recipients have a statutory and regulatory right to refunding in the absence of specified program deficiencies. The Corporation anticipates and supports final legislation for FY 1996 that requires a competitive process for all grant awards and does not include a right to refunding.

In August 1995, the Corporation made a broadly disseminated announcement of the

availability of FY 1996 grant funds by providing notice in the Federal Register, newspapers and bar journals and notifying IOLTA programs, governors, and legal services programs directly. A Request for Proposals for the Provision of Civil Legal Services (RFP) in 363 service areas was released by LSC in October 1995 with a return date of November 1995. In response to that RFP, 294 proposal applications were received. In 41 service areas there was more than one applicant; in two service areas there was no applicant; and in the remaining 320 service areas there was just one applicant (including 19 service areas in which the current recipient did not apply).

Due to the lack of a final appropriation, in January, 1996, all current LSC recipients who had applied for FY 1996 grants were refunded for the first three months of 1996. In the 19 service areas in which there were no applications from current recipients, LSC awarded 1996 grants to eight new entities which had submitted competitive proposals for funding. As of April 1, 1996, LSC has awarded grants pursuant to the system of competition to 301 programs for service areas for which there was only one applicant. These programs are receiving checks on a month-to-month basis until an FY 96 appropriation is enacted. For the 41 service areas for which there is more than one applicant, the current recipient has been refunded for two months while LSC concludes its evaluation of the applications, including on-site capability assessments where appropriate. Final decisions for these areas will be announced in May.

LSC will begin the competitive grant process for 1997 funding later this spring.

2. Equalization and simplification of the delivery system

For the first time, LSC grants for basic field services have been made on a strict per capita basis for FY 1996, thus equalizing the funding level for all grantees, with a few exceptions specified in pending legislation.

Under past appropriations bills, LSC has been required to follow a specific funding formula in awarding grants. For historical reasons, service areas were funded at a variety of different levels in relation to their populations of individuals eligible for legal services. H.R. 2076 would have required LSC to replace this formula with equalized per capita funding. Although the provision has not yet become law, LSC has had flexibility under the FY 1996 Continuing Resolutions to fund all grantees on an equalized basis and has in fact done so.

Consistent with the pending appropriations bills, LSC has also ceased to fund a number of categories of service providers which have been funded in the past: national support, state support, law school clinics, supplemental field programs, regional training centers, computer assisted legal research, and the Clearinghouse. LSC's Budget for FY 1997 includes only three categories of service areas: general basic field areas and basic field areas consisting of two populations with special needs, Native Americans and migrants.

3. Grantee financial and compliance audits

LSC's Board of Directors has adopted a new Audit Guide developed by the Office of the Inspector General requiring all grantees to provide audited financial statements that comply with the requirements of OMB Circular No. A-133. LSC's Inspector General has developed and published a Compliance Supplement setting forth compliance requirements for use by auditors in conducting audits of FY 1995 grantees. During 1995 LSC assigned to the

Office of the Inspector General full responsibility for LSC's audit function, including for the first time oversight of grantee audits. As a result of these new requirements, outside auditors and the Office of the Inspector General are playing an increased role in monitoring for compliance with congressional restrictions on the part of grantees. This is consistent with the will of Congress as expressed in H.R. 2076.

4. Timekeeping

On June 25, 1995, the LSC Board of Directors adopted a resolution directing management to develop a regulation requiring all grantees to maintain records of time spent on each case or matter. In doing so, the Board responded to congressional concerns that stricter accounting requirements were necessary to guarantee that LSC funds and private funds are not used, directly or indirectly, to support activities prohibited by the LSC Act or regulations. A final regulation setting forth the requirements has been published at 45 C.F.R. Part 1635.

5. Downsizing

In 1993, when the current Board took office, LSC's management and administration staff totalled 125, excluding the Office of the Inspector General (OIG). LSC's FY 1995 Budget Request called for a total of 108. As a result of the rescission of FY 1995 funds, that figure was reduced to 99. In August 1995, in response to indications that its management and administration budget would be significantly reduced for FY 1996, LSC announced a Reduction-in-Force (RIF) plan to further downsize its staff, with the exception of the OIG. The RIF produced a reduction in staff from a post-rescission level of 99 to 68, a cut of approximately one-third, bringing the level to just over one half of what it had been when the

current Board took office.

	FY 1995 Post-Rescission	Current	Proposed 1997
Executive Office	15	9	9
General Counsel	8	4	5
Programmatic Staff	47	35	35
Comptroller	6	6	6
Admin. Services and Human Resources	17	9	10
Information Technology	6	5	5
TOTAL	99	68	70

LSC is currently engaged in a thorough review of its salary structure and personnel policies, which is being conducted with the participation of the federal Office of Personnel Management.

6. Drug-related evictions

On June 25, 1995, LSC's Board adopted a resolution prohibiting the use of LSC funds to represent individuals in evictions from public housing projects if they have been convicted of, or are being prosecuted for, the illegal sale or distribution of a controlled substance and if the eviction proceeding is brought by a public housing agency on the basis that the illegal drug activity of such person threatens the health or safety of other tenants residing in the public

housing project or employees of the public housing agency. A regulation imposing the restriction has been published at 45 C.F.R. Part 1633.

These modifications of the LSC delivery system have addressed many of the concerns raised by critics of the program in the past. Implementation of competition in the awarding of grants eliminates the concern that "presumptive refunding" makes it too difficult to defund grantees when warranted by the circumstances. Requiring grantees to keep time records will ensure that LSC funds are not used directly or indirectly for prohibited purposes, and will document the amount of time spent on particular categories of cases. Increasing the role of outside auditors and the Office of the Inspector General in monitoring for compliance with federal restrictions addresses the allegation that LSC has not monitored grantees with sufficient rigor.

In addition to those restrictions which have already been implemented, a number of proposed restrictions are pending in Congress. Most of these require changes in current law and thus cannot be carried out until they are enacted. LSC understands that those restrictions may become law prior to the end of FY 1996, and anticipates that they will be incorporated in the Corporation's regular FY 1997 appropriation in a manner that is consistent with their final form. LSC is committed to implementing congressional requirements fully and rapidly.

However, the Corporation is concerned that some of the newly proposed restrictions would unduly impose on the representation of clients and limit their access to the justice system. The Corporation is particularly concerned about the scope of restrictions that address participation in agency rulemaking, collection of attorneys' fees, and permitting programs to respond to requests from legislators and administrative officials. In addition, the Corporation

considers that the proposed restrictions on non-LSC funds inappropriately impinge on the rights of states and private entities to determine how their own funds are to be used, and will result in the loss of additional sources of funding for legal services.

Neither State and Local Governments Nor the Private Bar Can Replace Federally Funded Legal Services for the Poor

The Budget approved last year by the House assumes that federal funding for Legal Services for the poor will be phased out over the next two years. It is our firm belief that the consequence of such action would be to bar most low income Americans from access to the legal system.

It has been suggested that state or local governments and the private bar should be responsible for legal services for the poor or could pick up the case load of the program. However, the experience of our grantee programs indicates that there is little likelihood that the majority of states and municipalities, already hard pressed to meet current budgetary demands, will take on the additional obligation of providing legal services if federal funding is eliminated. In 1995, state and local funding to LSC-funded programs fell overall: small increases in state and local grants were offset by a decrease in IOLTA funding due to lower interest rates. Although some states and localities have begun initiatives to provide funds to local programs to help make up for reduced FY 1996 LSC grants, preliminary indications are that any increases in state and local support will offset only a small part of the cut in federal funding. Moreover, if Congress shifts financial responsibility for many social programs to the states, the competing claims for limited resources may well result in further loss of support for

legal services. In many regions of the country, especially in rural areas with a high concentration of poor people, it is likely that there would be little or no publicly funded legal services available to the poor.

Nor is it realistic to expect that *pro bono* services from private attorneys can replace federally funded legal services. *Pro bono* services are now at an all-time high, primarily because of the efforts of the organized bar, the Corporation and local programs to involve private attorneys in the delivery of legal services. It is estimated that one sixth of all Legal Services cases were handled by private attorneys in 1994. Every effort is being made at the national and local level to significantly increase both the number of attorneys participating and the level of voluntary services, as well as direct financial support from the private bar. Nevertheless, even if the present level of *pro bono* services were doubled or tripled, they would replace only a fraction of the services now being provided by Legal Services attorneys, which in the aggregate meet only a small percentage of the need of the increasing population of eligible clients.

Moreover, *pro bono* programs typically depend upon Legal Services attorneys for training and support and Legal Services funding for basic intake and referral. Elimination of the Corporation and its grantees would thus eliminate the essential structure through which most *pro bono* services are provided. *Pro bono* programs, no longer able to rely upon Legal Services for funding, training and support, and overwhelmed with ongoing cases, would find it impossible to take on new cases that in the past would have been handled by Legal Services programs. The courts would be faced with large numbers of individuals forced to proceed *pro se*. The result would be serious disruption in our judicial system, to say nothing of the

personal and financial dislocation that would occur in an abrupt termination of Corporation activities.

Replacing the funding of local legal services programs through LSC with a block grant system, as proposed in a bill reported out by the House Judiciary Committee, would be more costly and would reduce the efficiency of the system by requiring the addition of a new layer of bureaucracy at the state level. At the same time, it would eliminate the centralized system of accountability now provided by LSC. The delivery system funded through LSC already has the advantages that would be presented by a block grant system.

The Corporation's FY 1997 Budget Request

The Legal Services Corporation seeks an appropriation of \$340,000,000 for FY 1997. In FY 1996, the Corporation has been operating at a level of \$278,000,000 pursuant to a series of Continuing Resolutions.

The \$340,000,000 requested for FY 1997 will be allocated as follows:

- \$305,800,000 for general basic field services;
- \$11,300,000 for basic field services to migrants;
- \$7,900,000 for basic field services to Native Americans;
- \$5,500,000 for audits of grantee financial statements and compliance;
- \$9,500,000 to be allocated by the Board of Directors to management and

administration and the Office of the Inspector General.

The Corporation understands that in a time of diminished resources all federal spending must be carefully scrutinized. Nevertheless, we believe that in light of the

overwhelming need for legal services on the part of low-income Americans, an appropriation of \$340 million, including an adequate allocation for LSC's management and administration functions, is both necessary and appropriate. This figure represents a significant reduction below the FY 1995 post-rescission level of \$400 million.

Even in prior years when LSC funding was considerably higher than it has been in FY 1996, local legal services programs were able to meet only a small fraction of the demand for services. A survey of selected local Legal Services programs in the spring of 1993 revealed that nearly half of all people who actually applied for assistance from local programs had to be turned away due to lack of program resources. As former Representative Guy Molinari stated when he testified before the House Appropriations Subcommittee in support of an appropriation of \$525,000,000 requested for FY 1994 by the LSC Board of Directors appointed by President Bush: "We can argue about the amount of unmet need; but I don't think there is any dispute about the fact that there is a very substantial amount of people out there who are, in fact, in need of civil legal services."

During 1994, Corporation grantees provided legal services to approximately 1,900,000 clients and closed almost 1,700,000 matters. Serving these clients directly benefited nearly 5,000,000 people, most of them children living in poverty. Final statistics for 1995 are now being compiled.

Projected figures are not yet available for FY 1996, during which LSC funding has been reduced by approximately 30 percent, from \$400 million (post-rescission) in FY 1995 to an annualized level of \$278 million under a series of Continuing Resolutions. Nevertheless, it is clear that the reduction in funding has required LSC-funded programs to lay off attorneys,

close neighborhood offices, and turn away clients in desperate need of services. In addition, there are indications that pending restrictions on the use of non-LSC funds are resulting in the loss of other sources of funding, including state and local governments. For FY 1997, LSC seeks a funding level which, while still inadequate to meet the need, will increase the number of clients who can be served. An appropriation of \$340 million would begin to mitigate the consequences of the 1996 cutbacks.

The appropriation must include a management and administration capacity sufficient to permit LSC to carry out its various administrative and oversight responsibilities. LSC is fully committed to encouraging rigorous competition for grants. This will require a substantial investment of time on the part of LSC staff. In some circumstances, it may be necessary for LSC to work closely with potential new applicants to ensure they are able to compete effectively for funding. For 1997 grants, LSC proposes to implement a two-tiered review process, which is standard practice in government and the private sector. Each application will be subjected to an independent review by outside evaluators as well as an internal review by LSC staff. For the outside process to be effective in promoting competition and ensuring the improved quality and effectiveness of applicants, LSC staff will need to devote appropriate efforts to recruit, select, train and coordinate the work of the outside evaluators. Once a decision has been made to award a grant to a recipient, it will be necessary for LSC staff to negotiate the terms, conditions, and expectations for the grant with each grantee. Matters that must be addressed include making arrangements for prior recipients to close out or transfer ongoing cases, ensuring that each grantee understands and complies with all Congressional requirements and restrictions, and assuring that appropriate priority setting is undertaken by

the recipient. LSC's prior experience with the start-up of new grantees has been that substantial LSC staff involvement is required for at least six months after the grant is awarded. Finally, LSC will need to evaluate the operation of grantees for purposes of determining who is entitled to receive future grants. During the competitive process, LSC will also need to continue to meet its responsibility to investigate complaints and to evaluate and act on requests for approvals and waivers required by our regulations. During the term of any grant made pursuant to competition, LSC will take such steps as may be necessary to require corrective action, to enforce sanctions or to terminate or suspend grants. We have estimated that to perform these functions will require no less than 27 professional programmatic staff members, with an administrative support staff of at least eight, for a total of 35. Adequate funding for payment of outside evaluators and travel will also be necessary. For other executive and administrative functions, including the executive staff, the offices of the General Counsel and the Comptroller, and information and administrative services, another 35 staff positions will be necessary.

As noted above, LSC has already taken steps to strengthen the role of outside auditors and the Office of the Inspector General in monitoring grantees for compliance with federal requirements by requiring programs to conduct their annual audits pursuant to the requirements of OMB Circular No. A-133 and transferring audit oversight responsibility to the OIG. LSC is not currently conducting any on-site monitoring, pending clarification of congressional intent on this issue.

At the time that this Budget Request is being submitted, Congress has not yet determined whether the cost of the A-133 audits should be paid by grantees themselves or by

the Office of the Inspector General. H.R. 2076 would have provided the OIG with funding to pay for program audits directly, while the Senate version of H.R. 3019 assumes that programs will continue to pay the cost of their own audits as they have in the past. Consequently, we have listed a separate line item of \$5.5 million to cover the costs of the audits and their administration and oversight, rather than including this expense in management and administration or grants to the field. It is the LSC Board's intention to provide the bulk of this amount to field programs to pay for the cost of their audits, with the balance allocated to additional compliance monitoring and/or oversight of the audit process. Since we do not yet have experience with requiring all programs to conduct their audits according to these more rigorous standards or using such audits as the basis for monitoring compliance with programmatic requirements, the Board considers that some adjustment of this allocation may be necessary during the course of the fiscal year.

In conclusion, Mr. Chairman, we want to emphasize that the Corporation is doing everything possible to encourage streamlining and efficiency of the legal services delivery system, on the one hand, and mobilizing additional non-federal participation in the system, on the other. We have initiated a state planning process in every state to attempt to mitigate the effects of declining federal support for legal services. We are proud of the leadership role that the Corporation has played in the past and continues to play with regard to maximizing the impact of federal funds. Nevertheless, no matter how innovative or creative we are, the bottom line is that reductions in funding for the Legal Services Corporation will inevitably result in a reduction in the number of clients who can be served.

Mr. Chairman and Members of the Subcommittee, we thank you for your long,

tradition of bipartisan support for the Legal Services Corporation. We believe that the Corporation merits your continued support for its mission of ensuring that the poor of our country retain at least a minimal level of access to the system of justice by which we resolve disputes and vindicate individual rights.

Legal Services Corporation

**Hearing before the
Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies of the
Committee on Appropriations**

**April 17, 1996
Witnesses**

Douglas S. Eakeley, Chairman, Board of Directors. Mr. Eakeley is a partner with the New Jersey law firm of Lowenstein, Sandler, Kohl, Fisher and Boyland. From 1990 through 1991 he was the First Assistant Attorney General of New Jersey. He chaired the Board of Directors of Legal Services of New Jersey from 1982 until 1990, and has served as Counsel since 1992. He has also served as the President of the Legal Services Foundation of Essex County, as a member of the Board of Trustees of Essex-Newark Legal Services Project, and on the Boards of the Urban League of Essex County, Community Law Offices of East Harlem, and the Legal Aid Society of Manhattan.

Nancy Hardin Rogers, Vice Chair. Ms. Rogers is a law professor and associate dean at the Ohio State University College of Law. She is a nationally recognized expert in the field of alternative dispute resolution and mediation, and has published and lectured extensively on the subject. She has chaired both the Association of American Law Schools Section on Alternative Dispute Resolution and the Standing Committee on Alternative Dispute Resolution of the American Bar Association. Prior to her teaching career, Ms. Rogers was a staff attorney with the Legal Aid Society of Cleveland.

Alexander D. Forger, President. Mr. Forger was a partner at Millbank, Tweed, Hadley and McCloy in New York City from 1958 through 1994, chairing it from 1984 through 1992. For more than ten years he was Chairman of New York's Legal Aid Society. He has served as President of the New York State Bar Association and a member of the House of Delegates of the American Bar Association, and has chaired the ABA's Commission on the Legal Problems of the Elderly and the Volunteer Lawyers AIDS Project. He became the interim President of the Legal Services Corporation in January 1994 and has served as President since June of that year.

Other officials who may be called to provide information:

Martha Bergmark, Executive Vice-President
David Richardson, Comptroller

Ms. NANCY ROGERS. Thank you. Mr. Chairman, members of the Subcommittee, my name is Nancy Hardin Rogers. I am a law professor who specializes in mediation and other forms of dispute resolution, and I am the Associate Dean of the Ohio State University College of Law.

I want to speak to you this morning about two things that you raised. One is the substantial changes that we have made in the delivery system over the last year. And the second are efforts that we have made to streamline the delivery of legal services.

First, with respect to the changes, I want to mention three. We now have a system of awarding grants that is based on competition. The board asked the staff to develop that system when we met last July. The system was set out for advertising in the fall, and the decisions are nearly complete. Most have been made and a few will be made in the next few weeks. So competition has been implemented.

The second I want to mention, is that we have promulgated a regulation which will go into effect May 1st which will require timekeeping on the part of all attorneys and paralegals in LSC-funded programs and have already sent a manual, that our staff has prepared for local programs, on how to implement the timekeeping programs.

The third I want to mention, and I know this has been a special concern to you, Mr. Mollohan, is that the board has also promulgated a regulation that deals with a situation in which persons are being evicted from public housing because of drug offenses, and that regulation prohibits LSC-funded lawyers from representing such persons in those evictions.

So in those three ways we have made substantial changes in the last year. We are studying and ready to make the changes that will be required by Federal—by Congressional enactment. We will do it fully and we will do it expeditiously.

Just a few words about our efforts to streamline. I have been a Legal Services lawyer and so I know that with respect to streamlining there is a responsive chord among our lawyers. In 1993, for example, we know that nearly half of those who qualified for assistance had to be turned away by our lawyers because they didn't have the resources to serve them. So there is a pressure to be much more efficient that is built in.

In response to that, already we know that our lawyers handle two-thirds of the cases with advice or brief service, and that the vast majority do not involve litigation. In fact, more than 90 percent of the work that they do doesn't involve litigation.

But there have been two changes that we think will help streamline. Several of our programs have implemented hotlines which are a combination of phones and computerized notations by the lawyer on the phone that has permitted, particularly in those programs serving the elderly, a vast expansion in the number of cases that an attorney has been able to handle. It involves an initial expenditure for computers and the Internet, which is substantial, but the efficiency gains are great.

The second thing I want to mention is the use by Legal Services' lawyers of mediation, something that I have studied and that is close to my heart. We know that, and can document at least 75 of

our programs have had their lawyers trained recently in the greater use of mediation for cases. I can say that I donated a day last summer to train a variety of lawyers from the Ohio programs in the greater and more efficient use of mediation.

I am glad to answer questions, but I wanted to mention before I did that, that Mr. Eakeley and I would like for Mr. Forger to speak, and I thank you for the opportunity to testify.

Mr. FORGER. Good morning, Mr. Chairman, and members of the Subcommittee. I appreciate the opportunity of appearing before you, and as you may know, I have been the President for a little over 2 years, before which I was acting President for 6 months. Prior to that, I spent 40 years in a Wall Street law firm doing corporate and financial institutions, which was principally the activity of that firm.

With the extra inducement of reduced funding for the Legal Services Corporation, we use that as an opportunity to, in effect, be the catalyst to try to organize on a statewide basis all the various components of the legal services provider system. The backbone of that is the Legal Services Corporation, and has been for over 20 years. It is the branch on which all others appear to hang. Some States have already convened statewide conferences to address how best to utilize the various resources that exist in that jurisdiction and to eliminate any duplication and assure that there is close coordination.

I attended one of those recently in the State of Connecticut, and was quite impressed with the seriousness with which States are undertaking this. Generally, the Chief Justice of the court and other members of the highest court were in attendance and participating.

In Connecticut, we had the Speaker of the House and the Minority Leader; we had foundations, IOLTA, bar presidents, social agencies that were providing assistance to poor people, and the business community as well, law schools, law school deans, all in the State of Connecticut. This has been replicated in many other jurisdictions: Taking out pieces of the system, how best to achieve the desire to serve more people with fewer resources.

From the court's point of view, the court is examining in many of these jurisdictions how to make it more user-friendly; how to remove some activity from the court system into an administrative basis, and also how to provide access on a pro se basis. Courts generally would prefer litigants to be represented by counsel, but recognize that that is not the case, cannot always be, and there must be an ease of access to the court system.

The legislators are looking at ways by which laws can be simplified, particularly those that may be invoked and affect low-income people. In New York itself, Mr. Forbes, we introduced legislation to simplify the appointment of guardians and to enable people to designate standby guardians who can come in and serve at the appropriate moment rather than go through the full panoply of court litigation in advance of that.

So in addition to functioning with the courts and the legislatures, we also have looked for ways by which to provide additional necessary service to the legal community. Law school deans are looking at ways by which law schools themselves may be resourced in

particular areas or in training, and assisting the younger lawyers in the legal services programs to function.

We are looking for ways by which we can include a greater number of nonlawyers in the process, not just paralegals, but legal assistants, clients who are trained with respect to intake, and also to do community education.

Technology has been mentioned. That is critical. There will be no doubt more brief service and referral and more use of telephone advice and counsel. Many bar associations have already established a number of those, and they are working efficiently and well.

Finally, there is the notion of funding. As we know, in the State of Kentucky and many others, there is an effort to get general appropriations from State treasuries. That is not as easy as it might have been years back, because States are also facing fiscal difficulties and cutbacks. But IOLTA programs are being expanded to embrace, as in Ohio, real estate brokers and funds that they maintain, and they are also looking to the method by which the States and the banks compute the interest.

IOLTA is the principal source for outside money for these programs, and there is a concern as to the level of return that is being given in the banks. Some have voluntarily raised that interest rate. But when interest rates are low, the returns on IOLTA similarly are low.

I have attended many State conferences in which fund-raising has been brought about principally through the bar. Many States for the first time are having fund-raising efforts and generating in the millions of dollars; Oregon, for example, and Minnesota have raised money.

Lastly, there is the private bar itself which understands, through its code of professional responsibility, and many States are discussing mandatory pro bono, and others are discussing mandatory reporting. Needless to say, there is a considerable debate as to the wisdom and the effectiveness that either of those will bring. But certainly we are searching for ways to involve to an even greater extent the organized bar whose support up to this point has been very significant and without which we would have had practically one-sixth or one-seventh fewer cases than last year. But we always know we can do better and we are seeking to do that.

So on the statewide scene, that process continues and we are hopeful of being able to leverage the funds we have and the system that we have in order to generate additional resources.

Thank you, Mr. Chairman.

Mr. ROGERS. Well, thank you, Mr. Forger, and all of you this morning. We appreciate your time, your statements and your preparation.

We have a good number of Members here this morning, so I think probably we ought to limit time, so I am going to say 10 minutes apiece, until we run out of questions or time, whichever occurs first.

Mr. Forger, I want to compliment you on the last portion of your statement, especially about the efforts of States and localities to take over more and more of the responsibility for representation of the poor.

Those of us who are lawyers remember a time, I certainly do, when it was felt to be the responsibility of the individual lawyer, the local bar and the State bar to represent poor people pro bono. If we had that era back with us, we would not be sitting here today; if the legal profession was doing what I think it has an obligation to do, pro bono, and that is represent poor people. But unfortunately, we are not in that kind of a perfect world yet. Hopefully, that will one day occur. And hopefully, we can help pressure the States and localities and the profession to represent poor people as they, in my opinion, should.

In the meantime, we will do what we can on this level and at the State level.

BUDGET CONSTRAINTS

As you undoubtedly know, our budgets are shrinking. We have less money to spend than we had last year, and funding was tight last year. So we are faced with an impossible situation of trying to fund the efforts of the State Department worldwide; the Commerce Department and the demands of the domestic economy; the courts, who no one says we can cut back on, because of the workload attributed to increases in the Federal Bureau of Investigation, the DEA, the U.S. Marshals, and the U.S. Attorneys. If we increase those agencies' funding level or yours, we are increasing the workload of the courts as well, so we can't cut back on the courts.

We also have the international obligations of the country that we are bound by treaty, so we can't very easily cut back on those. We are in an impossible situation given the programs under the Subcommittee's jurisdiction. We have too little money to spend on programs that most people think are very, very vital to the country. Consequently, we are saying the same thing to every agency that we deal with. You have to make do with less. I have said that to the Chief Justice of the Supreme Court. I have said it to the Secretary of State, Secretary of Commerce, the Attorney General, and all the other agencies. And you are no exception. I hate to tell you but we are all in this same boat together. We have to pinch pennies and do the best we can. I know you don't want to hear that. I don't like to say it, but I don't have any choice.

The 1996 conference report, as you know, made very fundamental changes to LSC, hoping to get back to basics. That basic mission is providing frontline lawyers to poor people to resolve their individual problems.

MANAGEMENT CHANGES IN THE CORPORATION

I think all of us at this table acknowledge there are poor people who have legal problems, and have no other resources at this point in time except LSC, the local frontline agency. Those are the people that we wanted to fund, and in so doing, we had to ask you to make some changes in the bureaucratic management of the agency. How have Congress' actions in the 1996 bill changed the way LSC programs do business? Who would care to answer that?

Mr. EAKEYEY. Let me start and then I think perhaps defer to Ms. Rogers.

Mr. ROGERS. And let's try to keep it as brief as possible.

Mr. EAKEYEY. I will. First, we have a different delivery structure which has eliminated Federal funding for national support, for State support, for regional training centers, and has focused on de-

livering Federal funds to basic field programs in the three categories I mentioned before.

Accompanying that reorientation of Federal spending, we have also had several different initiatives that were undertaken by the board, starting as early as last June, before the appropriations restrictions actually found their way into a bill that had been passed by the other chamber that dealt with eliminating representation in certain evictions for drug dealing, that dealt with competition, that dealt with timekeeping. We put those in motion back in June.

We also later in the year advised local grantees that given the language in the appropriations bills, then having cleared both chambers, and in the Conference Committee Report, that it would be inadvisable, to say the least, for any new class action advocacy to be undertaken, for any welfare reform challenges to be undertaken, and that in a sense, for the programs themselves to make doubly sure that the congressional intent was being fulfilled in all material respects.

Finally, we are still in the process of implementing competition, and part of that effort has been delayed because of the uncertainty of the continued funding for the program as well as the restrictions that might be in place, but that has been implemented substantially.

We have a system of competition now that when and if the restriction becomes law will eliminate a presumption of refunding for grantees, and also has encouraged a number of other programs that came forward and bid competitively, and in the process has yielded substantial new suggestions for more efficient ways of proceeding.

I will just turn to Ms. Rogers, if I might, to amplify some of the programmatic elements of several of the points that I just made.

Ms. NANCY ROGERS. I think you have covered them.

Mr. EAKELEY. Then I apologize. I meant for you to do that.

Mr. FORGER. Let me then pick up on the monitoring for compliance because we know that has been a concern of this Committee as to its effectiveness and its cost, and we have gone forward and transferred over to the Inspector General the principal responsibility for monitoring the financial compliance and, indeed, under the conference bill may well have the responsibility for monitoring for compliance for all regulations as well as using independent accountants in the field.

So I think that any concerns about our being diverted by a cumbersome monitoring process should be allayed, and along with the competition I think it gives us an opportunity without the refunding rights to be more discreet and more demanding with respect to the quality of performance that we get from the field.

CLASS ACTION SUITS

Mr. ROGERS. Now, Mr. Eakeley, last year you testified that almost 300 new class action suits were initiated in 1994, and the information that we received earlier this year indicates that grantees had over 800 class action suits pending as of January 1 of 1996.

While class actions may only represent a small number of overall caseload, the fact of the matter is these suits often drag on for years, and are very costly to litigate, both in terms of staff time and resources. However, once the 1996 appropriations bill is en-

acted, LCS grantees will be prohibited from participation in class action suits.

Won't you be able to save money and staff resources from elimination of class action suits and divert those resources to the individual representation of poor people. Won't that make your money go a lot further than it appears at this point in time?

Mr. EAKELEY. I made the mistake of arguing with the Chair a couple of years ago, and I didn't mean to at the time and I don't mean to now, but in some situations, and I am not talking about the class actions that have—the seven or eight challenging State waivers where we have gotten into very controversial grounds, last year in particular, but at some times class actions are procedurally cost effective, because they deal with common problems affecting many people, and I am afraid we haven't done the cost-benefit analysis that the Chair is suggesting might yield the conclusion that indeed—it is clear that resources have been freed up from class actions to deal with other matters, but I don't think that one can draw the conclusion that therefore we are better able to serve more people with those diminished resources. But if I could defer to Ms. Rogers.

Mr. ROGERS. Well, just a second point. We are limited on time. Just a simple point. Once the new restrictions are in place, you can't bring class action suits, so you are going to have more time to devote to individual cases. Doesn't that mean that you can do more with less money?

Mr. EAKELEY. Just to take an example, it may, but it may not. And the reason it may not is because there may be 200 elderly people affected by the same bureaucratic inaction or misperception of an obligation under the law established by the Congress. If we have to deal with 200 cases individually to reach the same result that a class action could have done in one single action, I don't know how much more efficient we will have gotten or whether or not we will be able to help more people.

That is not to say—I mean we are—we have accepted the restriction on class action advocacy; we are not trying to reopen that debate, but we did try to make the point last time that in the main, class actions are procedural devices that litigants in many civil matters find to be procedurally effective, and that is why they were adopted, both by States and our Federal courts, and it is that procedural efficiency that may ultimately conserve some resources that might otherwise have to be allocated case by case.

PROGRAM PRIORITIES

Mr. ROGERS. Now, as the budgets shrink for all agencies, we are asking everybody to prioritize, to go to the basic, most important functions that they were mandated to do, and perhaps to cut back on the edges. You are no different from all the other agencies. I am not singling out the Legal Services Corporation. We are asking all the other agencies to do the same. We have to. The conference report asked you to draw up a list of priorities for the local programs to use as a guide. Has that been done yet?

Mr. EAKELEY. We have asked local programs, actually the Congress required the Corporation to require local programs to set priorities from the very first enactment of the Legal Services Appro-

priation Act. We have done a great deal more to encourage programs to police those priorities, but I will defer to Mr. Forger to say where we are in terms of—

Mr. ROGERS. I would point out that the Conference Report required you to do that once it became law.

Mr. FORGER. Sixty days after enactment.

Mr. ROGERS. Thirty days. Of course it has not been finalized yet, but we know where we are going, and this should have been done irrespective.

Mr. FORGER. And we are doing that, Mr. Rogers. It just has not been finally finalized. I mean among the issues, we need to give a concern to changes or differences in localities, whether it be rural or urban and different geographic areas. Those, for example, that are subjected to natural disasters more so than others.

But I think from my point of view, and it is ultimately for the board to decide, I would make the principal emphasis, once we do the triaging, that is to say many types of cases that we would all say were good to do, you have to take the most serious ones and that which has the greatest implications for the lives of individuals.

That aside, I think the principal one is to work in matters that are affecting families and helping families. Approximately one-third of all the cases done throughout the country are a family kind of case, and contrary to what some critics may say, I believe this organization is entirely pro-family and is helping families. And I think that what we are seeing more of is family issues because of publicity given to them: Domestic violence, spousal abuse, child abuse, support, keeping families in housing, working to keep family farms. And I think that another, I would think, major priority is to help the 40 percent of our eligible clients who are adults that are working poor, and I think it is critical that we do everything we can to support working poor so that they can continue working and earning more.

Mr. EAKELEY. But the board is on record, Mr. Chairman. We had a discussion, it wasn't even a debate about, A, the need for local programs to adhere to the priority-setting process; and B, to make sure that that priority-setting process reflected the needs of the service area. And moreover, we went beyond that and said these are the types of cases we think should be part of that priority-setting process. We have not gone to the point of implementing yet, but I think that we are ready to do so and indeed in agreement with the Congress that in lean times, you have only enough resources to address the essentials.

[CLERK'S NOTE.—Subsequent to the hearing, the LSC provided the following information for the record.]

On May 23, 1996, in response to a requirement contained in P.L. 104-134, LSC submitted for publication in the Federal Register a suggested list of priorities for Legal Services programs to consider in determining their own priorities regarding the types of matters and cases to which they will devote resources. The suggested list of priorities adopted by the LSC Board on May 20 include: support for families; preservation of the home; maintenance of economic stability; safety, stability and health; populations with special vulnerabilities; and the delivery of legal services.

Mr. ROGERS. Exactly. And that is what we agree upon has to be done.

Well, my 10 minutes have expired. Mr. Mollohan.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

Mr. Eakeley, Ms. Rogers, Mr. Forger, welcome to the hearing this morning.

You have experienced a fairly dramatic budget cut; you have absorbed that. You have also had to assimilate some restrictions in the way you operate. Would you please talk about how this has affected your representation of clients? And I am interested in, if you can do it, talking about it with some sort of objective criteria to give us a feel for what the trend lines are, both with regard to your clientele and your case mix.

Mr. FORGER. Well, I think picking up on my point, Mr. Mollohan, roughly 34 percent of our cases, I believe it is 34, are in the family arena. I think that what we will see is that those cases that don't rise to the level of critical care will be turned away. The focus has to be on preserving physical well-being.

Mr. MOLLOHAN. Well, can you be more specific? Can you talk about the kind of cases you are dealing with? The divorce cases, the domestic violence cases, can you give us some sort of objective criteria to give us a sense of how this case mix is shifting and in which direction it is shifting and how your clientele are shifting? Who are you representing now that you weren't representing a year ago? What is the trend line? What do you project? I would like to understand how the demographics of your business are going. What has been the effect of this?

Mr. FORGER. I think the family is growing, but the kinds of cases we deal with are changing. We are dealing only with those principally where violence, threats, lack of support, the parent not giving the proper support, because without those funds, the family would be homeless. And I think those that don't rise to that same critical level, it could be a no-fault divorce or a divorce that doesn't involve children, will be turned away and those will have to be handled in a different way.

I think in terms of income maintenance and benefits, if it isn't something that relates to food or it doesn't relate to immediate medical attention, it is less likely to rise to the level of requiring that immediate attention. Disasters are always there as number one.

Mr. MOLLOHAN. I understand what you are having to do is to shift to the more emergency kind of cases—

Mr. FORGER. Yes.

Mr. MOLLOHAN. What I am really looking for, and you may not be able to give it to me, do you keep statistics on the case mix?

Mr. EAKELEY. We have case closure statistics that Ms. Bergmark just gave me, but we only have them for 1994, now.

I have some anecdotal—we are a service organization, and obviously, when you cut the funds for those services, the grantees lay off lawyers. In West Virginia, we have gone from 24 to 13 lawyers this year. In North Carolina, in legal services, there has been a 25 percent reduction. The caseload per lawyer left to deal with the needs of the poor, therefore, becomes that much larger. In large part what we are confronting almost across the board within the country are reactive delivery on an emergency need basis.

We can provide you, however, with the case closure information we have and the trends, but it is not current through 1995, although we have also got some polling of programs for 1995 with

not everyone reporting. But unfortunately, there is a lag there that we will do our best to provide you with.

Mr. MOLLOHAN. Do you understand what I am trying to get at?
Mr. EAKELEY. Yes, yes.

IMPACT OF 1996 BUDGET REDUCTION

Mr. MOLLOHAN. I think it would be important for the Committee to understand what the impact of the cuts you have experienced have been on your clientele and on the case mix. The Committee is very interested in that, from every perspective as far as that is concerned. We want to know how that is changing, who you represent and what issues you are dealing with as you represent that clientele.

And you are suggesting to me here you can't give us in likeness any more than you have on that, and if that is the case, would you please submit for the record that kind of information.

Mr. FORGER. We will have 1996 projections shortly, Mr. Mollohan.

Mr. EAKELEY. Yes, we will.

[The information follows:]

In 1996, Congress reduced federal funding for legal services to low-income individuals from \$400,000,000 to \$278,000,000. When adjusted for inflation, this is the lowest amount of federal funding since 1977, the third year of LSC's existence.

Along with the 30 percent cut in 1996 funding, new restrictions were placed on LSC grantees that forbid them to help some categories of low-income individuals that they formerly represented, barred them from giving legal assistance to poor families regarding several common legal issues, and prohibited them from giving eligible clients access to certain standard legal procedures. In addition, the 1996 appropriation eliminated several specialized components of the traditional legal services delivery system, reducing the quality and extent of services offered to low-income individuals who seek legal assistance from the local grantees. These changes have significantly affected the case mix of legal services grantees.

Poor people who in 1996 are no longer receiving legal assistance from legal services grantees include certain categories of legal aliens, pre-trial detainees and prisoners involved in litigation and people being evicted from public housing because they have been charged with a drug-related crime. These restrictions apply even if the representation is paid for by some other funding source, such as a state or local government as has been the case in many jurisdictions.

No longer will low-income individuals and families be able to receive legal help with challenges to unconstitutional or otherwise illegal welfare reform provisions that adversely affect them. Because of the exclusion of alien clients, help with many immigration problems, including most claims of asylum based on well-founded fears of persecution, will also be unavailable. Similarly, legal services programs will not be able to give legal assistance in litigation regarding claims of brutality, discrimination or improper denial of medical treatment in prisons. Again, grantees cannot give this help even if some other funding source wants to pay for it.

Standard lawyer activities that poor clients of legal services programs are no longer allowed to use when seeking help with legal problems include participating in class actions, which combine the claims of many individuals, and assistance with making their views known to local, state and federal legislators or regulators about proposed or current laws or regulations that directly affect their lives.

Among the specialized components eliminated are:

- national and state support programs which helped local advocates with expert counsel, materials and training that increased the quality and efficiency of legal services for low income clients;

- a national brief bank and information clearinghouse;

- specialized regional programs making computer-assisted legal research economically available to local legal services attorneys;

- specialized centers that provided training for entry-level legal services attorneys as well as continuing legal education for more senior attorneys; and

ten private bar involvement grantees (the Supplemental Field programs) which, as a group, pioneered some of the most effective methods of recruiting and using private lawyers to serve low-income clients.

In 1995, LSC recipients offered their services at more than 1200 main, branch and outreach offices. In early 1996, however, LSC recipients indicate that they are offering services at less than 1100 locations, having already closed more than 100 offices in the face of their reduced funding.

Similarly, at the end of 1994, LSC recipients were using their total resources to employ 4,865 attorneys and 1,950 paralegals. By the end of 1995, in anticipation of the 30 percent cut in federal funding that took effect January 1, 1996, the same legal services programs had cut their staffs to less than 4,200 lawyers (a 14 percent cut) and their paralegals to less than 1,650 (a 15 percent reduction). The bulk of the reductions were made by the local legal services programs in preparation for drastically lower funding in 1996. We anticipate that there will be further substantial reductions in staff.

These reductions will result in fewer clients being served. During 1995, legal services grantees closed about 1,658,000 cases, down slightly from 1994's 1,686,000. The small drop was probably attributable to the effect of inflation on static funding and the disruption of service as the Corporation and its recipients prepared for the drastic cuts coming in 1996 by laying off staff and closing offices. Case closure estimates for FY 1996 are not yet complete, but we anticipate a substantial drop in the number of cases closed.

Mr. FORGER. Another way in which the service is changing is less attorney-client interface and more of the hotline, brief service, and referral. It is a choice you have to make, and you deal with more people out there by phones, try to understand what their problem is, solve it without the involvement of a lawyer. Few can do that, then you set a time when a lawyer can either respond to that person or refer it to another agency.

Mr. MOLLOHAN. Some of the consequences.

Mr. FORGER. It is just less personal, and if you can serve 20 people by phone, there may be a tendency to do that, rather than 3 people who would need some lawyer involvement.

Mr. MOLLOHAN. Right. Some of the consequences of this new reality you are operating under are going to be good. Some of the consequences are going to be bad. And I just want to be able to sort through that. I think to really be able to sort through it, we have to have objective criteria to measure all of our goals on.

Ms. Rogers, would you like to comment?

Ms. NANCY ROGERS. Yes. It is not an objective criteria, but since so many of you are lawyers, I just want to share an experience that I know that you can relate to, and that is, particularly with respect to families. Most research indicates that if we are trying to do something, an intervention that helps the children adjust, as well as progress, then we do it fairly early so that the controversy doesn't extend over time and become violent and involve the children in ways that are destructive to their well-being.

The necessity to do emergencies only means that we don't have the ability to intervene early at a point when it makes sense from the standpoint of preserving families, or even providing some steady means for the children to get along.

Mr. MOLLOHAN. And we will only know, and you will probably only know, whether the only cases you are able to handle are emergency cases after you begin getting this data that I am talking about. I mean, anecdotally you are suggesting that that is the trend, but it would be very nice to get the hard facts in order to be able to make judgments.

Ms. Rogers, you mentioned my interest in Legal Services representing alleged accused drug offenders in housing projects and the difficulty that housing projects which receive Federal funding are having evicting these kinds of people because they are being represented by Legal Services, at the same time the Housing Authority is trying to evict them, and pay their lawyers, the Legal Services lawyers are representing the drug offenders, and it ends up in many cases the Housing Authority has to pay for their representation, which is really very objectionable.

I am pleased to see that you have promulgated a rule here. I have quoted you as suggesting that this rule, the 45 CFR 1633 prohibits Legal Service Corporation lawyers from representing persons in regard to drug evictions. I am really wondering if that is the case, because as I read this proposed rule, it prohibits them from using Federal funding to represent offenders in drug eviction cases.

Ms. NANCY ROGERS. Yes. I shouldn't have paraphrased the rule. You have read it correctly.

Mr. MOLLOHAN. So am I to understand that Legal Services Corporation lawyers could continue to represent drug offenders in these eviction cases so long as they did not use Federal funds under this proposed rule?

Mr. EAKELEY. It is in effect.

Ms. NANCY ROGERS. No. It is in effect, and they cannot.

Mr. MOLLOHAN. Oh, okay. Well, that clarifies it. I mean straight out, Legal Services lawyers cannot represent those accused of drug offenses.

Ms. NANCY ROGERS. I believe that is right. I just want to look back at the staff and see if I get a nod. Yes.

Mr. MOLLOHAN. Thank you very much.

Let me just ask you, finally, has this rule been promulgated?

Ms. NANCY ROGERS. Yes.

Mr. MOLLOHAN. Thank you very much.

Mr. FORGER. Becomes effective May 1.

Mr. ROGERS. Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman.

Well, I am pleased that this rule, although its effect may be unclear, has been promulgated. In the 22 years of your existence and the sum of 4 or 5 years that I have sat on this Committee, and in fact heard one member of this Committee who was a former mayor complain about it and nothing was done during those years, but I commend you on finally after 22 years coming up with a rule, though it isn't clear, and perhaps, the taxpayers' money will not be used to defend drug offenders. Now, if we can remove the many other objectionable parts of the things you do, and it doesn't take 22 years to do it, we might make progress.

I wanted to go into the beginning of the statement that you made for us, the principle of equal justice under law is fundamental to our system of government and all Americans have a stake in the just application and its access to citizens.

You would imply by that statement that really, if we destroy Legal Services, there will be no access to the poor in this country. Since your inception in 1974, there has been a substantial expansion of various services to the poor in a variety of ways. The Attorney Generals' offices now have specific departments and staff that

work in areas of consumer fraud, that work in areas to protect the poor, and flimflam scams and a variety of other things that weren't there 22 years ago. Most insurance departments in my State have an ombudsman that handles complaints. Our Governor's office has an ombudsman that takes cases that really prevent, from the pressure of the office, them ever coming to court. Our congressional office handles hundreds of cases of that same sort of thing. There are a lot of services there that weren't there 22 years ago when Legal Services started.

Also, the public sometimes misunderstands. Legal Services does not provide criminal defense. That is provided by the taxpayer through public defenders, both Federal and State, or by court-appointed attorneys. There is no case—you do not handle cases, I guess the clearest way to say, where there is significant monetary damages, personal injury, things of that nature where the bar would step in, and that makes up a lot of the folks—people both poor and nonpoor, who have legal questions.

So to say that, or to imply that the poor would have no access to law or justice without Legal Services stretches it quite a bit, and I wanted to point that out.

I wanted to dwell on just the whole question a moment about access to the poor. I have talked with you before in this area, and many of the things you have done in the past, including the question of protecting, or taking cases of drug pushers in public housing is not an action to help the poor; it is the poor that are being preyed upon in the public housing. And I know your rule that you have promulgated now after these 22 years is certainly in the right direction. But Legal Services during that period was not helping the poor in public housing by defending and keeping drug pushers in public housing. They were the victims, the poor, not the beneficiaries of your action.

I think the actions you have taken in keeping illegal immigrants in the country doesn't help the poor; that actually, the poor—illegal immigrants, we are talking about illegal immigrants, people who are here illegally without criminal checks, without health checks, and usually live in poor communities, do not protect the poor from the diseases they may have; it does not protect the poor because they take jobs, and because they are illegal they take jobs at sub-standard wages which affects the poor. I don't see how that practice of the Legal Services helps the poor.

Or in the extreme case of the Florida prison system where the Legal Services took an action to thwart the Florida prison system in its efforts to stop the spread of AIDS. I didn't see that as particularly protecting the poor. It was actually the taxpayer and nonpoor alike who have to pay for the results of the spread of AIDS in the prison system.

I would also focus toward the expenditure of a lot of your funds. You know, we discussed this last time, and I am going to ask you at the end a few questions that perhaps you can answer. But the \$1.5 million paid to the American Bar Association does not help the poor. The American Bar Association is one of the largest, most wealthy organizations that lobbies and does a variety of things in this country that hardly could be classified as the poor, and yet

that is a significant amount of money that was paid in the past. I want to know in a few minutes if you are still doing that.

I noticed in your report that you had paid a communications consultant \$375 a day, that is about \$2,000 a week, and what they seem to be doing was to assist the Office of Program Services in the design of a study to support functions and services. And I am not exactly sure what that is. But if that person was poor when they came there, they left not being poor.

And then of course I noticed there was another payment in the information received that there was \$600 a day, that is \$3,000 a week, that was being paid in a similar program. The \$375, excuse me, was for a consultant working in communications functions. The \$600 was the one to assist the design of a program.

I notice that you have doubled the number of unclassified positions in management and administration. Management and administration, like most Washington bureaucracies, that rarely helps the poor, it helps management and administration, and the positions range somewhere between \$60,000 and \$108,000. Here again, if the poor people could get those jobs, you would be helping them.

INSPECTOR GENERAL REPORT

You are asking for more money, more funds, in management and administration. I think that the IG's office, in its 1994 report, which is the latest that I have seen, pointed out there were some members of the transition team for Legal Services who received benefits that were not authorized in your corporate policies and not available to all LSC employees certainly, but they were available to these people.

Among the benefits were apartments leased at the Corporation's expense, payments of private insurance, reimbursement of child care and housekeeping—now, these were for people working for Legal Services; these weren't the poor out in the community—paid parking fees.

And then I notice that the IG's office also pointed out that even during the general pay freeze, the Executive Vice President and the Director of the Office of Program Evaluation, Analysis and Review and Office of Program Services, it is hard to get all that in, received salary increases of 18 percent, 15 percent for the Office of Program Services, and 18 percent for the other long-range program.

I don't expect the agency to come in and say we are bilking the public, and mostly you would come in and say we are helping the poor, because that is the only way you are going to get 435 people in Congress to come up with the hundreds of millions of dollars that you have spent in the past, actually billions in the past, and hundreds of millions that you want now.

But you can see where I am somewhat skeptical when we talk about helping the poor when many of the programs that I have witnessed over the number of years that I have been in Congress don't, I believe, help the poor, and much of the money that is spent really is in excess of what most Federal employees are making in many cases. That is not to say that you can't find people inside Legal Services who are making lower salaries. I just see in the Legal Services corporate area some excess, certainly the IG saw

some excess, and we will go into a couple of those things in a moment.

But you see the concern we have, and I don't see—I appreciate the rule on drug pushers that has been promulgated here at the end of 22 years, but it is precious little reform when there is so many other things there.

Now, let me get specific in my remaining time. The IG's report found that LSC did not report all employee and independent contractor compensation to the Internal Revenue Service and did not comply with tax withholding requirements.

As lawyers, can you respond to that part of the Inspector General's report?

Mr. EAKELEY. Do you want us to respond to—

Mr. TAYLOR. Well, we have to do it one at a time.

Mr. EAKELEY. If I could just respond very briefly to the first half of your—

Mr. TAYLOR. No, I would like for you to respond to that question. I only have a few minutes.

Mr. ROGERS. You don't have any time left, but I am sure they want to respond.

Mr. EAKELEY. I think I can respond to the first half in 1 minute and then we can start with Mr. Forger.

Mr. FORGER. Well, I think on that tax question there was an issue as to whether that was properly reportable or not, and the nature of the function, whether it was a consultant or whether it was an employee, and that was a reasonable difference of opinion and we went ahead and filed. It was not that we purposely in a clear case determined that we would not pay whatever tax was due.

Mr. TAYLOR. Why do you think the Inspector General mentioned it in his report? Usually that is reserved for what they consider significant problems.

Mr. FORGER. Well, the Inspector General looked at every aspect of, pursuant to a review of our personnel policies and practices. One of the things he criticized that was not in the manual was somebody has a parking space. I could have had a parking space; I didn't have a car. I allowed that parking space to be used by someone else.

I didn't find that to be an egregious offense, but nonetheless it wasn't in the manual. So it went from that level of detail embracing all other aspects.

Mr. ROGERS. I will have to ask the gentleman to pursue this on a second round.

Mr. EAKELEY. If we could just respond—I don't know whether—

Mr. ROGERS. Respond briefly.

Mr. EAKELEY. Just on the first part that the Legal Services Corporation and its grantees do not serve the poor in many cases. I think the overwhelming number of cases represented, the 1,800,000 cases and the 5 million families served, I don't think there is very much debate about the large majority of those cases, the benefits and services rendered.

With respect to illegal aliens and prisoners and drug pushers, we don't aspire to represent drug pushers. We have a new regulation

that basically attempts to preserve due process for families and leave them intact, but definitely says we should not be doing that. We have had a law for a number of years that said you can't represent illegal aliens and we don't with Federal dollars.

We have a new restriction that says that local programs as part of their benefit package may not pay ABA dues, and that is or will become in effect when hopefully, we get an appropriation. We don't have Federal funds doing prisoners' rights cases, and if the restrictions go into effect—nor can programs contract with State governments, as they do now, to represent prisoners in certain cases where State governments believe it is helpful to have a Legal Services program doing it.

Now, I appreciate your patience with 22 years of development on this, Mr. Taylor, but we are trying, and the Corporation is not in these areas—Federal funds are not being used in these areas. Nor will other State or local funds be used. And we agree with you that the purpose ought to be serving the poor in the day in and day out cases that affect it most vitally.

Mr. ROGERS. Mr. Skaggs.

Mr. SKAGGS. Thank you very much, Mr. Chairman.

Before getting to questions, I just want to recognize the very, very important and difficult role that the Chairman has played in preserving Legal Services' funding at all in the climate that we have been dealing with over the last year-and-a-half. I know it has been difficult and that you are bombarded by all sides on this. I know the gentleman's personal involvement as a practicing attorney in our common home State, at least originally; for me no longer, Kentucky, and the needs there are real as they are for me in Colorado, and I just want to recognize the very, very difficult task you have had in preserving the core program under difficult circumstances.

One thing I would like to get into very quickly, if I may, before some more broad questions, has to do with the allocation even still in the fiscal year 1996 budget of the administrative funds as between management and the Inspector General.

I believe the Inspector General is present, and if I may ask you to step forward, assuming we may end up with something like \$13 million in overall management audit and funds available for your operation, what do you believe you can put to good and effective use in fulfilling your responsibilities out of that total amount of money?

Mr. QUATREVAUX. My office has requested \$1.5 million as a figure for our core operations. The remainder that would be at issue depends on how this Senate committee and the Congress comes out on the issue of contracting for audits by independent public accountants; whether my office would procure those or whether the status quo would continue, which is the grantee procuring audits with their own funds.

Mr. SKAGGS. But if you were to do it, I believe I have seen somewhere, anyway, represented that only about an additional \$5 million or so could be put to good purposes out of that \$13 million, and you would essentially draw on the additional \$2 million that has tentatively been allocated for IG purposes. Is that roughly correct?

Mr. QUATREVAUX. I am having difficulty tracking the numbers. I am not sure I understand your question.

Mr. SKAGGS. Well, is it the case that of the \$7 million that was tentatively allocated to the IG in the Omnibus Appropriations report, that you have indicated that of that \$7 million, you could use effectively \$5 million, and that the remaining \$2 million should be—would be better used in regular management administration functions.

Mr. QUATREVAUX. Yes, as it applied to the fiscal year 1996.

Mr. SKAGGS. Correct.

Mr. QUATREVAUX. It was an issue of timing. The funds could not be properly used by year end.

Mr. SKAGGS. I just wanted to clear that up before we charged ahead in 1997. Thank you very much.

RESTRICTIONS

I wanted to get to and it is interesting to me, a comparison between the philosophy that we are following in this Congress with respect to block granting programs and freeing them of restrictions so that lower amounts of money can be put to more effective use because of flexibility and what would seem, anyway, to be a contrary philosophy applied to the Corporation of both applying less money but more restrictions, and therefore, less flexibility.

In particular, what are the implications of that for your ability to leverage private or other presumably State governmental funds in carrying out the responsibility of the Corporation and its grantees?

Mr. EAKELEY. They have been adverse, frankly. We have some States that seem to be taking the lead from the Congress and diminishing the significance of Legal Services as a program.

It is difficult for fund-raising efforts to proceed as they have been in the past because with the new restrictions imposed on the uses of those funds, including areas where State governments such as my own where Governor Whitman actively encourages the Legal Services program to participate in administrative agency rule-making, if we can't do that any more, then the State has less of an interest in making a contribution to Legal Services.

We get a compartmentalization effect that makes it even more inefficient, and a fragmentation of funding efforts. So it is not—unfortunately—we would have liked to come back to this Committee today to say with a massive effort in the State planning area and pro bono recruitment, and in fund-raising that we have seen significant increases across the board. Those have not occurred.

Mr. SKAGGS. If I am hearing you correctly, then some of these restrictions could conceivably generate greater—a greater caseload, more litigation, because you have been constrained from participating in rulemaking processes where some issues could have been worked out much more efficiently than waiting for them to turn into cases later.

Mr. EAKELEY. Yes, although very little of what Legal Services grantees do is litigation-oriented in the first place. But—and while insisting on priorities—advocates for the poor who have experience in problems that are being experienced by the poor tend to have relevant experience that legislators and administrative agencies

care to draw upon, as well as courts. And we may be out of that altogether with this one particular restriction.

Mr. SKAGGS. And we would therefore have less informed rule-making and regulatory processes in dealing with everyone's presumably goodwill efforts to make decisions as best we can.

Mr. EAKELEY. Yes.

Mr. SKAGGS. I am also interested in the contentiousness that seems to attach to the class action issue. Again, my recollection, I have never filed a class action, but my recollection of the Rules of Procedure is that it is the responsibility of the court in certifying a class to make a judgment call that this is going to be a matter among other things of efficiency for the judicial system in being able to resolve a generic issue that lends itself to that, rather than case-by-case litigation. Is that correct?

Ms. NANCY ROGERS. That is certainly correct. Your recollection is correct.

One of our concerns has been although class actions have been controversial from their inception, as have several other procedures that lawyers use, that Legal Services lawyers be able to use the same procedures that are available to lawyers who accept a fee, or who volunteer pro bono, but not through our programs.

While a number of laws are controversial and our lawyers are acting—arguing on behalf of those laws—while a number of procedures are controversial, we would like, to the extent possible, to have our lawyers be able to be real lawyers, to be able to use the same procedures that other lawyers can use.

I just got a note. To be honest, I said something wrong before that I want to correct. It is the order of things—

Mr. SKAGGS. I want you to use whoever's time it was that asked you that question. No, go ahead, please.

Ms. NANCY ROGERS. It was a simple thing. We prohibited the use of LSC funds for the use of drug eviction cases, and that won't have an effect on the non-LSC funds until the provision, that congressional provision that makes our regulations, or makes restrictions on non-LSC funds operative goes into effect.

I looked back and saw a nod and added too quickly a yes, but our regulations at this point do only regulate use of LSC funds and not the use of other funds. I am sorry.

Mr. SKAGGS. Well, another general proposition that I am intrigued by, I forget whose comment, I think it was the chairman's of the Corporation, that the reduction in Legal Services representation is likely to cause an increase in pro se representation, that that is likely to cause a decrease in the efficiency of primarily State courts, and one would therefore presume either an increase in docket backlog or an increase in expenditures by State courts in order to stay on top of their dockets in both judicial and administrative personnel. Is that a fair summation?

Mr. EAKELEY. That is a fair summation. But an even earlier, prior case, if you don't give people an opportunity to resolve their disputes in a process that is designed to give justice, then you may very well be giving them less of a sense of a stake in the system and increasing your law enforcement budget, ultimately.

Mr. SKAGGS. And is it also accurate that in those circumstances we are talking really about a constitutional due process obligation?

Does it sound as if the State courts can just say go away, we won't take you pro se?

Mr. EAKELEY. That is correct.

Mr. SKAGGS. Well, it strikes me again as ironic giving the overarching philosophies that obtain in this Congress that we may, through the reduction in Legal Services Corporation, be engaging in what would be de facto an unfunded mandate, because we are requiring State expenditures to make up in various ways, unintended, but very real ways, for what is a contribution to the efficiency and cost-effectiveness of judicial dispute resolution systems at the State level.

Mr. EAKELEY. Alex.

Mr. FORGER. Could I add a point to that as well, that our experience with the Veterans' Court of Appeals here in Washington where we have been funding a pro bono project, their statistics and their sense is that those who are appearing pro se without benefit of counsel have a success rate far less than those who appear with counsel. So quite apart from the efficiency and the cost, the consequence of the result, they believe, is adverse to the pro se litigant.

Mr. SKAGGS. There is a justice cost as well as a dollar cost. I appreciate that.

Finally, last question, Mr. Chairman. What percentage of your overall request is going to be expended on provision of legal services to the poor, and what percentage on administrative costs?

Mr. EAKELEY. Ninety-seven percent provision, 3 percent management and administration.

Mr. SKAGGS. Thank you, Mr. Chairman.

Mr. ROGERS. Mr. Forbes.

Mr. FORBES. Thank you, Mr. Chairman. I just have a couple of brief questions.

CHILD-RELATED CASES

I think you said in your testimony that you served 1.9 million clients and 1.7 million cases. Could you tell me, how many of the cases that the Legal Services Corporation engages in are directly related to children? How many are actually directed at child abuse, anything that would relate to actual cases taken on behalf of a child? I ask the same question about actual cases taken up on behalf of an elderly person.

Ms. NANCY ROGERS. Let me ask you a question. When you say "related to a child," does an eviction involving a child, a family that has children, is that child-related?

Mr. FORBES. Well, I am really looking at cases that are taken up exclusively for children, as opposed to for families. Evictions, if you want to tell me how many cases involve evictions, that is fine.

I am trying to get a sense of the caseload, how much is actually dedicated to something that directly affects a child.

Ms. NANCY ROGERS. Sure. Let me just give you some categories that involve thousands and thousands. Custody and visitation alone is 122,107 in 1994; adoptions, 7,534.

Mr. FORBES. How much? Seven thousand?

Ms. NANCY ROGERS. It looks like 7,534. Parental right cases involving children, 2,466; paternity involving children, 11,575; and other support, 50,940.

We have another category that deals with neglected and abused, 3,957. We have a category dealing with—I am sorry, I read the wrong number, 9,650 for that.

Mr. FORBES. For what?

Ms. NANCY ROGERS. For the neglected and abused. Delinquents is 7,168 and other juvenile, 3,957.

Mr. FORBES. Delinquent, you are talking about children or young people involved in delinquency issues with schools and that? Is that what you are talking about?

Ms. NANCY ROGERS. Yes, yes. Things like truancy.

Mr. FORBES. So there are as many delinquent-oriented cases as there are cases for abused children, neglected and abused?

Ms. NANCY ROGERS. I am going to have to ask for help on these figures. I am advised that these numbers that are under the delinquent category are often parents, representing parents with respect to issues that may involve delinquency of their children. So it is not—

Mr. FORBES. In other words, leaving children alone, would be characterized as a delinquent kind of case?

Ms. NANCY ROGERS. Right. So that these cases lump together in sometimes different kinds of cases. There are welfare cases that involve children primarily, welfare benefit cases.

Mr. FORGER. Let me interject there, Nancy, back in New York City, particularly with the housing issues with the Legal Aid Society, there is a major project on families. Families are being evicted that involve children. It is not single—

Mr. FORBES. I understand that and I don't dismiss the importance of what you just said, but I am really trying to get at this notion of neglected and abused children. I don't think there is a Member of Congress that wouldn't think that that was a responsible role for Legal Services Corporation.

Ms. NANCY ROGERS. I might mention that I missed some categories here and I am being handed information that there is an education category that also primarily involves children. I am getting nods.

Mr. FORBES. Education meaning making sure children are in school.

Ms. NANCY ROGERS. Access to education. There may be some special needs children, and that is a category that is 15,000.

Mr. FORBES. Are any of those education actions that are brought against an individual related to home schooling versus public education? For the record, could you provide that?

Ms. NANCY ROGERS. Sure.

[The information follows:]

From 1974 through 1977, LSC programs were barred from engaging in certain types of representation of juveniles. Currently, LSC recipients provide direct representation to children or minors in very few cases.

As part of its record keeping and data collection process, LSC requires programs to record the age of persons assisted and clients represented. In 1994, the most recent year for which we have complete client age data, recipients of LSC funds represented 58,000 clients who were under the age of 18. This represented 3.5 percent of all clients whose cases were closed during the year.

LSC also requires programs to record the general nature of types of cases handled. These categories include consumer, education, employment, family, juvenile, health, housing, income maintenance, individual rights and miscellaneous. These general categories include some 50 specific types of cases. LSC does not maintain data on all of the specific types of direct representation provided to children. However, we can surmise from available data that direct representation of minors includes helping special needs children obtain an appropriate educational plan for their schooling, representing juveniles at administrative hearings, and cases involving neglect and abuse or delinquency.

Of course, LSC grantees frequently represent adults in cases which have important direct benefits for children, usually as parts of their families. In 1995, recipients closed a substantial number of such cases. For example, recipients assisted in 53,000 child support cases, helped with 6,500 adoptions, participated in 22,000 guardianships (some for senior citizens and some involving children), and gave advice or more extensive representation regarding 9,300 cases alleging child neglect, abuse or dependency and 12,000 delinquency and other juvenile matters.

In 1996, funding for an important part of the Corporation's traditional system for assuring high quality and efficient representation of children, or of adults acting on behalf of children, the National Center for Youth Law, was eliminated as part of the termination of funding for all national support centers. The National Center for Youth Law provided training, practice materials, advice and co-counselling services to legal services advocates in cases affecting children and minors.

As for representation in home schooling cases, LSC's knowledge of the specific factual and legal characteristics of each of the cases closed by its recipients only allows it to identify these cases as education cases rather than cases of some other kind (e.g. divorce, bankruptcy, SSI). As a result, the Corporation does not know whether any of these cases, or any of the similar cases closed in other years, involved a home schooling issue.

With respect to education cases, in 1995, according to currently available data, Corporation recipients report closing 15,453 cases in which the primary issue was an education law issue. These cases constitute less than one-tenth of one percent of the 1,658,000 cases closed last year.

Of those education cases, nearly 80% were concluded after provision of no more than counsel and advice, referral, or brief services such as phone calls or letters. Only 196 education cases went to court decision during the year.

Given this data, as well as the fact that LSC programs since its inception have been involved in more than 20 million matters, we can surmise that home schooling issues have been presented. It is most probable that these matters involved low-income individuals seeking to provide home schooling, but it is possible that advice has also been sought by someone opposed to it. In addition, it is likely that advocates employed by, or private lawyers volunteering for, one or more Corporation recipients have provided advice or brief counsel, or even assistance in litigation, in a home schooling case.

Mr. FORBES. Adoption cases are 7,500, currently helping people to adopt children.

Ms. NANCY ROGERS. Yes.

Mr. FORBES. Does LSC take cases that are strictly related to the emancipation of a minor from its parents?

Mr. FORGER. We have never had such a category.

Mr. EAKELEY. The Corporation does not.

Mr. FORBES. You don't have a category, but could you provide maybe for the record if there have been any cases ever?

Ms. NANCY ROGERS. No. We are saying we don't know. We are looking around.

Mr. FORBES. Could you provide that for the record.

Ms. NANCY ROGERS. Yes.

[The information follows:]

As for LSC programs' participation in emancipated minors cases, LSC does not have a specific case category for representation in emancipation cases. However, we can surmise that in our 22 year history, LSC grantees have represented minors, their parents or guardians in cases where a minor was seeking a judicial order of emancipation. We know that LSC grantees have also participated in cases where a minor's lack of emancipation was a major issue. One such case is *Rodriguez v.*

Reading Housing Authority. For a discussion of this case please refer to our answer to question number 14 submitted for the record by Representative Taylor.

Mr. FORBES. In the interest of time I ask if you could provide information related to elderly clients that you work on behalf of, and maybe the categories as well.

Ms. NANCY ROGERS. All right.

[The information follows:]

Corporation recipients represent significant numbers of clients aged 60 and over, often in conjunction with funding under Title III of the Older Americans Act.

As part of its record keeping and data collection process, LSC requires programs to record the age of persons assisted and clients represented. In 1994, the most recent year for which we have complete client age data, recipients of funds from the Legal Services Corporation represented about 174,000 clients who were aged 60 and over. This represented 10.6 percent of all clients whose cases were closed during the year.

LSC also requires programs to record the general nature of types of cases handled. These categories include consumer, education, employment, family, juvenile, health, housing, income maintenance, individual rights, and miscellaneous. These general categories include some 50 specific types of cases. LSC does not maintain data on all of the specific types of direct representation provided to the elderly. However, we can surmise from available data that programs provide direct representation to the elderly in housing, benefits, and family law cases. In addition, many of the 37,500 wills and a significant number of the 22,000 guardianships in which Corporation grantees gave advice or provided assistance were prepared for senior citizens.

In 1996, funding for an important part of the Corporation's traditional system for assuring high quality and efficient representation for the elderly and those acting on behalf of the elderly, the National Senior Citizens Law Center was eliminated as part of the termination of funding for all national support centers. The National Senior Citizens Law Center provided training, practice materials, advice and counseling services to legal services advocates in cases affecting the elderly and their families.

Mr. FORBES. Thank you, Mr. Chairman.

Mr. ROGERS. Thank you, Mr. Forbes.

FISCAL YEAR 1997 BUDGET REQUEST AND SAVINGS

Now, your 1997 request includes a 22 percent increase over the conference-passed level. That is \$62 million more than we gave you this year, and as I mentioned earlier, our Subcommittee will likely have fewer dollars in FY97 overall than we had in FY96. So we are going to have to find ways to do business differently, and for less money.

Last year, as has been mentioned, the LSC Inspector General spoke to us about the success that some grantees have had by using telephone hotlines staffed by non-lawyers. In fact, these grantees have been able to double the number of clients served without new additional resources. And last year, Mr. Forger, you, yourself mentioned the success of this very type of program. You have alluded to it this morning.

How many grantees currently are using these types of innovative new services? Can anyone tell us that?

Ms. NANCY ROGERS. The actual number?

Mr. FORGER. Do we have a figure on that? No. But I think with respect to our grant-making in 1996 that we are currently in on, we are trying to get that sort of information, that is are they receptive to and what will it take to do a hotline, but I can't tell you exactly how many.

Mr. ROGERS. In the new competitive grant award system are you trying to encourage these innovative methods?

Mr. FORGER. Indeed.

Mr. ROGERS. And that will be a factor in whether or not a potential grantee receives a grant.

Mr. FORGER. Yes, indeed.

Mr. ROGERS. Well, I congratulate you on it.

Give us some rough idea, what percent of the grantees are using these types of activities now—Hotlines and so forth?

Mr. FORGER. I am not sure that I—probably most are experimenting with that. Some have to have access to the equipment. I know the bar associations are making that available, such as the city bar in New York City has a whole hotline operation. CARPLS in Chicago has a centralized intake. I think Connecticut is moving towards a statewide centralized intake through telephones, so that we all know that, in response to Congressman Skaggs' question, the way in which we deal with client problems is changing. There will be less client talking to lawyer in respect of a given case.

Mr. ROGERS. Tell us some more of the innovative methods that some grantees are using to stretch their resources.

Mr. FORGER. Well, I think certainly in seeking to generate more resources, they are being much more innovative in terms of raising funds and attracting additional support. There is a movement afoot in seeking to state that justice is the concern of everybody in the community, while it is the principal responsibility of those who are dedicated in the profession. But we are seeking to get the business community engaged in this as well.

We are looking for ways of tapping into other resources, such as residuals and class actions. Some have come forth. Filing fees, adding additional fees provides opportunities for further funding.

But the use of law schools certainly is another way. For example, I have familiarity with Pace Law School in New York that has a major presence in environmental matters, and we think that a combination of providing some kind of direct assistance to the staff will be beneficial.

The greater use of clients in the delivery of service, and also the use of preventive law, that is a luxury that we ought to be able to support in advising the community how to avoid real problems and what they may do to avoid the eviction, to be alert to the consumer fraud issues.

We have also participated with the Uniform Commercial Code drafters in facilitating solutions to problems that would otherwise be encountered by poor people.

Mr. ROGERS. Now, in addition to stretching the dollars that you do receive, both Federal and non-Federal, which you are encouraging, and I congratulate you on that, there are other ways perhaps that we can leverage alternative sources of funding other than Federal sources.

Now, almost half of the money you receive now does not come from LSC sources. Non-LSC funds have increased every year for the last 15 years. From 1990 to 1994 alone, non-LSC funding—outside sources of funding—increased by almost 40 percent. Let me retract that. It is incorrect.

Non-LSC funds increased 571 percent over the last 15 years, and LSC funds from 1990 to 1994, that is, Federal funding, increased almost 40 percent.

The point I want to make is that your non-Federal funds have been skyrocketing, and that is good. I would like to try to encourage even more leverage of non-Federal funding for the mission of representation of the poor, and I think we would all agree on that. By your own figures, 41 percent of the \$255 million in non-Federal LSC funding in 1994 came from State and local governments.

Mr. FORGER. Yes.

Mr. ROGERS. That tells me that they are beginning to step back up to the plate. Am I incorrect in that?

Mr. FORGER. I think they are starting to move away, is the sense I get, Chairman Rogers. New York, for example, has just eliminated its funding for prisoners' legal services. It had heretofore given general assistance to the Legal Aid Society in New York, and I think that is going to be ended.

And I think the Governor of New Hampshire has vetoed a fee bill that would have gone to Legal Services, and I think States are retracting, just as the Federal Government is, but we are also after those States who have never funded Legal Services and seek to get them to at least start at some modest level.

Mr. ROGERS. Is it a consideration in your new grant approval process that a local grantee work to increase their non-Federal resources?

Mr. FORGER. Yes. They have to establish to our satisfaction what they propose to do in order to leverage the funds we give them and how—what their anticipation is of support coming from the outside world. I think if we have two competitors, and one of them clearly has a better access and a better plan, that is the one who will get the award.

NON-FEDERAL FUNDING SOURCES

Mr. ROGERS. Well, on leveraging outside funds, we have mentioned State and local contributions and, by the way, if I am not mistaken, the Legal Services grantee in my area, the APPALRED group, is seeing the 25 percent cut in Federal funds partially replaced by an increase in civil filing fees in the State courts to supplement their funding level. This is another example of State and locals filling a gap that we have had to make here.

Now, on non-State and local government funding, we have seen anecdotal evidence that private bars, private corporations, and private lawyers are beginning to fill the gap. I want to cite for the record an article in the Washington Lawyer of March/April of this year, it is on the President's Page written by Mr. Robert Weiner, which describes private bar participation in representation of the poor in the District of Columbia.

Mr. EAKELEY. Yes, sir.

Mr. ROGERS. He says, and I quote, "I am happy to report the firms', law firms', response to the call of the chief justice and the judges in the District of Columbia. He says the response has been generous. To date, more than 50 firms have committed to increase their pro bono efforts. Four have opted for a rotation program. Nine firms will offer clinics in partnership with a legal service provider.

Fourteen new firms have joined the D.C. bar's pro bono clinic. Another 25 firms have adopted other options, such as taking a specific number of referrals from a legal service provider, increasing pro bono hours by a set amount. Several firms have agreed to fund positions at legal services providers. One has committed \$50,000 a year for 2 years." Mr. Weiner goes on in the article to state what the local bar, under the prodding of the courts, is doing to provide money and talent and time to the representation of the poor, both in your clinics and on their own.

Mr. FORGER. Yes, sir.

Mr. ROGERS. I think this is the way, and I think you agree, that we need to go. I would hope that in due course of time, we would not need the Legal Services Corporation. I hope you work yourselves out of a job by encouraging the courts, and the States and locals, to force the bar to provide pro bono service to all people who can't afford it. I just think the profession owes it to the constituents.

What do you think?

Mr. FORGER. Well, I am in total agreement that the bar can and should do more. I am not as sanguine as to its ability to do the entire job. Quite apart from whether it is the sole responsibility of lawyers to provide access to justice. But with roughly a 30 percent cut in our funding, which may very well translate into at least a 30 percent cut in the clients we can serve, even if we were able to triple the involvement of the local bar that we now have, we would simply rise back to where we were last year.

So, and then, according to the various surveys, we were only meeting a fraction of the need.

So even if every member of the bar participated, and I encourage them, and I have been an advocate of mandatory pro bono since 1980, I see that there is still a large gap. The presence of the Federal program is essential, and particularly in the pro bono, because from my vantage point as a chairman of a large law firm, I did not want to send lawyers off into pro bono endeavors unless there was a structure, and unless there is oversight and training and someone seeing that they were not committing malpractice, and that is very important. And I think that for many law firms that is significant, that there is a Federal program where they know there will be the oversight, the training and the assignment. So that is critical.

The last point on this is I do hope Congress does not make it more difficult for us to do that by preventing us from self-help lobbying.

Mr. ROGERS. Let me file as a part of the record this article that I just referred to, because I think it is a superb example of—

Mr. FORGER. D.C. has done an extraordinarily good job.

[The information follows:]



PRESIDENT'S
PAGE

The Legal Services Crisis in D.C., Part III

Those who read this column regularly (I applaud your fortitude) may have detected a certain consistency in the choice of topics. I have focused on the rapidly growing gap between the legal needs of the poor and the resources available to meet them. With the significant cuts in the budget of the Legal Services Corporation, the declining charitable contributions to legal service providers, and the insolvency of the District of Columbia government, the situation is becoming increasingly dire. My concentration on this one theme is compelled by the urgency of the crisis we face, by the injustices only we can prevent, and by the ethical obligation we all have to provide legal assistance to the needy.

I reported previously on the meeting of managing partners of the largest law firms in the District, called by the four chief judges of our D.C. and federal courts, to address this crisis in legal services. More than 100 people representing fifty-five firms attended. We asked the firms to respond to the crisis by adopting—in addition to their existing pro bono commitments—at least one of three options or an equivalent. The options included a rotation program, in which one or more of a firm's attorneys work full time at a legal service provider for a specified period, usually six months or more; a law firm-sponsored clinic in partnership with a legal or social service provider; and participation in the Law Firm Pro Bono Clinic of the Bar's Public Service Activities Corporation.

I am happy to report that the firms' response to this call to action has been generous. To date, more than fifty firms have committed to increase their pro bono efforts. Four have opted for a rotation program. Nine firms will offer clinics in partnership with a legal service

provider. Fourteen new firms have joined the D.C. Bar's Pro Bono Clinic. Another twenty-five firms have adopted other options, such as taking a specific number of referrals from a legal service provider, increasing pro bono hours by a set amount. Several firms have agreed to fund positions at legal service providers. One has committed \$50,000 a year for two years.

This level of dedication to serving the needs of the poor reflects the highest traditions of our Bar and our profession. We should all feel proud. But that pride should not obscure the unfortunate fact that these efforts will not solve the problem. We still will meet only a fraction of the legal needs of the indigent.

What then are the next steps? There are several:

The Bar will provide opportunities for all lawyers to assist the poor.

Government lawyers. Those members of our Bar who work for the government already perform a public service. But they can also be a great resource for the poor. President Clinton has recently directed government agencies to develop programs to "encourage and facilitate pro bono legal and other volunteer service" by government lawyers. The Justice Department's program pursuant to that directive should be promulgated soon. Government lawyers should seize the opportunities that this program and those of other agencies present.

Small firms and solo practitioners. The meeting of managing partners involved only those firms with fifty or more lawyers. Those institutions are the easiest to assemble and mobilize, and they have the most resources. But they represent less than a fourth of the Bar members in the metropolitan area. The obligation to provide legal assistance to the poor extends to all of us, regardless of the size of our firms or the nature of our practices. The Bar will provide opportunities for all lawyers to assist the poor. Please

call us if you want to do so.

Money. Even more than personnel, legal service providers require money to serve the legal needs of the poor. Our efforts to support legal service providers will be far more productive if we ensure that the providers have the administrative and other resources to capitalize on those efforts. So in addition to volunteering your time, please write a check.

The Future. As noted, our best efforts at mobilizing members of our Bar to serve the disadvantaged and contribute to legal service providers will help, but they are unlikely to end the crisis in legal services. We therefore must look in depth at the legal needs of the poor, evaluate how the legal system deals with the indigent, and assess all the means available to assure access to justice. We need to engage in creative, long-range thinking. The Bar can play a role in initiating such a process, but the participants must be broadly representative of the legal, business, provider, governmental, and client communities.

What we must keep in mind as we work in the comfort of our climate-controlled offices is that somewhere in D.C. a mother and her children face eviction from their home, and they cannot find a lawyer to help them. A parent confronts the prospect of losing custody of his or her child, and cannot find a lawyer to help. A destitute AIDS patient has been denied medical benefits, and cannot find a lawyer. So long as such situations persist—and they do—our responsibility as a profession for access to justice remains unfulfilled.

Hubert Humphrey once remarked that the moral test of government is how it "treats those who are in the dawn of life, the children; those who are in the twilight of life, the elderly; and those who are in the shadows of life—the sick, the needy, and the handicapped." That moral test applies as well to our profession and Bar.

All of us must do our part.

CASES RELATED TO VIOLENCE AGAINST WOMEN

Mr. ROGERS. Now, quickly before my time expires, can you tell me what percent of your caseload is related to fighting violence against women?

Ms. NANCY ROGERS. I can say that in 1993, 52,000 cases were cases in which the clients sought legal protection from abusive spouses, and 9,000 involving neglected, abused and dependent juveniles. The percentage, I need someone to do the math—

Mr. ROGERS. Just a rough percentage.

Mr. FORGER. In addition, Nancy, we get a sense that there is some 250,000 cases listed as divorce that stemmed in large measure from domestic violence, but we don't have an exact figure on that.

Mr. ROGERS. So we could say that a significant portion of the caseload is somehow related to violence against women?

Mr. EAKELEY. Definitely.

Mr. FORGER. And children.

Mr. ROGERS. Would you say half? As much as half?

Mr. FORGER. Maybe half of our family cases have at the root some violence.

Mr. ROGERS. What portion of the overall caseload?

Mr. FORGER. Family represents roughly one-third, and I would say maybe one-sixth is related to family violence.

Mr. ROGERS. The reason I bring that up is, as you know, we have a new program now that the Congress just funded in 1995 for the first time. We have tripled the funding in 1996, assuming the Conference Report becomes law, for violence against women activities, and there will be local grants made to help defend in that type of situation, which hopefully will relieve you of many of the responsibilities for violence against women actions. There is a specific program that is taking hold. Won't that be a factor in your budget?

Mr. FORGER. Yes, to the extent that that can eat into the caseload that we have.

What we have found, Mr. Rogers, is that with the publicity in recent months or the last year or two with respect to domestic violence, and the fact that there is an alternative, there is a way to get protection, many more people who had heretofore not sought a legal solution, thought that was a way of life, are now asserting their rights to be protected. And so the numbers turning to lawyers for that help has risen dramatically.

[CLERK'S NOTE.—Subsequent to the hearing, the LSC provided the following information for the record.]

The Legal Services Corporation places a high priority on representing women and children who have been the victims of domestic abuse. On May 20, 1995, the Board of the Corporation reaffirmed this priority when it began its suggested list of priorities pursuant to P.L. 104-134 with support for families and highlighted violence against women and children.

In 1995, Corporation grantees closed 59,000 matters in which the primary legal issue was the protection of women who had been abused. Of these, nearly a quarter were represented in court by Corporation-supported advocates as they sought orders of protection and other remedies against their batterers. Another 32,500 abused women received advice about how to protect themselves under the law, brief services such as phone calls to the police or shelters and referrals to public and community agencies that could help them.

In a much larger number of cases, where the primary issue was the termination of a marriage, spouse abuse may also have been involved. Nearly 240,000 cases

were closed in 1995 after advice, brief service, representation in court or other legal assistance was provided in divorce cases. Reports from program managers indicate that a significant number of the women represented in these cases had also suffered from abuse. This was particularly true with regard to the 48,000 divorces carried through to a court decision. Grantees often accord a high priority to divorces involving abuse, focussing their limited resources on such cases and limiting their divorce services to advice and referral when neither children nor abuse are involved. We have not, however, collected statistics on the 1,658,000 cases closed in 1995 at the level of detail that would tell us the number of divorce cases in which there was also an allegation of abuse.

Abuse of women, or their children, is also a factor in a significant number of the 128,454 custody cases in which grantees completed their representations during 1995, and in some of 116,507 paternity, child support, juvenile delinquency, child neglect and other family and juvenile matters. Again, the Corporation's statistics are organized on the basis of the primary legal issue in each case and do not disclose the number of abuse allegations made within cases of these other types.

Nevertheless, it is clear that, in addition to the 59,318 explicit domestic abuse cases closed, in 1995 grantees also completed their provision of legal assistance to almost three-quarters of a million clients in matters in which abuse may well have been involved. Moreover, there were another half-million cases still open at year end, and many of these also involved spouse abuse as well as divorce, custody and similar primary issues in which violence against women was frequently involved.

The Federal Violence Against Women Act of 1994, 42 U.S.C. 3796gg et seq., has dramatically increased the federal government's involvement in this important area. The Act's primary purpose, however, is to alter and improve the response of the *criminal justice* system to violence against women. Its goals are to foster arrest, prosecution and conviction of persons committing violent crimes against women at all levels in the criminal justice system.

Pursuit of this statutory mandate will, hopefully, result in swifter and more extensive protection of women who are being abused, and might even, in the long run, reduce the frequency of such abuse. The need for advocates for abused women will not, however, be significantly reduced for some time, if at all. Indeed, the Violence Against Women Act of 1994 allows some funding under the Act to be used to support certain civil justice assistance that bears on or is inextricably intertwined with criminal justice. 42 U.S.C. § 3789n. Specifically, some funds are available for counselling, victim services referrals, victim transportation and victim assistance with court proceedings and trials. These funds can also support specialized domestic violence court advocates (lawyers or non-lawyers) working in courts where significant numbers of protective orders are granted. 42 U.S.C. 3796gg(b)(5).

The Department of Justice, which administers the Violence Against Women Act of 1994, has made grants in 20 states for civil assistance under the Act. In only three of those states did any of the grants go to Corporation grantees for help for women seeking protective orders. In Iowa, \$37,608 has been awarded to a Corporation grantee to increase legal assistance to battered women in certain counties. In Missouri, \$15,000 has been awarded to another Corporation grantee to help develop a community response plan rather than to provide representation. In Nevada, two *pro bono* programs affiliated with Corporation grantees have received a total of \$12,500 to enhance representation of abused women. In most of the other 17 states the awards have been for services other than representation of abused women.

While these grants to Corporation recipients, which total \$65,108 so far, will be of great value and will increase the services available to abused women, their scope is dwarfed by the \$122,000,000 reduction in FY 1996 funding for civil legal assistance supported by the Corporation.

Mr. ROGERS. Okay. Mr. Kolbe.

Mr. KOLBE. Thank you, Mr. Chairman. My apologies for having to leave to do a press event and I also have to speak on the Floor in the next few minutes. And if you have answered some of these questions, I apologize. You can just say so.

Mr. Chairman, I assume we will be able to submit questions for the record, because I do have some others that I would like to submit.

Mr. ROGERS. Sure.

COMPETITIVE GRANT AWARDS

Mr. KOLBE. I note in your testimony you talk about the success you have had in implementing some of the things that the Committee directed you to do. One that you spoke of is the competition-based system for awarding grants. I wonder if you would just review for us the results of your first attempt at using the system for awarding grants and how you plan to disseminate your announcements and your requests for proposals, your RFPs.

Mr. FORGER. The process has not yet been completed for the—

Mr. KOLBE. You haven't gone through a cycle yet of awarding grants?

Mr. FORGER. Well, we have been—under the House bill—

Mr. KOLBE. And I understand this is not enacted into law.

Mr. FORGER. We were due January 1. So we went forward on that scheme that would be required by January 1. To use the Chairman's words, we hit the ground running. We went through the publication, we went through the preparation of the RFP, the regulation, the process of receiving, giving help, and made some judgments. It was just such a truncated and pressurized system that it isn't representative, we are sure, of what is to come.

However, there is a realignment of many of the service areas. Some are consolidating as a result of this; some have withdrawn from the system. But the greatest number are programs that were previously in place that had been refunded on a term basis. There are some 41 that are still in competition that we are now assessing and will make a judgment within the next few weeks.

So there is some movement, there are some new programs, but the uncertainty as to the amount of money which still exists, the uncertainty as to the degree of restrictions which still exists, has not been an environment that has been conducive to a lot of new entries.

Mr. KOLBE. Well, on that issue of the uncertainty of the amount of money, let me just follow up with that a little bit of some of the reforms I wanted to ask a question about. But I know you are asking for a level of \$340 million, which is significantly above what we agreed to in conference, and still below where you were funded in 1995. But, if we were to continue on the glide path that we have talked about, which is a 3-year phaseout of the LSC, I think next year's level would be \$141 million, which is a third of what you are asking for.

What are you doing to prepare your local organizations for the prospect that there may not be a funding level that you have asked for here?

Mr. FORGER. Well, the programs are privy to the comments of the Budget Committees and the other indicia of the future. Many are downsizing their staff in anticipation. Some are withdrawing from the system in order to seek funds that wouldn't otherwise be restricted, that would be available.

Mr. KOLBE. Is anyone looking for other sources of funds?

Mr. FORGER. Oh, yes. I think every one of them is out scrambling looking for pro bono help and other sources of money, through the State, local government as well as corporations and foundations. They are seeking to do that. But if, indeed, there were to be still

another drop, and I think that while there are budgetary constraints, probably the Legal Services Corporation has taken a disproportionate reduction with respect to other programs or comparable programs. If there were to be a further step-down to that \$142 million range, we would no longer have the network of the national legal services system, we clearly would not have programs existing in the suburban areas, in the rural areas, and in the poorest areas. Some States are far less dependent on Federal money. Connecticut is 25 percent Federal money, Mississippi is 98 percent Federal money. So I think there would be quite a realignment, and major gaps.

Our original objective was to have the Legal Services Corporation in every county of the country. That would cease to exist. So everybody is scrambling trying to anticipate—just to recover from the cuts and it is going to take an awful lot of scrambling and they may not make it.

Mr. KOLBE. Thank you for your answer.

OVERSIGHT OF GRANTEES

In your 1997 budget request, you say that you have adopted a resolution requiring local grantees to maintain time records, timekeeping records, I believe. What are you doing in terms of oversight of that?

And in the same question, let me just say there is also a congressional direction not to have LSC or private funds used on activities that are restricted by law or current regulations. How do you audit that? How do you provide oversight on that?

Mr. FORGER. Well, we will now for the first time have in every program a quarter-hour report as to every lawyer and every paralegal, how that time was spent and the nature of the matter, a funding line, if it is different from LSC.

During the oversight, the audit inspection, the auditors will be monitoring that, will be looking at time records and will be looking to determine, as with other restrictions, that monies were not diverted, time was not spent on issues that are restricted for the Corporation.

Quite apart from the accounting function, I think it is going to be useful for those making judgments on competition to make judgments as to the efficiency with which certain programs may function: How much time is allocated to a certain set of problems; is that the best use of time; is that the most efficient. But I think that it will be a useful management tool, as well as the ability to make certain that the monies are not being diverted.

It was more significant perhaps at a time when there was no restriction on non-LSC money. If indeed there is a restriction on LSC money, there is less importance in being able to keep those records for the purpose of tracking where the time is being spent, where we don't have parallel lines. Senator Gramm used to say the brothel money on one side and the legal services money on the other.

Mr. KOLBE. And on the issue of the not spending the money on pro bono programs, is that part of your audits? Do you include that in your audits?

Mr. FORGER. Yes. The auditors go test for that, and when you monitor compliance, and we have done the monitoring on-site, we

have checked to see that the monies were not being devoted to prohibited transactions.

CONGRESSIONAL CASEWORK COMPARED TO LSC CASEWORK

Mr. KOLBE. Let me just ask one other question. I think you made the statement, it is in your report or in your budget request, or maybe you said it verbally, but I remember hearing it, you said that most of the work you do doesn't result in litigation or end up in a courtroom.

What extent does the work that you do then duplicate the kind of work that is done, quite frankly, by congressional caseworkers? I have a half a dozen caseworkers in my offices in Arizona that work to untangle very complicated disability problems, social security problems, other kinds of, frankly, legal problems that involve Federal agencies and sometimes local agencies as well.

I am wondering, have you ever looked at that in terms of how any of this is being duplicated by congressional caseworkers?

Mr. EAKELEY. I think our experience has been that congressional caseworkers frequently turn to Legal Services' offices when they cannot—either when a constituent's needs do not involve a Federal agency with which that caseworker has experience, or because there are other particular reasons, including the expertise of a Legal Services organization, that—

Mr. KOLBE. Well, my question is the reverse of that. To what extent are you doing the kinds of work that might be more readily done by congressional caseworkers and concentrate on more important stuff?

Mr. EAKELEY. I think I was attempting to say our experience is the converse, in that there is a complementary effort that we are not in effect—but we don't have the numbers.

Mr. KOLBE. You are right, we do refer people to Legal Services when it gets beyond the ability of us to deal with it or if it is not an appropriate place for us to deal with it. But I am just wondering conversely, do you sometimes say, well, that is something that really can be straightened out by congressional caseworkers.

Mr. EAKELEY. That is definitely the case. In New Jersey, for example, if there is a problem with a Federal agency, we will attempt to—or we will work with the State, the Attorney General's Office also, if it is a State problem, try and refer the client to the source of a solution in the most effective way. It is not eliminating all overlap or duplication, but there is recognition that there is a complementary effort that hopefully will accomplish an overall result that provides more service to those in need.

Mr. FORGER. Most hotlines are handled by nonlawyers. They are trained to refer those cases either to social agencies, to someone else's office, and to screen out those that don't require any legal involvement. It is only when they can identify, then a lawyer gets on the wire, and he can then respond as to whether that is a legal case. So I think that we are not duplicating to any extent, except we are referring out to the appropriate agency that can handle it.

Mr. ROGERS. The time of the gentleman has expired. Mr. Mollohan.

Mr. KOLBE. Thank you, Mr. Chairman.

PRIVATE ATTORNEY INVOLVEMENT

Mr. MOLLOHAN. I think it would be a very good thing if all legal service-type cases and all cases to people who couldn't afford legal service were handled pro bono by the bar. I really do think that that would be a very good thing.

But I am wondering, going into that issue of how we do provide legal services, if that is even a realistic hope that that can happen. Could you talk about that?

Mr. EAKELEY. The analogy that we have used in the past is that it is like asking bakers to feed the hungry. The need is so overwhelming compared to the resources available, and to ask the private bar to step forward and shoulder that challenge on its own is impractical and extreme, we believe.

Lawyers do have a role, lawyers do have a responsibility, but so does government, so does the rest of our community as well, but, unfortunately, we live in a sufficiently legalistic society that access to a lawyer is tantamount to access to justice at times. And if government is in the business of dispensing justice, then unfortunately, or fortunately, government should remain in the business of providing access.

Alexander Hamilton, no liberal, said the first priority of government should be justice.

As I was walking down Pennsylvania Avenue last year, I came to a red light. It was on the corner facing the Capitol. Part of the inscription read: "Liberty is maintained in security of justice." You can't have liberty without justice, you can't have justice without access, and we all have to do our part in securing access.

Mr. MOLLOHAN. Can you give us some dimension of that? How many cases are out there across the country?

Mr. EAKELEY. We will provide that information.

[The information follows:]

In 1995, attorneys participating in private attorney involvement efforts associated with recipients of Legal Services Corporation funding, including the Supplemental Field programs, closed about 257,000 cases. Putting aside the nearly 30,000 cases closed by pro bono and judicare attorneys working for the ten Supplemental Field programs that were defunded under the terms of the 1996 appropriation bill, pro bono, contract and judicare attorneys closed 229,000 cases. While most of these cases were handled by pro bono attorneys, in nearly 60,000 of them the private attorney was paid a reduced fee for handling the case. According to reports from the grantees, 131,000 lawyers had registered to participate in a Corporation-supported private attorney involvement program, and about 57,000 of them accepted at least one referral during 1995.

While these attorneys continue to show the impressive commitment of the private bar to giving freely of its time to help the unfortunate and to expand access to justice in the United States, their efforts will never begin to meet the needs for legal assistance among low income individuals.

Approximately 38,000,000 Americans live in households whose income is below the poverty level, according to Department of Labor estimates. At least 11,000,000 additional individuals with incomes between 100 and 125 percent of the poverty level are potentially eligible for legal services. Thus one in every seven Americans is potentially eligible for legal services.

During the last fifteen years, a score of state and local studies have used a variety of methodologies for estimating the unmet legal needs of the poor.¹ The studies' esti-

¹Studies have been conducted by bar associations, bar foundations and legal services consortia in such states as Arizona, Connecticut, Illinois, Maine, Maryland, Massachusetts, New York, Texas, West Virginia. A summary of the findings of a national study for the American Bar Association.

Continued

mates of the number of significant legal problems that arise each year among eligible individuals vary widely, supporting projections that serious need exceeds supply by factors of five or ten or even more. But while their calculations of total need vary, their findings were strikingly consistent with regard to the significant legal problems they specifically identified in their surveys: the overwhelming majority of poor people (as much as 80 percent) did not have the advantage of an attorney when they were in serious situations in which a lawyer's advice and assistance would make a difference.

As former Representative Guy Molinari stated when he testified before the House Appropriations Subcommittee in support of an appropriation of \$525,000,000 requested for FY 1994 by the LSC Board of Directors appointed by President Bush: "We can argue about the amount of unmet need; but I don't think there is any dispute about the fact that there is a very substantial amount of people out there who are, in fact, in need of civil legal services."

These studies were conducted during the late 1980's and early 1990's, when funding for the Corporation was higher than that provided by the 1996 appropriation (which has cut Corporation funding, adjusted for inflation, back to a level lower than any year since 1977). Yet even with that higher Corporation support, local legal services programs were able to meet only a fraction of the demand for their services. A survey of selected local Legal Services programs in the spring of 1993 revealed that nearly half of all people who actually apply for assistance from local programs are turned away due to lack of program resources. As the priorities provision of H.R. 3019 emphasizes, all local programs must severely limit the cases they accept to those which fall into the highest locally-chosen priorities, the cases which threaten clients and their families with extreme hardship.

During 1995, Corporation grantees and their private attorney involvement programs provided legal assistance to about 2.2 million clients, including 1,658,000 cases that were completed and more than 500,000 additional cases that were still active at the end of the year. Funds equal to about one-eighth of Corporation funding were used to support private attorney involvement efforts, and about one-seventh of the cases closed (229,000) were handled by private attorneys participating in those efforts.

Lawyers are not evenly distributed across the country, and lawyers are not evenly distributed relative to the presence of the poor. Instead, a very high proportion of all lawyers are found in several cities in which government and law are principal industries (such as the District of Columbia and New York City) and in just a few of the states. While lawyers everywhere participate fairly consistently in pro bono activities, there just aren't enough lawyers in most states, and particularly in the rural areas of most states, to provide a fair share of the total pro bono potential to poor people living in those states. Poor people living in the large number of states with relatively few lawyers will find little legal help available to them if the government withdraws its support and leaves them to the willing but infrequent assistance of pro bono lawyers in their states. The absence of services would be particularly noticeable in rural areas and across much of the South, the plains and the mountain states.

Mr. EAKELEY. On average, I think the pro bono portions of cases—we still have a mandatory set-aside of 12 percent of all grantees' Federal funds for pro bono involvement. There have been major recruiting endeavors this past year and every year, but more so this past year, to enlist more pro bono.

My firm tithes—we have a \$500,000 budget for pro bono, and we make cash contributions, and we loan lawyers full time. It is still no more than perhaps 10 percent of the total caseload any program handles, and that is a small percentage.

Mr. MOLLOHAN. I only have so much time.

Mr. EAKELEY. I am sorry.

Mr. MOLLOHAN. I wish you could expand, but would you supply for the record an analysis of that issue, how many cases are out there a year, how many cases is the bar now handling pro bono,

what kind of slack would they have to pick up if there isn't any Government contribution to this effort.

Mr. EAKELEY. Yes.

COMPETITION

Mr. MOLLOHAN. You are venturing into the area of competition, are you not?

Mr. EAKELEY. Yes.

Mr. MOLLOHAN. Can you give us a sense of how that is going and where you are going?

Mr. EAKELEY. I think I will turn to Mr. Forger for that. He has been having to do this day in and day out for the last year.

Mr. FORGER. Well, we are optimistic that we can make this as much of a success as Congress and this Committee would like us to do. It is still too early.

Mr. MOLLOHAN. What does that mean? I am sorry. You will make this as much of a success as possible.

Mr. FORGER. A success, that we do indeed result in improving the quality of the program, by getting innovation, being able to reward innovation and the leveraging.

Heretofore, there have been refunding rights, and one had to go through a due process hearing to remove a grantee. There was no discretion, little discretion, in making distinctions unless there was cause to be shown where you could demonstrate that somebody clearly could do it better.

Here we have the ability to give incentives in a competitive system, and if there really are two or more competitors for a different grant, then we have the ability to cause them to reach out further, to perhaps become more innovative, to do more leveraging.

Mr. MOLLOHAN. Right. All of the good things that come from competition. Have you started this process?

Mr. FORGER. We have started the process.

Mr. MOLLOHAN. To what extent have you started it?

Mr. FORGER. We have 41 programs in competition at the moment.

Mr. MOLLOHAN. Out of how many?

Mr. FORGER. 280.

Mr. EAKELEY. But it is fully launched, and it is now on a recurrent cycled basis.

Two footnotes: In order to make competition work, we need an adequate management and administration budget in order to take advantage of the innovative proposals coming in and to provide feedback to programs who may not have heard of it.

Secondly, the more restrictions are imposed on other funding sources, as well as Federal funding sources, the more difficult it is to recruit, for example, law firms who have other clients.

Mr. MOLLOHAN. You mean to compete?

Mr. EAKELEY. That is right. To attract new entrants into the legal services provision arena.

Mr. MOLLOHAN. All right. Let me ask, you say the competition initiative has been launched.

Mr. EAKELEY. Yes.

Mr. MOLLOHAN. Does that mean that every one of your grantees are open to competition?

Mr. FORGER. Yes, they were.

Mr. EAKELEY. Had to apply; it was on notice that others might be applying from each service area.

Mr. MOLLOHAN. Okay. And the 40 number that you gave us, what did that relate to?

Mr. FORGER. That is where there is more than one applicant for that—

Mr. MOLLOHAN. All right. So out of all of your grantees, 200 and how many?

Mr. FORGER. 280, more or less.

| Mr. MOLLOHAN. 280 when you invited competition; 40 grantees actually experienced competition, in 40 of your sites. But every one of them were open?

Well, these are rough numbers, I am sure. Is that correct?

Mr. FORGER. There were some 200 and—some were regranted—there was only one applicant, and that was—I will have it in a minute in my ear, I am sure. But it was simply the process of, in the 100 days that we had to put all of this together, there was no competition in most of the jurisdictions.

Mr. MOLLOHAN. Right. I understand.

For a first round, do you feel like the process has been successful?

Mr. FORGER. Well, it certainly has been a stretch for the Corporation. We have got things in place now; we have been through the competition; we have been through the RFPs. Next year it will be far better, given the opportunity of being able to assist those who wish to compete, to know more about the program. We need funds to do that.

So I think it will be a useful, a very useful, tool for us in terms of seeking to approve and leverage.

Mr. MOLLOHAN. So you are pleased with this requirement, and the only issue I hear you saying is the question of your ability to administer a real competitive program.

Mr. FORGER. Indeed.

Mr. MOLLOHAN. And why is that?

Mr. FORGER. Well, the limitation is the money. We need to help programs. Those who wish to compete, they need to get information, assistance. For those that are in competition, we need to be able to go out there and give—

Mr. MOLLOHAN. Have you detailed in your budget your requirement, your administrative requirements, to make the competition programs successful?

Mr. FORGER. Yes, we have.

Mr. MOLLOHAN. You have isolated that out?

Mr. FORGER. Yes. It is indeed with reviewers and being able to have on-site inspections and to get capability assessments of the competing entities. It is basically using people in the field rather than just do a paper process, which is principally what we had to do this time.

Mr. MOLLOHAN. I am interested in rural areas. What was your experience with competition in rural areas?

Mr. FORGER. The 41 was pretty much a mix across the board, and I just don't have a figure as to how many of them were rural.

Mr. MOLLOHAN. Okay. If you would submit an analysis of that for the record.

Mr. FORGER. Certainly.

[The information follows:]

Because LSC recipients usually operate in service areas covering both urban and rural populations, almost every one of the basic field, migrant and Native American service areas in which there was competition involved rural populations. For example, the basic field service area designated NY-11 included cities such as Newburgh and Poughkeepsie, as well as rural counties such as Greene, Orange and Sullivan. Similarly, Kern County in California is an intensely agricultural area, but it also contains the urban center of Bakersfield.

Service areas that are predominately rural and had more than one applicant include at least one of the service areas in the following states: Arizona, California, Louisiana, New Jersey, Mississippi, South Carolina, New York and Wyoming. Examples of competitions for non-rural service areas include those for the area encompassing the City of Chicago and the predominantly suburban population of Ocean and Monmouth counties in New Jersey.

The Corporation is in the process of concluding its assessment of the proposals submitted in response to the competitive process authorized by the Omnibus FY 1996 Appropriations bill, and has not yet awarded final FY 1996 grants for those services areas in which there was more than one applicant. There is no evidence, however, that competition is either more or less possible, or effective, in rural areas than in urban.

Mr. ROGERS. In the interest of time, and I hope we can conclude here reasonably soon, I am sure everybody here is busy. I don't have any more questions. Mr. Mollohan, do you?

Mr. MOLLOHAN. No, Mr. Chairman. I may have some for the record.

Mr. ROGERS. I think Mr. Taylor is in need of some time.

Mr. TAYLOR. I could be with you here all afternoon, but I will try to hold it to a few minutes so we can wrap up.

I would like to ask you about a Legal Services unit like Dade County, a Legal Services Corporation. What is their total budget, would you say? Of that total budget, what would Legal Services contribute, the official corporation?

Mr. EAKELEY. That will vary by region and by program, from as much as 95 percent to as little as 20 or 25 percent.

Mr. FORGER. But it will be on the basis of \$7.58.

Mr. EAKELEY. Yes, per capita.

Mr. FORGER. Whether they are Miamians or Toledians, if that is the right word.

Mr. TAYLOR. Well, I assume that—and I just picked that; it could be any number or any organization. Could you not say to those recipients, say if you furnished 95 or say you furnished 50 percent or whatever, we have promulgated this rule, we are not going to allow Legal Services to participate in defending convicted drug pushers in public housing where the local government is making an effort to control that problem; therefore, you will not receive any Federal money if you, in fact, spend your local money in this direction?

Is there any reason why you could not put that in your rule?

Mr. EAKELEY. We don't believe we have the authority under the current appropriation language. We welcome appropriation language that would prohibit—

Mr. TAYLOR. Well, why would you need appropriation language to do that? You are the Legal Services Corporation. Your Board of Directors could say that, could you not, this is—and clearly it is the

intent of Congress to head in that direction; therefore, we are going to restrict you in the use of your money in this practice.

Mr. EAKEYEY. We have said unequivocally, you may not represent those charged with illegal drug dealing in housing projects using Federal funds.

But I think that there was a legal issue about our authority to go beyond that and to prohibit programs using non-Federal funds for any purpose, for that matter, not prohibited by the Congress.

Mr. TAYLOR. What I am suggesting, the rule that you have promulgated really is no rule at all if you do not, because the shell game is, as the gentleman mentioned a moment ago, if I get 50 percent of my money here and 50 percent from you, I can also say, well, when you catch me doing something that is against your policy, I can say, well, I was using my money. It is very difficult to tell.

Mr. EAKEYEY. But I think my predecessor actually invited the Congress in this area, at least, to authorize us to restrict grantees from using non-Federal funds as well. And we are not resisting that at all, and indeed—

Mr. TAYLOR. Well, I wasn't talking about you restricting or resisting it, I was talking about you initiating from the board as board policy.

Let's move on because of the time, but I would suggest you do that, if at all possible, because it would put some teeth in that regulation.

Mr. EAKEYEY. It is definitely board policy. I can assure you of that.

Mr. TAYLOR. But I mean, you have to—as I understood, the rule you had promulgated did not impact their use of their own funds, and if that is true, then it has no teeth at all, because they can play the shell game of saying, "Well, I used my money rather than yours," and of course it is almost impossible to prove that and carry out the same action.

I wanted to follow up on a case that we were talking about, pro family, because it is disturbing to me in a recent case of Legal Services lawyers suing the Reading Public Housing Authority, I think, for refusing to rent an apartment to an unemancipated, unmarried minor.

Now, the lawyers argued that the unwed minor—that unwed minors have a right to HUD housing because they are an official category of eligible applicants.

Now, that gave me pause when we were talking about pro-family or working with minors. But, in the first place, we all know the minor is the responsibility of the parents, to begin with, and there are a plethora of Federal programs that work with families, food stamps, and housing—and all of the other things to see that there is support for the child.

Secondly, if the minor—if the parents are dead or refuse, for whatever reason, to take care of the minor, then it goes into the court system and, in loco parentis, a person is appointed, or social services, or any other number of steps follow through.

That seems like a rather radical policy, for Legal Services officers to come in and say that unwed minors are entitled to public housing. How do you—is that not rather extreme? And how is that pro

family, if you can say to a minor, "We are going to hold out this attachment of public housing, so if you decide to leave home, you will have housing and perhaps follow up in other areas"? That seems a little radical.

Let me ask two questions, because I think the chairman will be gone and my time will be up.

I would like to ask you also to respond to the consultant fees I mentioned earlier, the \$600 per day. Doesn't that exceed the amount, governmental amount, for per diem for consultants?

I would ask those two questions, Mr. Chairman.

Ms. NANCY ROGERS. Mr. Taylor, I am going to respond to the first while they are checking on the second.

I confess that I was impressed with your knowledge about emancipated minors and so forth. It vastly exceeds my legal knowledge of that.

But in responding, without knowing that case or that lawyer, I guess one thing I might say is, there were 1.7 million cases closed in, I guess, 1994, and in that group, I would be surprised if I looked over the cases and didn't disagree with the judgment of the lawyers in even 1,000 of them, if I could look over that many and knew enough.

I don't know a system, including a pro bono system or any other, in which there would not be representation which some of us would have said, "Gee, when I set the priorities, I put that one so far to the bottom that we didn't reach it."

I am not sure that there is any solution to that, and, fortunately, we have courts, and if that was an argument without merit, the true check ought to be that it ought not to win.

Mr. TAYLOR. Well, except that we are asking the Federal taxpayer to actually borrow money. I mean if you consider a \$200 billion deficit the money you are spending we are having to borrow somewhere and the taxpayers are having to pay back, with interest, working people in the country.

We ought not say we are going to fund lawyers to carry out these areas of extreme policy that are clearly anti-family—this would be—under the guise that we are helping the poor or that we are working for the average case of someone being evicted from their apartment.

One of the things that I have—many of the cases that I have seen are very extreme, radical areas that are being funded by the taxpayer, and the taxpayer shouldn't be asked to be funding that area.

Let me—and I know we are coming to the last seconds. A problem I have with Legal Services is that it is not the average elderly person being evicted from homes that you would have people believe that you defend. They are more of this radical view I see funded by the taxpayer, and it is not all in the case I gave you, there are a multitude of other cases.

I am also skeptical about reforms. We are talking about tiptoeing our way into reforms for the first time in 22 years. We are talking about a system of a time chart so that you have some idea what these people are doing out there with the hundreds of millions of taxpayers' dollars.

The arrogance of not having a system in 22 years in that direction, that we are now talking about competition, but we are now into 22 years. The fact that even though the Congress has said we are going to see a glide-path, a 3-year phaseout, you folks come in and ask for three times that amount, even know the Congress has said we are headed in a glide-path direction.

There doesn't seem to be anyone listening in your corporation. Even when the chairman, or president, of the Corporation a few years back tried some reforms, he was sued by three different Legal Services Corporations for the reforms that he was trying to bring out.

Now, if you have that kind of loose cannon floating around, it is hard to come to us at a time of tight money and say, "Fund this with the taxpayers' money." That is what troubles me, is that I have sat here several years now, and the different folks, not all of you have been here, but that is a troubling sort of thing.

Mr. Chairman, I am sorry if I ran with too much time. I would like the responses in writing, if you would.

Mr. ROGERS. Well, thank you very much. We will consider your testimony in full.

Mr. EAKELEY. Thank you again.

Mr. FORGER. Thank you.

Ms. NANCY ROGERS. Thank you.

[The following questions were responded to for the record.]

77

LSC Responses to Questions for the Record
Submitted by Rep. Harold Rogers
House Appropriations Subcommittee on Commerce, Justice,
State, the Judiciary and Related Agencies
LSC FY 1997 Appropriations Hearing, April 17, 1996

Question: Please provide a chart of the following: Total amount of funding received, or expected to be received, by LSC grantees from all non-Federal sources (including, but not limited to, IOLTA, state and local governments, private contributions) for FY 94, FY 95, FY 96, and estimated for FY 97.

Answer: The requested chart is attached, but we cannot provide estimates for 1997 given the volatility of non-LSC funding for our recipients in a system of competition. In reading the chart, several special considerations are required.

First, all of the data is not for federal fiscal year grant funds, but for grantee calendar years. The Corporation's grants are all made for calendar year periods, and grantee data of the sort requested is collected on that basis. As a result, while the non-federal funds reported coincide with the grants for each federal fiscal year, they are, in fact, calendar year funds received by the grant recipients.

Second, the 1994 and 1995 data are based on unaudited submissions by recipients after the close of the grant year. The 1996 data is estimated, as of the end of March 1996, and may slightly understate our final estimates, which will be available shortly.

Third, the 1996 data has been substantially affected by the change in the number and nature of LSC grantees. In 1996, the Corporation no longer made grants for national or state support, for supplemental field, or for the Clearinghouse. The non-LSC funds received by organizations that formerly received these grants, but that are no longer grantees of the Corporation for any purpose, do not appear in the 1996 data. This funding totalled approximately \$30 million in 1995. Similarly, a number of recipients of 1994 and 1995 basic field grants did not apply for 1996 grants. The new grantees in the affected service areas project having approximately \$20 million less in 1996 non-LSC funding than the 1995 non-LSC funding of those that did not apply for 1996 grants.

In addition, some state and local governments, perhaps taking their lead from the Congressional cuts, have also been reining in their support. Any expectation that these governments would take over legal services as a local responsibility have been no more than partly realized so far. Moreover, some sources of non-LSC support, both governmental and private, are reportedly turning elsewhere with their funds because they are not willing to place their money under the restrictions established by P.L. 104-134. For example, funding to specifically support legal services to prisoners, or to undocumented aliens, no longer goes to 1996 LSC recipients.

LEGAL SERVICES CORPORATION

1994, 1995 and Estimated 1996 Non-LSC Funding for All Recipients*

Funding Source	1994 (\$)	1995 (\$)	1996 Estimated (\$)
Title XX	11,077,198	10,201,153	7,623,938
Older Americans	15,096,049	15,507,422	14,201,810
Other Federal	4,547,519	8,785,939	7,136,794
Block Grants	3,676,934	4,707,427	3,137,920
Revenue Sharing	207,725	239,483	291,657
State	51,370,839	52,655,358	44,553,823
Local	23,768,888	22,841,775	17,932,499
United Way	11,916,195	12,137,190	11,913,195
Foundation	11,076,297	11,218,158	5,942,747
Bar Association	2,738,789	3,142,535	2,790,052
IOLTA	64,879,683	58,752,262	53,462,828
Fee Awards	7,722,596	8,106,759	4,466,106
Non-LSC Carry Over	12,476,798	15,944,309	24,138,863
Publication Income	1,228,217	1,435,478	58,328
Other Non-LSC	21,053,787	23,076,707	12,425,728
Totals	242,837,514	248,751,955	210,076,288

*Data for 1995 and estimates for 1996 are slightly incomplete.

LSC Responses to Questions for the Record
Submitted by Rep. Charles H. Taylor
House Appropriations Subcommittee on Commerce, Justice,
State, the Judiciary and Related Agencies
LSC FY 1997 Appropriations Hearing, April 17, 1996

- 1. Question:** I recently requested, and was provided with information from Legal Services Corporation. I would like to follow up with a few questions in regard to that requested information. Please define the term "unclassified position" and explain why the number of management and administration unclassified positions in your office has doubled from 9 in fiscal year 1993 to 18 in the current fiscal year.

Response: Under its current salary scale, which was instituted under the previous LSC administration, the Corporation has seven salary classification levels, roughly comparable to GS levels 1-13 in the federal system. LSC does not have a salary scale for positions above its level 7. These positions, which are comparable to GS levels 14-15 and Senior Executive Service positions, are compensated at the President's discretion, in consideration of the employee's experience, education, and role within the Corporation, and are called unclassified positions. The following table shows the relation between LSC's salary scale and the federal scale.

Comparison of LSC Salary Schedule to Federal Salary Schedule

LSC SALARY SCHEDULE		FEDERAL GENERAL SCHEDULE	
Salary Level	Salary Range	Salary Level	Salary Range
Level 1	\$11,830 - \$18,269	GS-1 GS-2	\$13,132 - \$16,425 \$14,764 - \$18,577
Level 2	\$15,771 - \$22,671	GS-3 GS-4	\$16,111 - \$20,940 \$18,085 - \$23,515
Level 3	\$20,206 - \$27,796	GS-5 GS-6	\$20,233 - \$26,303 \$22,554 - \$29,320
Level 4	\$24,808 - \$34,008	GS-7 GS-8	\$25,061 - \$32,582 \$27,756 - \$36,088
Level 5	\$31,050 - \$43,012	GS-9 GS-10	\$30,658 - \$39,858 \$33,762 - \$43,888
Level 6	\$38,279 - \$53,690	GS-11 GS-12	\$37,094 - \$48,222 \$44,458 - \$57,800
Level 7	\$46,986 - \$66,535	GS-13	\$52,867 - \$68,729
Unclassified	\$66,536 - \$108,200	GS-14 GS-15	\$62,473 - \$81,217 \$73,486 - \$95,531

LSC recently began a thorough review of its salary structure and personnel policies, which is being conducted with the participation of the federal Office of Personnel Management. At OPM's recommendation, the Corporation is considering whether to consolidate the current pay levels and place currently unclassified positions in newly created pay levels.

The following table shows the number of unclassified positions since 1990, for the Corporation's Management and Administration and its Office of Inspector General.

Total Number of Unclassified Employees by Fiscal Year, 1990 to Present

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95	Current
Management & Administration	9	15	11	9	13	22	17
Office of Inspector General	1	2	1	1	1	4	5
Total	10	17	12	10	14	26	23

If the federal General Schedule were now applicable to LSC, seventeen of those whose positions are currently in the unclassified category would be in the GS-14 and GS-15 ranks, leaving only five in the unclassified category. Their positions are equivalent to those in the Senior Executive Service.

The increase in FY 1995 in unclassified positions attributable to the Corporation's management and administration reflected the creation of eight new Program Officer positions. These new positions were created pursuant to a reprogramming of funds in November, 1994, when there was no indication that the Corporation's management and administration allocation was to be drastically reduced. As part of the Corporation's downsizing over the past year, the number of individuals in unclassified positions in the management and administration component has been reduced by five.

2. Question: *Additionally, please give the salary ranges of these unclassified positions.*

Response:

Current Salary Ranges for Unclassified Employees

Salary range	Management and Administration	Office of Inspector General
\$100,000-109,000	4	0
\$90,000-99,000	2	1
\$80,000-89,000	3	1
\$70,000-79,000	4	2
\$65,000-69,000	4	1

The only positions at LSC compensated at a level exceeding that equivalent to a GS-15 are the President, Executive Vice-President, Director of OPEAR, Director of OPS, and Inspector General. The Corporation understands that these and other Corporation employees are compensated at levels that in general are significantly lower than for comparable positions in federal agencies and the Congress. A salary comparability study will be conducted as part of the Corporation's review of its salary structure and personnel policies mentioned above.

3. Question: *Please explain how it is possible to continue to add positions in the management and administration division while at the same time stating that you need additional funds for management and administration. Why don't you simply reduce the number of positions in an effort to better use those funds already existing?*

Response: The Corporation has not continued to add positions while seeking additional funds for management and administration. In fact, under its current administration, the Corporation's staffing level, exclusive of the Office of Inspector General, has been reduced by 46 percent.

In 1993, when the current Board took office, LSC's management and administration staff totalled 125, excluding OIG. In LSC's FY 1995 Budget Request, that level was reduced to 108. As a result of the rescission of FY 1995 funds, the level was further reduced to 99. In August 1995, in response to indications that its management and administration budget would be significantly reduced for FY 1996, LSC announced a Reduction-in-Force plan (RIF) further reducing its staff, with the exception of OIG. As a result of the RIF, the staffing level was reduced to 68, a cut of approximately one-third, bringing it to a little more than one-half of what it had been when the current Board took office. In its FY 1997 Budget Request, LSC sought to restore only two of these positions unfilled as a result of the RIF, for a total staffing level of 70.

The following table shows the allocation in the Corporation's staff, excluding OIG, over the past year and in the Corporation's FY 1997 Budget Request.

Corporation Staffing by Office

	FY 1995 Post-Rescission	Current	Proposed 1997
Executive Office	15	9	9
General Counsel	8	4	5
Programmatic Staff	47	35	35
Comptroller	6	6	6
Admin. Services and Human Resources	17	9	10
Information Technology	6	5	5
TOTAL	99	68	70

4. Question: I would now like to ask you a few questions in regard to an LSC Inspector General (IG) report which was published in July, 1995. In that report, the Inspector General found that in 1994, some members of the transition team received benefits that were not authorized in the corporate policies and not available to all LSC employees. Among those benefits were: apartments leased at LSC expense, payment of private insurance, reimbursement for child care and housekeeping, and paid parking. Could you explain the justification for these benefits?

Response: Alexander D. Forger, at the time Interim President of the Corporation, deemed these temporary benefits to be necessary due to the exigencies of the circumstances. As the OIG Report found, the leasing of apartments was cost-effective when compared to daily hotel rates. Reimbursing the members of the transition team for the premiums they paid for health insurance available to them from other sources, rather than enrolling them in the Corporation's health plan, resulted in no additional cost to the Corporation. (In one instance, health insurance coverage was waived.) For one member of the transition team who lived in Washington state and had a small child, Forger deemed it appropriate to reimburse reasonable child care and housekeeping costs for the periods during which she worked in Washington, D.C. Parking was paid for the Vice-President, which was consistent with past LSC practice. As the OIG Report concluded, all these contractual arrangements were within the authority of the President.

5. Question: *Please justify why, during a 1994 general pay freeze the Executive Vice President and the Director of the Office of Program Evaluation, Analysis and Review/Office of Program Services (OPEAR/OPS) received salary increases of 18% and 15% respectively.*

Response: When the Executive Vice-President and the Director of OPEAR were appointed to those positions as permanent employees they received the salary level determined to be commensurate with the responsibilities assigned to their positions. Prior to that time they had both served as members of the Transition Team, in a temporary capacity.

6. Question: *The IG report also found that LSC did not report all employee and independent contractor compensation to the Internal Revenue Service and did not comply with tax withholding requirements. Please comment on the allegations and advise the committee as to any efforts that have been made to rectify this situation.*

Response: The OIG Report concluded that LSC had erred in the application of certain difficult areas of tax law. In response to the Report, the Corporation requested a review of the issue by outside tax counsel. Counsel's advice was that while the issue was a close one, the conservative approach would be to follow the OIG's interpretation of the IRS requirements. Based on this advice, LSC made the necessary adjustments, as recognized by the OIG in its "Inspection Report Followup" dated May 3, 1996, through the issuance of revised tax reports for 1994 and reports for 1995 on compensation paid to contractors and transition team members classified as employees.

7. Question: *Please explain why LSC continued to pay for trips home to Denver, Colorado for the Director of OPEAR, even after an offer had been extended to him to serve as a permanent staff member. Also, were those amounts paid by LSC for those trips included as compensation for the Director in 1994?*

Response: LSC considered that the Director of OPEAR became a permanent employee on October 1, 1994, and that he remained entitled to reasonable travel to and from his home until that date, pursuant to his temporary employment contract. The OIG Report concluded that LSC had erred in its application of tax laws to these payments. On the advice of tax counsel, as described above, the Corporation revised its tax reports for 1994 to include these trips as compensation.

8. Question: *Last year LSC promulgated regulations regarding a new policy for competition for its grantees. Please comment on the effectiveness for these regulations. In addition, how many total bidders will there be for LSC grants and how many of these bidders are new bidders?*

Response: The Corporation is fully committed to promoting active competition for grants. The Corporation believes that the competitive system set forth in the regulation can achieve that result provided that: (1) the Corporation is adequately funded, with a reasonable prospect of stable funding for the future, so that new entities will be motivated to participate in the delivery system; and (2) the Corporation's management and administration is funded at a level that provides for the necessary staff and sufficient funds for the development and evaluation of competitors, including engagement of outside evaluators and travel for on-site capability assessments.

For FY 1996, the Corporation solicited applications for 363 service areas. Applications from bidders other than the previous grant recipient were received for a total of 60 service areas. In 19 of these 60 services areas, the previous grant recipient did not apply for funding. In the remaining 41 service areas, the Corporation received more than one application. Many bidders submitted applications covering more than one service area.

9. Question: *Do you believe that the new competition structure is meeting its goals? If you do not believe that it is meeting those goals, what additional way can this system increase competition and ensure that taxpayers are getting value for their money?*

Response: see above.

10. Question: *How much money do LSC-affiliated groups contribute in American Bar Association (ABA) dues per year? Please provide information regarding money or activities by LSC-affiliated groups in regards to the ABA.*

Response: The Corporation has no data with which to respond to this question because it does not collect from grantees information about their specific expenditures for either ABA dues or participation in ABA-sponsored activities. However, although no data is collected, the Corporation is aware that among the activities in which grantees have engaged, either with LSC or non-LSC funds, are ABA and other bar-related annual meetings, committees and conferences. Under the FY 1996 Appropriation, grantees can no longer use LSC funds for ABA dues. (LSC has no affiliation with any groups other than its grantees. To the extent that the question is intended to reach other organizations concerned with legal services issues but not affiliated with LSC, the Corporation has no access to such information.)

11. Question: *The information provided to me contained a list of temporary employees and consultant service contracts. I would like to ask about a few in particular. Robert Echols, who was with LSC on a consultant contract from December 1994 through July 1995 was paid \$375 dollars a day to 'assist with the corporation's communications functions.' Explain to me exactly what his position required and how do you justify the amount paid per day? Isn't that amount in excess of the federal government's daily rate?*

Response: During this period, Robert Echols was primarily responsible for communications with Congress, including documents such as the FY 1996 Budget Request, hearing testimony and response to Congressional requests for information, which were unusually heavy at the time. The fact that he was willing to work on an as-needed basis, paid on a daily rate, rather than as a regular employee, represented a benefit to LSC. The compensation paid to him, which is roughly equivalent to a full-time annualized salary of \$79,000 per year with benefits, was reasonable and appropriate for an individual with his qualifications and responsibilities. The federal Office of Personnel Management (OPM) has verbally confirmed that the daily rate paid to Echols as a consultant was consistent with federal policies and practice.

12. Question: *Additionally, I would ask you about Karen Gaskins Jones, who in the period of April 1995 through August 1995 was paid over \$600 a day to 'assist the Office of Program Services in the design of a study of support functions and services in the delivery to poor people.' Please clarify what her job entailed and would you agree that the \$600 per day paid to her was in excess of the going rate for a consultant?*

Response: The object of the study was to determine the extent to which the then existing system of national and state support was meeting the needs of LSC grantees for training and other forms of support. The system and individual support programs had been the subject of controversy. (Congress has eliminated funding for the programs in FY 1996.) Karen Gaskins Jones was engaged for a period not to exceed fifteen days to begin the development of a process by which the effectiveness and efficiency of both the system as a whole and the individual programs could be evaluated. She has served as a consultant to numerous federal agencies, and reduced her usual rate substantially for this contract as a favor to LSC. On the basis of her prior work for federal agencies, her expertise and the nature of the services she provided, and our conversation with OPM, the Corporation does not agree that the rate paid to her was excessive.

13. Question: *In June of 1995, Mr. Forger made a trip to Raleigh, North Carolina to speak to the Raleigh/Durham Bar Association. In addition to speaking to the Bar Association, Mr. Forger visited the editorial board of the Raleigh News and Observer. In an editorial published in July of 1995, the News and Observer strenuously defended LSC, due in part to the visit by Mr.*

Forger. Now in this time of tight budgets, do you really believe that lobbying editorial boards of newspapers is the correct way to be using federal funds? It is quite obvious that you used your dialogue with the editorial board to forward your agenda and make the argument that critics of LSC are nothing more than disgruntled losers in LSC suits.

Response of Alexander D. Forger: "I visited North Carolina at the invitation of the Raleigh/Durham Bar Association to speak at a luncheon honoring attorneys and law students volunteering their services to help provide legal assistance to the poor. The event focussed also on the need to increase outside resources, including the raising of funds and enlisting of voluntary professional time of the bar. As is my custom, I visited the local LSC grantee to meet with staff and to hear first hand their views of problems being encountered and their thoughts as to how the LSC program could become more effective. Thereafter, I visited with the local press, as I do whenever the opportunity permits. I have learned that there is considerable misunderstanding among the public as to the purpose and performance of the Legal Services program. Meeting with the press provides me with an opportunity to respond to questions about the Corporation and the local program, and in so doing to reach through the media far greater numbers of people than would otherwise be the case. This is consistent with my view that a principal responsibility of my role as President of the Corporation is to promote full understanding of the essentiality of assuring access to justice without regard to personal financial resources, and to enlist community support of, and participation in, the local programs.

"This is my sole 'agenda,' and was so in speaking to the newspaper in Raleigh. The implication that I visited with the intention of criticizing you is incorrect. I did not discuss with the board your motives for opposing legal services. The editorial makes clear that its focus on you was based upon the nature of your criticisms of the Corporation rather than anything I said to the board. (*Raleigh News and Observer*, July 3, 1995, copy attached for the record).

"I do not believe, nor would I argue, that all those who oppose federally funded legal services are disgruntled losers in cases involving LSC grantees. While this may be the case in some instances, I recognize that there are others who oppose the program because they do not see access to justice as a federal responsibility. Others, like the Christian Coalition, characterize the program as being anti-family, ostensibly because we assist poor women in obtaining divorces, irrespective of the cause, whether domestic violence, spousal or child abuse, or abandonment. A few others, including yourself, citing a handful of particularly controversial cases, view the program as out of control and beyond reform as well as reckless, irresponsible and corrupt. To the latter allegation, I would respond that having spent 44 years in practice with a Wall Street law firm (including eight years as its chairman), I am not without some experience with which to make judgments as to the integrity and quality of legal service providers. I have seen no evidence to support your allegation against the Corporation and its grantees. Perhaps you would provide me with any specific charges, which I will investigate immediately."

14. Question: Let me now ask you about *Rodriguez v. Reading Housing Authority*, a 1991 case in which Central Pennsylvania Legal Services sued the Reading, Pennsylvania Housing Authority for refusing to lease an apartment to an unemancipated and unmarried 16-year-old girl. Would you not agree that by accepting cases like the one mentioned above, LSC is promoting an anti-family agenda?

Response: The underlying facts in the *Rodriguez* case, as reported to the Corporation, are as follows:

The 16-year-old plaintiff and her family (her child and the child's father) had been paying excessive rents for private housing that was unsafe and infested with mice and rats. She hoped to move into better housing and applied for public housing. The Housing Authority denied her application on the grounds that the plaintiff was an unemancipated minor. The Authority requires applicants under age 18 to provide a judicial decree of emancipation as a condition of admission.

Although the plaintiff had never obtained a legal decree of emancipation from her parents, she had very little contact with them during her childhood. The plaintiff had lived with her mother only for a few months following her birth. She had seen her mother two or three times since then, most recently five years ago. The plaintiff believes that her mother is in prison in Florida. The plaintiff's father has mental health problems and has been in and out of prison and mental health institutions throughout the plaintiff's life.

The plaintiff was raised by her paternal grandparents, whose only income is social security benefits. The plaintiff and her boyfriend lived with her grandparents in a two-bedroom apartment. When the plaintiff's great-aunt came to live with them, there was not enough room to house the entire family and the plaintiff and her boyfriend moved into their own apartment. After becoming pregnant and experiencing severe problems with rodents in their apartment, the plaintiff and her 23 year old boyfriend applied for public housing, hoping that they would obtain a larger and more sanitary place to live. She had been living on her own for several months at this time.

In bringing suit against the Housing Authority, the plaintiff stressed that the relevant state law allows minors to enter into an enforceable contract for "necessaries." The plaintiff argued that the Authority had the power to determine that her housing was "necessary" because her parents or guardians were either unable or unwilling to provide housing, and the Authority could therefore provide public housing without requiring the plaintiff to obtain a decree of emancipation.

The plaintiff did not contend that all minors should be admitted on their own to public housing. Rather, plaintiff argued that minors such as her, whose parents or guardians are either unwilling or unable to provide them with housing, should be given the opportunity to present such facts to the Housing Authority when applying for public housing and should not in every

instance be required to obtain a judicial decree of emancipation before making an application. The trial court held in favor of the Housing Authority and against the plaintiff. On appeal the trial court's decision was affirmed, the Court of Appeals determining that it was not unreasonable for the plaintiff to obtain the emancipation decree rather than causing the Housing Authority to determine whether or not she had the capacity to enter into a binding lease.

Based on the limited nature of the claim, and given the plaintiff's desire to obtain safe and appropriate housing for herself and her child, as well as her parents' and guardians' inability to provide housing for them, the Corporation does not believe that this case promotes an "anti-family" agenda. Nor does the case violate any of the Corporation's regulations or other legal restrictions. The Corporation takes no position as to whether or not the case represented an appropriate use of the program's resources. Under the Legal Services Corporation Act, questions of case priority are determined not by the Corporation but at the local level.

15. Question: *I would like to now to ask you a question in regard to LSC's newly promulgated rule regarding restricting representation in drug-related eviction cases. While appearing to crack down on the problem, the regulation contains a number of loopholes that could easily be abused. For example, the rule as written would still allow LSC to represent family members who benefited financially from the crime, but were not necessarily charged with the actual crime. Additionally, this new rule does not forbid the use of non-LSC funds for representation of individuals in drug-related evictions. Please address these points and explain how LSC is going to assure Congress that non-LSC funds are the only funds being used in these cases?*

Response: In drafting its regulation, the LSC Board tracked the language of pending legislation so that it would not be inconsistent with the law. That legislation, which has now been enacted as part of the FY 1996 Appropriation, refers to a "person charged with the illegal sale or distribution of a controlled substance." Under the law at the time the regulation was adopted, the Corporation did not have the authority to restrict the use of non-LSC funds. Now that the FY 1996 appropriation has been enacted, the restriction applies to non-LSC funds as well as LSC funds, and the Corporation's regulation will be amended to reflect this change. At the direction of Congress, monitoring for compliance with this and other restrictions will be based primarily on audits conducted by independent auditors and reviewed by the Office of the Inspector General.

ATTACHMENT 1

THE NEWS & OBSERVER
MONDAY, JULY 3, 1995

I advise and enjoin those who direct the paper
in the Sumterites never to advocate any cause for personal
profit or preferment. I would wish it always to be "the people"
and to devote itself to the policies of equality and justice to the
underprivileged. If the paper should at any time be the voice
of self-interest or become the spokesman of privilege or selfishness
it would be untrue to its history.

— from the will of Hampton Baptista, Editor and Publisher (1794-1866)

EDITORIAL

In defense of legal aid

A federal program to provide legal services to poor people is taking an unwarranted hit from U.S. Rep. Charles Taylor of North Carolina. His lawyers do the important job of making the system work for all.

You would think a congressman could find better things to get angry about than a program that provides legal aid to the poor. But not Rep. Charles Taylor, the land baron who represents North Carolina's mountainous 11th District. Taylor has scored in on the Legal Services Corp., and oh boy, is he mad.

"It's out of control and beyond reform!!" he says in a caption across one of two recent missives asking fellow lawmakers to eliminate federal funding for Legal Services. "Little do Americans know what their hard-earned money is really being used to support," he says in the other. "If they did know, they would be outraged."

The letters accuse the corporation's lawyers of taking up for drug dealers, illegal immigrants and other scoundrels. Among other mind-boggling examples, Taylor claims that they helped a 14-year-old try to get custody of a child he had fathered by rape, sought U.S. residency for an illegal alien convicted of a felony, and sued to have alcoholics and drug addicts classified as disabled so they could receive government checks.

But like much of the fire that the far right has been aiming at the program, the incidents Taylor cites seem to be embellished, overstated or untrue. A spokesman for the corporation says Legal Services lawyers represented the 14-year-old, but he wasn't seeking custody; the agency wasn't involved in the illegal alien's case; and it was Congress that classified alcoholism

and drug addiction as disabilities.)

More important, such stories don't reflect Legal Services' sometimes mundane but utterly necessary work. More realistic examples of how its lawyers spend their hours include representing victims of domestic violence, assisting ripped-off consumers, holding landlords accountable for substandard rental housing, and helping people obtain veterans' benefits, disability payments or child support. North Carolinians have benefited in countless instances.

The lawyers are committed and dedicated, to be sure. They must be to settle for the average \$33,000 salary. Moreover, they have brought suits against government agencies. But in a nation that is founded on law, the system has to work for everyone or it is worthless.

Alexander Forger, the corporation's president, recently visited The N&O and expressed frustration over criticism by detractors, some of whom are disgruntled losers in Legal Services' suits.

As he pointed out, Congress already restricts the types of cases Legal Services may handle. Its lawyers cannot bring redistricting suits, for instance. And Forger said he was willing to accept other reasonable restrictions and address any genuine abuses.

That seems fair enough. It makes no sense to let misinformation and misbegotten anger destroy a program that helps so many.

LSC Responses to Questions for the Record**Submitted by Rep. David E. Skaggs****House Appropriations Subcommittee on Commerce, Justice,****State, the Judiciary and Related Agencies****LSC FY 1997 Appropriations Hearing, April 17, 1996**

Question: *Please comment on the relative cost to LSC and private law firms of the use of volunteer private attorneys representing poor persons on a pro bono basis versus the use of LSC attorneys specializing in the legal problems of the poor.*

Answer: In 1995, attorneys participating in private attorney involvement efforts associated with recipients of LSC funding, including the Supplemental Field programs, closed about 257,000 cases. Putting aside the nearly 30,000 cases closed by *pro bono* and judicare attorneys working for the ten Supplemental Field programs that were defunded under the terms of the 1996 appropriation bill, *pro bono*, contract and judicare attorneys closed 229,000 cases. While most of these cases were handled by *pro bono* attorneys, in nearly 60,000 of them the private attorney was paid a reduced fee for handling the case. According to reports from the grantees, 131,000 lawyers had registered to participate in a Corporation-supported private attorney involvement program, and about 57,000 of them accepted at least one referral during 1995.

For more than a decade, to ensure that private lawyers play a prominent role in the delivery of legal services to low-income individuals, LSC has required recipients of LSC grants to expend an amount equal to 12.5 percent of their basic field grants on involving private attorneys in service delivery to the poor. During 1995, LSC grantees and their private attorney involvement programs provided legal assistance to about 2.2 million clients, including 1,658,000 cases that were completed and more than 500,000 additional cases that were still active at the end of the year. About one-seventh of the cases closed (229,000) were handled by private attorneys participating in the private attorney involvement efforts.

Even *pro bono* legal services, provided to low-income individuals by volunteer attorneys receiving no compensation, are not "free" to the organization that recruits the attorneys, screens and assigns the cases and assures that work is completed in a professionally competent fashion. In fact, the Corporation's Delivery Systems Study completed in 1980 (pursuant to §1007(g) of the Legal Services Corporation Act) demonstrated that the cost of using lawyers to provide high quality individual services was probably only moderately lower than the cost of providing services to the same clients using staff attorneys. Consistent with that finding, in 1995, recipients spent funds equal to about one-eighth of LSC funding to support the private attorney involvement efforts that closed about one-seventh of the year's cases.

Pro bono legal services are also not free to the lawyers that provide them. Instead, each case represents an important contribution of resources to the system of legal services provision. In 1994, for example, recipients reported receiving donations of services valued at \$41 million. The bulk of these services were donated through private attorney involvement efforts, and they

probably underestimated the total. For example, if each closed case consumed just five hours of lawyer time, and that time was valued at \$50 (probably about half of an average billing rate nationally), the total value of donated time in 1995 might be \$57,250,000.¹

Pro bono services are primarily rendered in legal controversies that are familiar to lawyers in private practice. Assignment of cases of this kind make it possible for private lawyers to offer services without extensive training or more intrusive supervision which are not practicable for lawyers who are volunteering ten, twenty or even fifty hours per year. As a result, private attorneys concentrate their work for the poor in family law cases (such as divorce and custody), in consumer cases (such as debt defense and bankruptcy) and in advice about housing issues. In 1995, these three substantive areas accounted for 80 percent of all cases closed by private attorneys, compared to only 63 percent of those closed by staff attorneys and paralegals. While training programs could increase the willingness and ability of private attorneys to handle kinds of cases that don't occur in their ordinary practices (such as SSI applications), such programs would increase the cost of *pro bono* efforts and might make it more difficult to recruit new participating attorneys.

The dream of a simpler time, in which the poor are able to get *pro bono* help for whatever legal problems they encounter, was never realized in the past and certainly appears wishful thinking given the reality of current large populations of the poor in parts of the country with few lawyers.

Only a staff attorney system can place lawyers in these areas and assure access to justice for low income individuals.

Lawyers are not evenly distributed across the country, and lawyers are not evenly distributed relative to the presence of the poor. Instead, a very high proportion of all lawyers are found in several cities in which government and law are principal industries (such as the District of Columbia and New York City) and in just a few of the states. While lawyers everywhere participate fairly consistently in *pro bono* activities, there just aren't enough lawyers in most states, and particularly in the rural areas of most states, to provide a fair share of the total *pro bono* potential to poor people living in those states. Poor people living in the large number of states with relatively few lawyers will find little legal help available to them if the government withdraws its support and leaves them to the willing but infrequent assistance *pro bono* lawyers in their states. The absence of services would be particularly noticeable in rural areas and across much of the South, the plains and the mountain states.

¹\$50 x 5 x 229,000 = \$57,250,000.



FEDERAL MARITIME COMMISSION

THURSDAY, APRIL 25, 1996.

MARITIME ADMINISTRATION

WITNESSES

ALBERT HERBERGER, MARITIME ADMINISTRATOR

HAROLD J. CREEL, JR., CHAIRMAN, FEDERAL MARITIME COMMISSION

GENERAL STATEMENT OF THE CHAIRMAN

Mr. ROGERS. The subcommittee will come to order.

The Chair apologizes for the delay in opening, but we had a vote on. This morning we have before us the two maritime-related agencies within the subcommittee's jurisdiction; the Maritime Administration, a part of the Department of Transportation, and the Federal Maritime Commission, an independent regulatory agency.

This is the second time we have asked these two agencies to appear together. We have asked you to discuss: one, the need for each organization; two, downsizing and efficiencies achieved by each organization in an environment of continuing budget restraints; and, three, alternative ways of achieving each organization's missions and goals.

The fiscal year 1996 appropriation did not result in an overhaul of these organizations, but it did require significant belt-tightening. We are interested in how well you responded to the challenge.

The schedule this year requires us to do a consolidated hearing schedule. We are trying to cover a lot of ground in a short period of time. We will try to conclude this hearing in an hour because we are also scheduled to hear the EEOC this morning as well.

We are pleased to have with us this morning the Maritime Administrator, Admiral Albert Herberger, and the Chairman of the Federal Maritime Commission, Harold Creel.

Admiral Herberger, your statement will be made a part of the record. We will be pleased to hear from you.

OPENING STATEMENT OF THE MARITIME ADMINISTRATOR

Mr. HERBERGER. Thank you, Mr. Chairman.

I welcome the opportunity to be with you today to discuss the Maritime Administration's fiscal year 1997 budget request. The Maritime Administration is responsible for ensuring the maintenance of an adequate American merchant marine to promote the commerce of the United States and to aid in the national defense.

From the military perspective, the value of the U.S. flag merchant marine is most visible during emergencies or wartime. Privately-owned American merchant ships and our civilian seafarers have served with honor during World War II, Korea, Viet Nam, the Persian Gulf, and humanitarian efforts such as Operation Restore

Hope, Uphold Democracy and most recently Joint Endeavor in Bosnia.

A key element of this year's budget is the Maritime Security Program, MSP. The new program will foster a modern and competitive American merchant marine at substantially lower costs than the existing Operating Differential Subsidy—ODS—Program.

It seeks to ensure the continued operation of merchant ships under the American flag manned by skilled American seafarers. It also provides access to the modern state-of-the-art commercial intermodal system which can be made available when needed to support the nation's armed services. The budget also supports the National Shipbuilding Initiative through our funding request for Title XI Loan Guarantee Program and Research and Development Program.

With the enactment of this initiative, we are seeing an unprecedented increase in commercial shipbuilding projects which is maintaining a significant number of jobs in American shipbuilding and related support industries. Through MARAD's shipbuilding, and hopefully the Research and Development Program, we will continue to promote the revitalization of the American shipbuilding industry.

Since the enactment of the National Shipbuilding Initiative in 1993, MARAD has approved over \$1.5 billion worth of Title XI financing for the construction of 144 vessels and three shipyard modernization projects as of February 23, 1996. Included among these approvals were 13 double-hull ocean going vessels.

We request your support for an R&D Program which will be focused on shipbuilding, ship operations and port industries, including our inland river systems which are critical to the economic health and well-being of the nation, since they are fundamental components of our international trade.

The remaining funds requested for the fiscal year 1997 for the Maritime Administration will provide for the payment of existing contracts for the Operating Differential Subsidies and will maintain the agency's operation and training programs.

Effective in fiscal year 1996, funding requests for the Ready Reserve Force are submitted by the Department of Defense to the National Security Committee. MARAD, however, retains management responsibilities of the fleet.

An appropriation of \$100 million is requested for the Maritime Security Program. The fiscal year 1997 request will provide support for about 47 liner vessels.

For Operations and Training, an appropriation of \$78,097,000 is requested for fiscal year 1997. Increases are requested for the State Maritime Schools for essential maintenance and repair of the training ships assigned to them and for administrative expenses associated with maintaining the current maritime programs.

Also included in the total request is an increase for the Research and Development Programs of \$1,764,000 to resume our activities in the critical areas of intermodal development and shipyard revitalization. What we are attempting to do is to represent the water-borne commerce industry and the port industry along with the other modes of the Department of Transportation.

DOT's R&D budget in fiscal year 1995 was \$854 million. We were zeroed out last year. This year the DOT's budget request for R&D is \$1,058 billion. We are requesting \$1,764,000. What we are trying to do is stay in the game to represent the waterborne transportation industry.

For the Title XI Program, the Maritime Guaranteed Loan Program, the appropriation request is for \$44 million for subsidy costs and administrative expenses associated with the new loan guarantee commitments. These resources would permit loan guarantees covering up to \$570 million worth of shipbuilding.

In summary, we are requesting for fiscal year 1997 an appropriation to liquidate the contract authority of \$148,430,000 for Operating Differential Subsidies; \$100 million for the Maritime Security Program; \$78,097,000 for Operations and Training; and \$44 million for the Maritime Guaranteed Loan Program, Title XI.

Mr. Chairman, that concludes my opening remarks. I will be pleased to answer any questions that you may have.

[The statement of Mr. Herberger follows:]

**STATEMENT
OF
ALBERT J. HERBERGER
MARITIME ADMINISTRATOR
ON
BEHALF OF
THE
MARITIME ADMINISTRATION
BEFORE THE
SUBCOMMITTEE ON COMMERCE,
JUSTICE, STATE, AND JUDICIARY
OF THE COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES
IN SUPPORT OF
FISCAL YEAR 1997 APPROPRIATIONS
APRIL 25, 1996**

DEPARTMENT OF TRANSPORTATION
STATEMENT OF THE MARITIME ADMINISTRATOR
ALBERT J. HERBERGER
BEFORE THE SUBCOMMITTEE ON COMMERCE,
JUSTICE, STATE, AND JUDICIARY
OF THE COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES
IN SUPPORT OF FISCAL YEAR 1997 APPROPRIATIONS

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to be with you today to discuss the Maritime Administration's Fiscal Year 1997 budget request. Title I of the Merchant Marine Act, 1936 states that "It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine...." The Maritime Administration is responsible for ensuring the maintenance of an adequate American merchant marine to promote the commerce of the United States and to aid in the national

defense. To carry out this broad responsibility we strive to assure: (1) **an active fleet of privately-owned and operated commercial vessels;** (2) **a sufficient supply of trained and efficient personnel to crew these ships and the Government sealift ships;** (3) **a Government-owned reserve fleet of cargo vessels which can be activated during national emergencies;** and (4) **support to other maritime-related activities that further the national interests of the United States.**

Overview

The Maritime Administration's FY 1997 budget request reflects the President's commitment to maintaining the status of the United States as a maritime nation. From a military perspective, the value of the US-flag merchant fleet is most visible during emergencies or war time. Privately-owned American merchant ships and our civilian seafarers served with honor during World War II, Korea, Vietnam, the Persian Gulf, and humanitarian efforts such as operations Restore

Hope, Uphold Democracy, and, most recently, Joint Endeavor in Bosnia.

With the end of the Cold War, we are shifting from large forces stationed overseas to a US-based "power-projection" deployment strategy. In the absence of timely sealift, the strategic concept of power projection of heavy forces and global reach will be merely hypothetical. The commercial U.S.-flag fleet is a cost-effective source of military sealift.

A key element of this year's budget is the Maritime Security Program (MSP). The new program will foster a modern, competitive American merchant marine at substantially lower costs than the existing operating-differential subsidy (ODS) program and seeks to ensure the continued operation of merchant ships under the American flag by skilled American civilian seafarers. It also provides supplemental sealift capacity and an intermodal system which can be made available when needed to support the nation's armed services.

The Maritime Security Program will be financed by budget authority subject to annual appropriations and the Administration is requesting \$100 million for FY 1997 to support this critical program.

The budget also supports the National Shipbuilding Initiative (NSI) through our funding requests for Title XI and research and development programs. With the enactment of this initiative, we are seeing an unprecedented increase in commercial shipbuilding projects which is maintaining a significant number of jobs in American shipbuilding and related support industries. Through MARAD's shipbuilding and research and development programs, we will continue to promote the revitalization of the American shipbuilding industry.

Since the enactment of NSI in 1993, MARAD has approved over \$1.5 billion of Title XI financing for 144 vessels and three shipyard modernization projects as of February 23, 1996. Included among these approvals were 13 double-hull tankers that will meet all

environmental requirements of the Oil Pollution Act of 1990 and the International Maritime Organization's standards.

This Administration believes that a research and development program to facilitate the assessment and deployment of innovative technology is essential for the economic productivity of our nation. An R&D program is an investment in the future efficiency and productivity of an economic sector's industries. Clearly, the shipbuilding, ship operating, and port industries are critical to the economic health and well-being of the nation, being fundamental components of our international trade.

Without funding for MARAD's cost-shared cooperative research and development program with the U.S. maritime industry a shortfall of critical investments in a productive and competitive future for our country's economic trade and national security interests will result. Technology assessment and deployment in the maritime industry needs to be supported to assure standing with our international

competitors. It is for these reasons that I urge you to restore funding for our research and development program in FY 1997.

The remaining funds requested in the FY 1997 budget for the Maritime Administration will provide for the payment of existing long-term contracts for Operating-Differential Subsidies, and will maintain the agency's operations and training programs. Effective in FY 1996, funding requests for the Ready Reserve Force (RRF) are submitted by the Department of Defense to the National Security Committee. MARAD, however, retains management responsibilities of the fleet. This arrangement will ensure appropriate levels of funding for the RRF while taking advantage of the technical expertise of MARAD personnel.

REQUEST FOR APPROPRIATIONS

Operating-Differential Subsidies (ODS)

An appropriation to liquidate contract authority of \$148,430,000 is requested, based on the most current rate, which is a net decrease

of \$14,180,000 from the funding provided for FY 1996. This will pay for existing contract obligations for 27 liner and 13 bulk ships, a decrease of 5 liners and 14 bulk ships from FY 1996. The ODS program is designed to offset the higher total costs associated with operating U.S.-flag vessels versus lower cost foreign-flag vessels.

Maritime Security Program (MSP)

As stated earlier, an appropriation of \$100,000,000 is requested for the Maritime Security Program. This program will replace the ODS program which is due to expire in 2001. The FY 1997 request will provide support for about 47 liner vessels in the second year of this 10-year program.

Operations and Training (O&T)

An appropriation of \$78,097,000 is requested for FY 1997, an increase of \$11,497,000 over currently estimated FY 1996 funding. The requested increase is necessary to provide for unavoidable cost increases such as annualization of 1995 and 1996 pay raises, and

Inflation. In addition, increases are requested for the State maritime schools for essential maintenance and repair of the training ships assigned to them (\$2,625,000), and for administrative expenses associated with maintaining current maritime programs (\$4,699,000).

Also included in the total request is an increase for the Research and Development program (\$1,764,000) to resume our activities in the critical areas of Intermodal Development and Shipyard Revitalization. We will continue our efforts to work closely with all sectors of the maritime industry in cooperative research and development to assist in the revitalization of this important national capability.

Maritime Guaranteed Loan (Title XI) Program

An appropriation of \$44,000,000 is requested for subsidy costs and administrative expenses associated with new loan guarantee commitments for FY 1997. Of the total, \$40,000,000 is required to cover subsidy costs and \$4,000,000 is to cover administrative costs. These resources will permit loan guarantees of about \$570 million

during FY 1997 to strengthen America's shipyards and introduce newer more efficient ships into the fleet.

SUMMARY

In summary, we are requesting for FY 1997 an appropriation to liquidate contract authority of \$148,430,000 for Operating-Differential Subsidies; \$100,000,000 for the Maritime Security Program; \$78,097,000 for Operations and Training; and \$44,000,000 for the Maritime Guaranteed Loan Program (Title XI).

This concludes my prepared statement and I will be pleased to answer any questions that you may have.

Mr. ROGERS. Thank you, Admiral.

Chairman Creel, your statement will also be made a part of the record. You may proceed.

OPENING STATEMENT OF THE CHAIRMAN OF THE FEDERAL MARITIME COMMISSION

Mr. CREEL. Mr. Chairman and Members of the subcommittee, thank you for the opportunity to appear before you today to present the President's fiscal year 1997 budget for the Federal Maritime Commission.

I'm accompanied today by my fellow Commissioners Ming C. Hsu, Joe Scroggins, Jr., and Delmond Won. The primary functions of the FMC are to ensure a fair system of oceanborne transportation for the benefit of U.S. exporters and importers, and to protect U.S. trade from unfair foreign shipping practices.

The industry the FMC supervises transported 12.7 million containerloads of imports and exports in 1995 with a value of greater than \$415 billion. To oversee this transportation system, the President's budget for the FMC provides \$15 million for fiscal year 1997, which represents a net increase of \$145,000 over the continuing resolution fiscal year 1996 funding level of \$14,855,000.

Included in the increase is \$535,000 for administrative expenses, offset by a reduction of \$390,000 for salaries and benefits. While there is a slight increase of \$145,000 in our funding request for fiscal year 1997, I wish to point out that the Commission sustained a 20 percent cut in its budget resources between fiscal years 1995 and 1996 of almost \$4 million.

The FMC's budget contains very limited discretionary spending; in fact, less than \$150,000. Virtually all of the FMC's budget is composed of mandatory or essential expenses such as salaries, rent and telephone costs. Such expenses make up approximately 99 percent of our appropriation.

In order to operate within this budget, we have provided minimal funding for promotions, supplies, furniture and equipment. We have eliminated funding for performance and incentive awards. We have also reduced office space, and travel is straight-lined at the fiscal year 1996 level of \$81,000 for the entire agency, which I would note is 50 percent of the fiscal year 1995 level.

At present, the FMC has 159 employees on board, down from 231 employees five years ago. Currently, most are located in Washington, D.C., with a total of eight employees staffing the FMC's three field offices in New York, Los Angeles and Miami.

Shortly after assuming the Chairmanship, I initiated a review of the FMC's field operations consistent with instructions from this subcommittee that the FMC explore ways to maximize the utilization of modern communications technologies to improve effectiveness and to reduce reliance upon physical office space.

As a result of that review, on April 3rd of this year I announced that the FMC would be closing all of its District offices in June. The FMC will maintain a presence in Los Angeles, Miami, New Orleans and Seattle/Tacoma through four representatives who, supported by headquarters staff, will carry out the agency's enforcement and liaison activities through the use of up-to-date tele-

communications and information systems technologies. As MCI calls it, the virtual office system.

Specifically, the area representatives will be equipped with PCs, laptop computers, cellular phones, fax and pager capability, and access to the Commission's headquarters E-mail and automated tariff filing and information system data base. The FMC will be on the Internet and the World Wide Web providing the shipping public with access to pertinent information via its own Web page. Rather than being bound to an office setting, the representatives will spend their workdays in the field, traveling as necessary to major transportation centers throughout their geographic zones. This is where they do the bulk of their work now. I want to put them out in the field where the work is.

Mr. Chairman, my statement for the record contains a discussion of the many statutorily mandated activities in which the FMC engages. Today, I want to address the current role of the FMC and the continued need for sufficient funding to administer the statutes under which the FMC operates. I firmly believe that an agency with independent status is required to oversee our oceanborne foreign commerce. An independent agency can be impartial in performing regulatory functions. Moreover, it is imperative that an independent entity continue to exercise the FMC's mandate to protect against restrictive trade practices by foreign countries. Otherwise, the immediate maritime concerns could become subservient to other foreign policy or trade issues. The retention of an independent agency is a notion that most parties to the public debate now agree upon, regardless of their position on the underlying substantive issues.

Until such time as legislation is enacted to amend our shipping laws, the FMC must be permitted to do the job entrusted to it. Some would advocate cutting the agency's budget and then making the changes in the law. I believe the better way to address change is to make the substantive changes first, and then tailor the funding to suit the agency and its functions as crafted by the new legislation.

The agency needs its full fiscal year 1997 budget request in order to fulfill its many statutory duties effectively. First, although we have downsized our enforcement program in fiscal year 1996, some unavoidable temporary termination-related and start-up costs associated with the reorganization of the District offices will result in our requiring the full amount reflected in the President's fiscal year 1997 budget for the enforcement program. Significant reductions will therefore begin in fiscal year 1998. Second, the FMC still retains virtually all the statutory responsibilities with which it has been charged since the Shipping Act was passed, despite operating with 30 percent fewer personnel than five years ago.

Were the FMC to be underfunded and its statutory functions continued intact, the result would be a severe strain on its ability to perform its mandate appropriately. Most statutory functions would be hampered or delayed. If Congress ultimately determines to revise some of these functions and programs, then of course it would make sense to adjust the agency's budget accordingly. In the meanwhile, however, I urge the subcommittee to ensure that the FMC is not defunded or underfunded. Even a minor reduction in fund-

ing, given the 99 percent non-discretionary spending, would likely necessitate reductions-in-force or furloughs that would seriously jeopardize the efficacy of the agency's programs. For example, a 10 percent cut in our budget would require us to impose 29 furlough days on the entire staff. In addition, we would be forced to RIF 25 employees out of our 159, as well as make other cuts.

With such reductions in resources, the agency would be put in an untenable position of choosing which of its statutory functions to administer and which to ignore.

Though operating with greatly reduced resources, the Commission still has a wide range of functions and programs dictated by our statutes. Defunding of the FMC would mean, among other things, that rampant fraud, misdescription, and discrimination would go unchecked. Restrictive foreign shipping practices harming U.S. interests would go unchallenged. An accessible forum for resolution of disputes would disappear. Concerted carrier activity would continue to receive antitrust immunity with no oversight at all. Unbonded NVOCCs and unlicensed freight forwarders could prey on American consumers with impunity. Finally, U.S. cruise passengers would lose financial protection against casualty and nonperformance of passenger vessel operations. America cannot risk its ocean transportation system, on which U.S. importers and exporters are entirely dependent, being reduced to chaos.

At this time, Mr. Chairman, I'd like to introduce for the record a letter of support for full funding of the FMC signed by a broad range of industry interests—carriers, shippers, labor, ports and intermediaries.

[The information referred to follows:]

April 18, 1996

Honorable Mark O. Hatfield
Chairman
Senate Appropriations Committee
SH-311 Hart Senate Office Building
Washington, DC 20510

Honorable Bob Livingston
Chairman
House Appropriations Committee
2406 Rayburn House Office Building
Washington, DC 20515

Gentlemen:

The undersigned organizations recently met in New Orleans, Louisiana to discuss proposed amendments to the Shipping Act of 1984. Although no consensus on legislation was reached, a variety of legislative changes were discussed. While these discussions continue, we strongly urge you to fully fund the Federal Maritime Commission in FY 1997 to ensure a reasonable level of stability in ocean shipping.

The independent FMC performs essential functions under the provisions of the Shipping Act of 1984. Additionally, the FMC protects United States commerce against unfair trade practices of foreign countries. Accordingly, in the interest of sound trade and shipping policy, we urge that the Federal Maritime Commission be fully funded for the FY 1997 budget.

Sincerely,

American Import Shippers Association
American President Lines, Ltd.
Council of European & Japanese National
Shipowners' Association (CENSA)
International Longshoremen's &
Warehousemen's Union (ILWU)
National Customs Brokers and Forwarders
Association of America
Pacific Coast Council of Customs
Brokers and Freight Forwarders
Port of New Orleans
Sea-Land Service, Inc.
South Carolina State Ports Authority
Toy Shippers Association

Mr. CREEL. I want to make it clear that I recognize and applaud the fact that Shipping Act reform is in progress. To ensure that the interests of all segments of the industry are being considered, I have undertaken a series of discussions with the maritime community to help identify common ground. In so doing, I am optimistic that we might be able to assist Congress as it reformulates its shipping policy objectives.

Although not a part of the FMC's fiscal year 1997 budget request, I want to alert this subcommittee that OMB has instructed the FMC to establish a robust fee schedule in order to accomplish the goal of self-funding the agency in fiscal year 1998. However, since there are statutory limits placed on the assessment of user fees, it is not possible for the FMC to recover its entire budget simply from user fees. Therefore, the FMC has begun discussions with OMB to explore how to obtain additional legislative authority to recover the full cost of the FMC's yearly appropriation. To the extent that such legislative authority is required, I will contact your staff and the Authorization Committee's staff to discuss this approach.

Mr. Chairman, I hope I have expressed adequately the importance of the work of the FMC and of our efforts to downsize the agency significantly while achieving our mission in the most efficient and economical manner. I respectfully request favorable consideration of the President's budget so that we may continue to effectively perform our statutory functions in fiscal year 1997.

In addition, Mr. Chairman, I want to thank you personally for recognizing the need for a continued FMC presence in the field and working with me to maintain that presence while also cutting costs.

[The statement of Mr. Creel follows:]

STATEMENT OF
THE HONORABLE HAROLD J. CREEL, JR.
CHAIRMAN, FEDERAL MARITIME COMMISSION
BEFORE THE
COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEE ON COMMERCE, JUSTICE, AND
STATE, JUDICIARY AND RELATED AGENCIES
UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 25, 1996

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to appear before you to present the President's fiscal year 1997 budget for the Federal Maritime Commission.

The President's budget for the Commission provides \$15,000,000 for fiscal year 1997. The \$15,000,000 represents a net increase of \$145,000 from the Continuing Resolution funding level of \$14,855,000 in FY 1996. Included in the increase is \$535,000 for administrative expenses, offset by a reduction of \$390,000 for salaries and benefits. While there is a slight increase of \$145,000 in our funding request for FY 97, I wish to point out that the Commission sustained a 20% cut in its budget resources between FY 95 and FY 96 -- almost \$4,000,000.

The Commission's budget contains very limited discretionary spending. Virtually all of the Commission's budget is composed of mandatory or essential expenses such as salaries and benefits, rent and guard services, health service and accounting services, telephone and other communications costs, supplies, mandatory training, and printing and reproduction costs. Such expenses make up approximately 99% of our appropriation and are essential for the Commission to perform its statutory mandates. In order to operate within this budget, we have provided minimal funding for promotions, supplies, furniture and equipment, and we have eliminated funding for performance and incentive awards and have reduced office space. Travel is straight-lined at the fiscal year 1996 level of \$81,000 -- which is 50% of the 1995 level.

The budget also requires that we reduce the Commission's authorized FTE level from 201 FTEs in FY 1996 to 180 FTEs in FY 1997. At present, the Commission has 160 employees on board, down from 231 employees five years ago, and over 300 fifteen years ago. Currently, most are located in Washington, D.C., with a total of eight employees staffing the FMC's three field offices in New York, Los Angeles and Miami. I will discuss my plans for the Commission's field operations later in this statement.

The Federal Maritime Commission was established by Congress in 1961 as an independent agency to oversee international ocean transportation, which is the very means by which the United States participates in international trade, and the overwhelming majority of our nation's exports and imports are transported. The primary

- 2 -

functions of the Commission are to ensure a fair system of oceanborne transportation for the benefit of U.S. exporters and importers and to protect U.S. trades from unfair foreign shipping practices. The industry the Commission supervises transported 12.7 million containerloads of imports and exports in 1995, with a value of greater than \$415 billion.

I would like to mention some Commission activities in particular to highlight the Commission's approach to its mission. As I mentioned above, the Commission currently has three field offices, employing a total of eight staffers. Shortly after assuming the Chairmanship, I initiated a review of the agency's field operations, consistent with instructions from this Subcommittee that the Commission explore ways to maximize the utilization of modern communications capabilities to improve effectiveness and reduce reliance upon physical office space. As a result of that review, on April 3, I announced that the Commission would be closing its district offices in June of this year in favor of another approach to field investigations and enforcement. The Commission will maintain a presence in Los Angeles, Miami, New Orleans and Seattle/Tacoma through area representatives who will rely on the latest telecommunications technologies. These representatives also will serve the other major port cities and transportation centers in their respective areas on a regular rotating basis. Coverage of the North Atlantic region will be the responsibility of the Commission's current Washington, D.C. staff. The four area representatives, supported by headquarters staff, will carry out the agency's enforcement and liaison activities through the use of up-to-date technologies in telecommunications and information systems.

Specifically, the area representatives will be equipped with PC and laptop computers, cellular phones, FAX and pager capability, and access to the Commission's headquarters E-mail and automated tariff filing and information system database. The FMC will be on the Internet and the World Wide Web, providing the shipping public with access to pertinent information via its own Web page. Rather than being bound to an office setting, the representatives will spend their workdays in the field, travelling as necessary to the major transportation centers throughout their geographic zones, responding directly to industry concerns and investigative demands. I believe that this new operating structure is progressive, will ultimately reduce Commission costs, and will provide a mobile, efficient method of meeting the challenges presented by reduced resources.

The Commission continues to improve its effectiveness and efficiency through the use of telecommunications and data technologies in other ways. The Commission's Automated Tariff Filing and Information ("ATFI") System renders the statutory tariff-filing requirements less burdensome on the carriers and more useful to the shippers who rely on tariffs. Carriers can file

- 3 -

tariff information from anywhere in the world at any time of day or night. Similarly, shippers or freight forwarders can obtain a complete "down to the penny" calculation of all lawfully available carrier rates by simply pushing a computer button, and thereby make a fully informed decision on the best way of moving their cargo.

It should also be noted that ATFI tariff filings are utilized by the Commission to monitor the pricing practices of conferences and other carrier rate-setting organizations. Provisions of the 1984 Act also make suspension of tariffs (or the threat of suspension) a primary method for the Commission to police against predatory rate-cutting by carriers owned or controlled by foreign governments.

With respect to its investigatory, monitoring and enforcement activities, the Commission has invigorated its efforts to confront and terminate malpractices in major trades. We continue to develop innovative targeted monitoring techniques, and to administer a variety of monitoring programs designed to identify current trade conditions, emerging commercial trends, and carrier pricing and service activities in the U.S. liner trades.

The Commission's responsibilities under the Foreign Shipping Practices Act and Section 19 of the Merchant Marine Act, 1920, include protecting shippers and carriers from restrictive or unfair practices of foreign governments and foreign-flag carriers. In the past ten years, the Commission has initiated numerous actions against various countries, including China, Korea, Japan, Taiwan, Colombia, Brazil, and Ecuador. In each instance, the underlying issues were resolved successfully and expeditiously, to the satisfaction of the affected U.S. parties.

Additional functions performed by the Commission include ensuring that cruise vessel operators have sufficient resources to pay judgments to passengers for personal injury or death or for nonperformance of a voyage pursuant to sections 2 and 3 of P.L. 89-777, and the licensing of ocean freight forwarders under section 19 of the 1984 Act.

The Commission also provides an expeditious and inexpensive forum for the resolution of disputes between private parties involved in ocean transportation. A substantial number of such complaints have been filed with the Commission. The Commission also provides informal procedures for the resolution of disputes. In the past year, the Commission has entertained 162 special docket applications and 32 informal dockets, granting shippers in many instances refunds or waivers of freight charges. The Commission's processes have provided a more affordable and expeditious means of allowing small shippers to obtain relief than would filing lawsuits in the more costly and formal judicial system. Further, the Commission's ombudsman mediates maritime disputes on behalf of the public, thereby avoiding the costs of litigation.

- 4 -

There has been much public discussion of the current role of the Commission and the continued need for the statutes under which the Commission operates. I firmly believe that an agency with independent status is required to oversee our oceanborne foreign commerce. An independent agency can be impartial in performing regulatory functions. It can also resolve the many disputes and complaints among shippers, carriers, NVOCCs, forwarders, ports and terminals, without being subjected to political concerns, foreign policy considerations, or the overriding importance of extraneous non-maritime factors -- an important consideration given the agency's quasi-judicial function of dispute resolution. If maritime issues are important to our nation, regulatory functions pertaining to those interests are better housed in a specialized, expert and streamlined agency. If buried in an already overburdened bureaucracy, they are more apt to get lost in the cracks, become politicized, or take a back seat to other priorities and other constituencies.

Moreover, it is imperative that an independent entity continue to exercise the Commission's mandate to protect against restrictive trade practices by foreign countries. When a foreign country restricts U.S. carriers' access to foreign port facilities, or imposes severe restrictions on shippers' choice of carriers, or requires shippers to use only the national or government-sanctioned intermediaries, having an independent agency to address these matters is crucial. Otherwise, the immediate maritime concerns could become subservient to other foreign policy or trade issues. The Commission's great success in these areas is directly attributable to its independence from the Departments of Transportation, State, and Commerce, and demonstrates the effectiveness and importance of preserving independence. The retention of an independent agency is a notion that most parties to the debate now agree on -- regardless of their position on the underlying issues.

Until such time as legislation is enacted to amend our shipping laws, the Commission must be permitted to do the job entrusted to it. Some would advocate cutting the agency's budget, and then making changes in the law. I believe the better way to address change is to make the appropriate substantive changes first, then tailor the funding to suit the agency and its functions as crafted by the new legislation. Drastic budget cutting last year forced the agency to eliminate positions and reduce services to the public. I am concerned that additional cuts would jeopardize critical Commission mandates that are at the core of its mission. Moreover, if the budget is cut prior to making substantive changes in the law, the Commission would be forced to choose which of the statutory mandates to enforce. Determining the role and responsibilities of an agency is a function properly left to Congress to legislate, not to the agency itself.

- 5 -

The agency needs its full fiscal year 1997 budget request in order to fulfill its many statutory duties effectively. First, although the closing of the Commission's field offices and the concurrent establishment of the area representative positions will result in future savings, these changes will unavoidably necessitate higher costs in fiscal year 1996, and some temporary termination-related and start-up costs associated with the changes will be incurred in fiscal year 1997. Second, we at the Commission still have a wide range of functions and programs dictated by our statutes. We are responsible for challenging and negotiating amendments to carrier conference agreements found to be excessively anticompetitive; we process freight forwarder applications as well as applications for financial responsibility certificates for passenger vessels; we resolve informal complaints and adjudicate formal complaints; we ensure that NVOCCs and forwarders are bonded; we administer the ATFI system; we monitor service contract filings; we take action to combat fraud and other acts deemed unlawful; we perform investigatory functions; we combat foreign-imposed discriminatory or unfair shipping practices injuring U.S. shippers or carriers.

Were the Commission to be underfunded, and its statutory functions continued intact, the result would be a severe strain on its ability to perform its mandate appropriately. Most statutory functions would be hampered or delayed; at risk would be the Commission's ability to carry out enforcement and oversight of standards and limitations of a wide variety of activities. If Congress ultimately determines to revise some of these functions and programs, then of course it would make sense to adjust the agency's budget accordingly. But any deregulation of the maritime industry should flow from amending the shipping laws, not from cutting the funding of the agency responsible for enforcing them. I urge the Subcommittee to fully fund the FMC. Even a minor reduction in funding, given the 99% non-discretionary spending, would likely necessitate reductions-in-force and/or furloughs that would seriously jeopardize the efficacy of the agency's programs. For example, a 10% reduction in our budget would require us to impose 25 furlough days on the entire staff. In addition, we would be forced to RIF 25 employees. With such reductions in resources, the agency would be put in the untenable position of choosing which of its statutory functions to administer and which to ignore.

Complete defunding of the FMC would mean, among other things, that concerted carrier activity would continue to receive antitrust immunity with no oversight; rampant fraud, misdescription and discrimination would go unchecked; restrictive foreign shipping practices harming U.S. interests would go unchallenged; an accessible forum for resolution of disputes would disappear; unbonded NVOCCs and unlicensed forwarders could prey on American consumers with impunity; and U.S. cruise passengers would suffer the loss of financial protection against casualty and nonperformance of passenger vessel operations. America cannot risk

- 6 -

its ocean transportation system, on which U.S. importers and exporters are entirely dependent, being reduced to chaos. The FMC oversees an industry which transports cargo with a value in excess of \$415 billion annually. We do all this with 160 personnel, and with a budget of about \$15,000,000, a portion of which is recovered and returned to the U.S. Treasury through fines, penalties and user fees.

I want to make it clear that I recognize and applaud the fact that Shipping Act reform is in progress. To ensure that the interests of all segments of the industry are being considered, I have undertaken a series of discussions with the maritime community, to help identify common ground. In so doing, I am optimistic that we might be able to assist Congress as it reformulates its shipping policy objectives.

Although not part of the Commission's fiscal year 1997 budget request, I want to alert the Subcommittee that OMB has instructed the Commission to establish a "robust" fee schedule in order to accomplish the goal of fully funding the agency in fiscal year 1998; this goal is reiterated in the narrative of the President's Fiscal Year 1997 Budget. The Commission is authorized under the Independent Offices Appropriation Act, 31 U.S.C. section 9701, to establish fees for services and benefits that it provides. The primary guidance for implementation of this Act is set forth in OMB Circular A-25. However, since there are statutory limits placed on the assessment of user fees, it is not possible for the Commission to recover its full budget simply from user fees. Therefore, the Commission has begun discussions with OMB to explore how to obtain additional legislative authority to recover the full cost of the Commission's yearly appropriation - beginning in FY 1998 - through annual assessments on regulated entities, i.e., carriers, forwarders, and marine terminal operators. To the extent that such legislative authority is required, I will contact the Subcommittee's staff and the authorization committee staff to discuss this approach.

Mr. Chairman, I hope I have adequately expressed the importance of the work of the FMC, and I respectfully request favorable consideration of the President's budget so that the FMC may continue to effectively perform our statutory functions in fiscal year 1997.

Mr. ROGERS. Thank you, Mr. Chairman and Admiral. Both of your statements were excellent and very helpful to the subcommittee.

Chairman Creel, what is the current time table for closing these remaining field offices?

CLOSING FMC FIELD OFFICES

Mr. CREEEL. We have sent out the RIF notices already. Initially, we were going to close the offices by June 3rd. The date is now June 8th. That is when they will all be closed.

Mr. ROGERS. You are on schedule then?

Mr. CREEEL. Yes, sir.

Mr. ROGERS. After completion of that process, what is the size of the personnel and budgetary savings that will be achieved as a result of that innovation?

Mr. CREEEL. We are going to save about a quarter of a million dollars, starting in fiscal 1998. Of course, there are going to be costs which come with any sort of shutdown and start-up like this, such as the payment of severance, as well as the buying of equipment and otherwise getting the alternate operations set-up. In fiscal year 1996, we could have a shortfall of as much as \$256,000 because of the shutdown and alternate start-up costs.

FY 1996 REDUCTIONS

Mr. ROGERS. Is it fair to say that your fiscal year 1997 budget request accepts the reductions that took place in 1996 over 1995, which was \$18.6 million down to \$14.9 million and uses that as a base for the \$15 million request for fiscal year 1997?

Mr. CREEEL. Yes, sir. I must tell you that any further cuts would cut to the bone and we would start losing personnel and really hurting the mission of the agency.

Mr. ROGERS. The thrust of my question is you have assumed the 1996 cut over 1995 when you made your 1997 request.

Mr. CREEEL. Yes, sir.

Mr. ROGERS. Admiral, the 1996 appropriations reduces your Other Operations and Training account, your major administrative and personnel account, from \$36 million to \$29 million. Yet, we have not seen employment reduced by any significant amount. How did you absorb that \$7 million, a 20-percent reduction, and not undertake a major reduction in personnel?

Mr. HERBERGER. In a number of ways. We cut back substantially on other discretionary spending; travel, ADP support and other support-type, and R&D functions. We had some carry over from fiscal year 1995. We were able to carry on the basic functions without a RIF or a furlough.

A part of our dilemma in fiscal year 1996 was the uncertainty of the continuing resolution process. We really were operating at the conference level and taking the actions we needed not knowing whether or not our request to reprogram money to stay within the approved budget of \$66.6 million would be acted upon.

Once we passed a certain point in the fiscal year, RIFs would have been counterproductive. It would have cost us more than we had. What we have been doing is reducing in some areas and mov-

ing people to newer areas, such as national security, shipbuilding revitalization, ports and environmental.

We have been reducing resources in ODS and some of the traditional areas such as ship construction, naval architects, and engineering, and moving them to the newer functions that we have picked up as a result of our reorganization of a year ago.

Mr. ROGERS. How much was your carry over?

Mr. HERBERGER. \$4.7 million.

Mr. ROGERS. Is there any other pot of unobligated balances that you are drawing from?

Mr. HERBERGER. That we are drawing from?

Mr. ROGERS. Yes, to sustain your personnel.

Mr. HERBERGER. No, no.

Mr. ROGERS. What are your current plans to live within the appropriations of \$29 million for Other Operations and Training?

Mr. HERBERGER. We will live within that by, again, continuing to constrain those areas that I mentioned: travel, ADP support and other work functions.

Mr. ROGERS. Now, you have asked for reconsideration for another \$1.4 million for Other Operations and Training. If we can't give that to you, does that mean furlough?

Mr. HERBERGER. This year, we have asked to shift \$1.4 million.

Mr. ROGERS. You wanted to take some money out of the Merchant Marine Academy.

Mr. HERBERGER. Yes, we did.

Mr. ROGERS. And put it into the Other O&T.

Mr. HERBERGER. Right.

Mr. ROGERS. And the State Maritime Schools.

Mr. HERBERGER. Yes.

Mr. ROGERS. If we are unable to do that, what happens?

Mr. HERBERGER. We are on the down-slide now. We will have to stay within the constraints that we have imposed.

Mr. ROGERS. What will that result in? What will that mean?

Mr. HERBERGER. We still have over a million dollars left from carry over now that the threat of any further shutdown is over for the fiscal year. We will be able to use that. We have really pulled back on travel and other things. We will be able to get through the fiscal year, it is my estimation, without furloughs.

SHIPPING REFORM ACT

Mr. ROGERS. Chairman Creel, what is your position on the Shipping Reform Act that could come to the floor of the House as early as next week?

Mr. CREEEL. I have tried not to take a strong position, but rather to meet with the interested parties so that they might come up with a compromise solution. The House bill is the only bill that is out there at this point. When that bill went last year to the Senate, several Senators on both sides of the aisle had some problems with carriers having antitrust immunity and no transparency or no oversight.

In an attempt to help them—the carriers, the shippers, the unions, the intermediaries—reach a compromise agreement, I have been meeting with them and helping them to define the issues, and

hopefully, wind down the number of contentious issues so that they might come up with something.

Mr. ROGERS. Well, the bill deregulates the industry. It eliminates FMC.

Mr. CREEL. Yes, sir.

Mr. ROGERS. It transfers its functions to MARAD. What do you think about that?

Mr. CREEL. I think first of all Congress needs to decide if common carriage is still a valid concept. If it is, then I think that it follows that you need to have some sort of oversight, some transparency to make sure that shippers, both big and small, can have their cargo carried at reasonable rates for the same service.

If common carriage is important, then you need to have some oversight, whether it is the FMC or some other independent entity. What form the overseeing authority is doesn't matter, as long as it is independent. That's the critical factor.

Mr. ROGERS. You don't think that transferring it to MARAD would achieve that?

Mr. CREEL. Transferring it to MARAD would be a problem because in 1961 we were actually pulled away from MARAD. Until 1961, MARAD and the FMC were together in the Department of Commerce. Because they promote on one side, and we regulate the same parties that they promote, it was deemed to be inappropriate for us to be together and appropriate for us to be pulled apart.

Mr. ROGERS. Admiral Herberger, you don't agree with my question, I don't think.

Mr. HERBERGER. My understanding is that the recommendation was to transfer FMC to the Department of Transportation, not to MARAD per se.

Mr. CREEL. The Surface Transportation Board, the old ICC is now an independent agency within DOT, much like FERC is within Energy. Even though it is a part of DOT, it is not, *per se*, a part of MARAD. It is an independent entity within DOT. As long as you maintain the independence, that's the critical part; as they have done with the STB, the Surface Transportation Board, I wouldn't have a problem with that.

Mr. ROGERS. Are you saying it is under the umbrella, but not holding the umbrella?

Mr. CREEL. That's right.

Mr. ROGERS. Well, do you think DOT could handle it instead of MARAD?

Mr. CREEL. Yes, as long as there is independence. That is absolutely critical. One of the things that we do is oversee foreign shipping trade practices and make sure that our carriers, and all carriers, and intermediaries as well, can have access to free trade abroad.

It is critical that you have an independent agency. Otherwise, the agency becomes politicized or becomes an arm of the government and is subject to the foreign policy concerns.

Mr. ROGERS. I think the interest is to see a single maritime agency of the government; one-stop shopping so to speak. Do you have a problem with that?

Mr. CREEL. I don't have a problem with that. I hate to keep repeating myself, but I can't emphasize enough the notion of inde-

pendence. I got a call two days ago from the largest carrier in this country, who has been negotiating with Admiral Herberger and China on getting permission for U.S. carriers to have wholly-owned freight forwarding subsidiaries in China. The Chinese can do that here all day long. We can't do it there. Under the FMC statutes, if China doesn't allow that, we can stop their ships from coming in. Only the FMC can stop them, not the State Department. We can decide to stop their ships at our borders and charge a million dollars per voyage fine. We don't have to go through the State Department or through the President. It can just be done.

In that negotiation, I understand in talking to Al before this hearing, it was the strong arm of the FMC that has brought the Chinese to the table. I think they are about ready to cut a deal.

Mr. ROGERS. Admiral, what do you think about the reorganization possibilities under this act?

Mr. HERBERGER. It was my understanding, as I said a moment ago, that the critical functions of the FMC might be transferred to the Department of Transportation as an independent entity. There was no discussion of having it come under the Maritime Administration for the reasons outlined by Chairman Creel.

In 1961, it was deemed appropriate to split the Federal Maritime Commission away from the Maritime Administration because of the diversity in its functions. We were in Beijing last week with our bilateral agreement discussions with the Chinese.

The FMC function is very crucial to our having some leverage in bilateral discussions with other countries where we are attempting to change some of the restrictive policies that they have for our shipping companies.

Our system here in the United States is wide open. Foreign subsidiaries and their companies are able to operate in the United States unimpeded. We need the same type of reciprocal program in those other countries, particularly in China and some of the others that we are dealing with.

Mr. ROGERS. I will have some questions later.

Mr. CREEL. Mr. Chairman, if I could just add or put words into the Admiral's mouth here.

Mr. ROGERS. Yes.

Mr. CREEL. I also understand that the Chinese kept asking how long the FMC was going to be around.

Mr. ROGERS. Mr. Mollohan.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

This requirement for independence, Mr. Creel, that you keep mentioning, does that characterize the FMC?

Mr. CREEL. Yes, sir.

Mr. MOLLOHAN. What good would be achieved through a reorganization or would we just be rearranging the chairs on the deck?

Mr. CREEL. That's a good question because I think that's what the problem is. With a \$15 million budget, with literally less than \$150,000 in discretionary spending, we are lean right now. We are an expert agency. If you transfer the functions, then you are going to send them to a bigger bureaucracy and, I think, at potentially even more cost.

However, I don't have any problem with that, as long as you maintain the independence. I'm just not sure of where the economies are.

Mr. MOLLOHAN. You don't have any problem with it. But I guess you don't see any real necessity for it?

Mr. CREEL. Right.

Mr. MOLLOHAN. Does H.R. 2149, which I think is the legislation that the Chairman referenced, achieve some benefit here? Do you agree that it achieves some benefit here?

Mr. CREEL. If Congress deems it necessary to have oversight of antitrust immunity and to allow an independent agency to proceed with this responsibility in the international arena, the legislation does not do it.

If Congress, on the hand, decides that it is okay for a carrier to have antitrust immunity without oversight, or if the oversight by the Department of Transportation is sufficient, then that's another matter.

Mr. MOLLOHAN. You just choose to set forth the two policy versions and not necessarily take a position one way or another.

Mr. CREEL. I don't mean to be passing the buck here. It is truly a decision of Congress.

Mr. MOLLOHAN. Well, being an expert in the field I would like you to express your opinion.

Mr. CREEL. I think that there needs to be independence. I think there are ways to provide the large shippers with the flexibility that they need to better their relationships with their carriers and visa versa. I think there are ways of doing it that are less dramatic than that proposed. There are discussions going on now that address some of those concerns.

FUNDING CUTS

Mr. MOLLOHAN. You indicated if your funding were cut any more that you would have to choose between responsibilities. That you would have difficulties fulfilling your statutory obligations. Could you elaborate on that?

Mr. CREEL. The problem is, with so little discretionary funding further cuts really get into the meat of our mission. The example that I gave was that a 10 percent cut would mean 29 furlough days for all employees at the FMC. Plus twenty-five people would be fired. Even a 3 percent cut would require either furloughs of six days or RIFs of 35 individuals.

Mr. MOLLOHAN. Yes, I know you described the impact on your workforce. What would be the impact on fulfilling your responsibilities? Give us examples of what you would not be able to do. What statutory responsibilities would you not be able to carry out?

Mr. CREEL. I think that, because we are small and lean, when you start cutting individual employees, you do get into the mission. We would not be doing as good a job, quite frankly, at looking at carrier agreements dealing with antitrust immunity. It would impact our freight forwarder licensing, our adjudicatory proceedings. It would affect our foreign trade functions. Virtually every function in the agency would be somewhat diminished, depending upon the amount of the cut.

FIELD OFFICE CLOSINGS

Mr. MOLLOHAN. You talked about virtual field offices.

Mr. CREEL. Yes, sir.

Mr. MOLLOHAN. And that you are in the process of closing all of your field offices.

Mr. CREEL. Yes, sir.

Mr. MOLLOHAN. Has your mission changed in any way? How does the closing of these offices allow you to fulfill or inhibit your fulfilling your mission?

Mr. CREEL. The mission has stayed the same. This is just an unfortunate consequence of the budget situation for all agencies. However, this is totally my idea.

It is not a novel idea though. In private industry, it is quite the thing these days. I think with the right support, meaning the right equipment and the right individuals, it can work. It is going to be so important that the right individuals are in those positions, so it can work. It may take a couple of years to get going and to be effective.

Sure, there will be some effect on our enforcement. That is unfortunate. I hope that we can at least maintain a presence in the field and enforce the laws as vigorously as possible.

Mr. MOLLOHAN. How does that work? If you have a virtual organization, when I think of that I think of combining disparate parts, not necessarily in the same organization, but taking them from different organizations and then creating a virtual entity for some purpose.

If you are closing down offices, then you are removing those contact points. I can understand how if there was somebody out there that you would be linking up with them, but if you are closing down those offices, then you are removing those contact points.

To what are you referring when you talk about a virtual office?

Mr. CREEL. With that we are doing, the physical office is closing. One individual will stay, either working out of his or her home or a telecommuting center. They will be out in the field with the regulated entities, which they do now. They are out in the field all of the time now anyway. I hope to give them an 800 number. All of this is contingent on funding and what we can afford. But I hope to give them an 800 number, pager capacity, fax, Internet access, etc.

Mr. MOLLOHAN. What is that person doing out there?

Mr. CREEL. They are enforcing our laws. They are gathering information.

Mr. MOLLOHAN. They are enforcement people.

Mr. CREEL. Yes, sir.

Mr. MOLLOHAN. I see. So, they are out on the beat so to speak.

Mr. CREEL. They are cops on the beat, precisely.

Mr. MOLLOHAN. What you're doing is simply closing down their one-room office that they had somewhere.

Mr. CREEL. That is literally all they had. We had gotten to the point where we had three or four employees in these offices and no secretarial support. They were very small anyway. This way, I think we are able to still carry out our functions and cut down some of the overhead, if you will.

There will be some initial overhead for the start-up, but the functions are the same. Even the individuals would remain the same, because we are hiring from within. It is fortunate that we have good enforcement people who have good contacts in the industry, which is key.

I think that one of the good things about Internet access is that you can tattle on other people that are not complying. You can make it so that there is no way to trace it. In some ways, that may even be more effective. I'm really curious to see how it works out.

MARITIME NATIONAL SECURITY PROGRAM

Mr. MOLLOHAN. Admiral, you are initiating a Maritime National Security Program.

Mr. HERBERGER. Yes, sir.

Mr. MOLLOHAN. Could you talk about that? I missed your testimony, I'm sorry.

Mr. HERBERGER. We have formed a new organization within the Maritime Administration to focus on all of the many sub-programs that we are involved with: the management of the RRF from MARAD Headquarters, the new Maritime Security Program, and the new Voluntary Intermodal Program. We are involved with NATO and other organizations regarding national security planning during contingencies and the use of sealift.

It is all of those elements that were heretofore in separate sections of MARAD under different associate administrators. I put them all in one. I identified it as a national security mission. We're in much greater contact with the Defense Department, with Joint Chiefs of Staff and with the Transportation Command. It is beginning to really bear a lot of good progress in this area.

Mr. MOLLOHAN. To what extent are you in contact with the Defense Appropriations Committee to support it?

Mr. HERBERGER. We are now under the new alignment starting this year for authorization; in the House, we go before the National Security Committee. Our authorization is split.

Mr. MOLLOHAN. I asked another question. I asked to what extent are you in contact with the Defense Appropriations Subcommittee to support it.

Mr. HERBERGER. We're not. We're not, other than we have to again, from a technical point of view, represent the funding support for the RRF, which is now being funded out of Defense appropriations.

READY RESERVE FORCE FUNDING

Mr. MOLLOHAN. Are you seeking continued funding out of the Defense appropriations for that?

Mr. HERBERGER. Yes.

Mr. MOLLOHAN. At what level?

Mr. HERBERGER. It is \$351 million for FY 1997 and has been submitted by the Defense Department. Again, in that the Maritime Administration administers that program, we provide technical support for that.

Mr. MOLLOHAN. I see.

Mr. HERBERGER. The requirement is determined by Defense. We work with the Transportation Command who is the action head-

quarters for that requirement. We work with the Navy on the specifics of the budget submission. It comes out of the National Defense Sealift Fund.

MARITIME SECURITY PROGRAM

Mr. MOLLOHAN. You are asking this committee for \$100 million to support the operation of 47 vessels?

Mr. HERBERGER. To support the Maritime Security Program that would cover up to 47 commercial ships, yes.

Mr. MOLLOHAN. Last year, well, hopefully this year you will get, if it is still \$46 million.

Mr. HERBERGER. Forty-six, yes, and we got that yesterday or maybe today.

Mr. MOLLOHAN. You haven't got it yet.

Mr. HERBERGER. It's pretty close.

Mr. MOLLOHAN. You don't know.

Mr. HERBERGER. I agree.

Mr. MOLLOHAN. The \$46 million, was that your request?

Mr. HERBERGER. No. We asked for \$100 million, but that was to start the program at the beginning of the fiscal year. It is so far into the fiscal year that the \$46 million will permit us to start with 47 vessels for the remainder of this fiscal year.

Mr. MOLLOHAN. You just got to my point. Are you going to do that? Are you going to start with 47?

Mr. HERBERGER. We're going to start as soon as it is enacted.

Mr. MOLLOHAN. With how many vessels?

Mr. HERBERGER. We could go up to 47 because we are so late in the fiscal year.

Mr. MOLLOHAN. That \$46 million, the original intention was that it was to be applicable to the whole year, was it not? I guess what I'm asking you is how confident are you that we are going to be able to appropriate \$100 million for that purpose?

Mr. HERBERGER. We've been getting good bipartisan support for this program.

Mr. MOLLOHAN. You got 50-percent of your request.

Mr. HERBERGER. In this first year, yes.

Mr. MOLLOHAN. Do you have indications from the committee that you are going to do better than that this year?

Mr. HERBERGER. Yes, yes. It has been submitted by the Administration as 054, defense-related funding.

Mr. MOLLOHAN. 050.

Mr. HERBERGER. Specifically 054, which is defense-related.

Mr. MOLLOHAN. Staff points out that you have not gotten your authorization for this program, for this \$46 million. Is that true?

Mr. HERBERGER. Yes.

Mr. MOLLOHAN. You have not gotten the authorization for the \$46 million?

Mr. HERBERGER. It has passed the House, but not the Senate.

Mr. MOLLOHAN. What is the status of it in the Senate side?

Mr. HERBERGER. We are waiting for them to take it to the floor.

Mr. MOLLOHAN. So, you feel good about that?

Mr. HERBERGER. Yes, I do. We've been getting very good responses.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

STATE MARITIME SCHOOLS FUNDING

Mr. ROGERS. Thank you.

Admiral, have you taken any steps to require or even encourage the state schools to pick up any of the costs of the state schools?

Mr. HERBERGER. We have discussed the funding situation with the state schools. My position is that federal support, when broken down for each of the state schools, amounts to somewhere around \$2 million per state school. That is a very important part of their program.

They are all having extremely difficult times within their individual states for support for their programs. It has been a traditional support from the federal sector. I for one would like to see it continue. However, we have discussed contingencies.

TRAINING SHIP PROGRAM

This year when the training ship program was below the requested amount, we had to defer maintenance, defer drydocking and do some other things that I would hope that we would not have to continue to do.

We are also bringing online two newer, they are not brand new, but newer school ships. Once they are up and operational¹, they should make the annual maintenance a little less costly than it has been for some of the very old ships that have been the school ships for two schools.

Mr. ROGERS. And these are state schools.

Mr. HERBERGER. They are state schools, yes, five state schools.

Mr. ROGERS. And we gave them the ships.

Mr. HERBERGER. The federal government loans them, yes.

Mr. ROGERS. And rehabilitated them.

Mr. HERBERGER. And converted them to school ships.

Mr. ROGERS. And maintained them.

Mr. HERBERGER. And we provide for their maintenance, yes.

Mr. ROGERS. And repair.

Mr. HERBERGER. Excuse me?

Mr. ROGERS. And repair.

Mr. HERBERGER. Maintenance and repair.

Mr. ROGERS. In perpetuity.

Mr. HERBERGER. Yes.

Mr. ROGERS. Why? Why does the federal government have the responsibility to maintain state operations?

Mr. HERBERGER. Many of these students, again, the vast majority of them, end up as third mates and chief engineers that serve in our merchant marine. They serve as a reserve for this country.

In the case of a national need, they are called upon for services. Those that are in the specific Student Incentive Program serve as reserve officers in the Navy and are subject to be called. They are in the reserve for eight years. They have to serve in the merchant marine.

The merchant marine in the historic past has been called the fourth Arm of Defense. Each time we need it, we need that type of expertise. Some of them go into the other maritime-related industries, shipbuilding, port operations, all of which come to bear in the time of national emergencies. It has been the position of our

Department to give that relatively modest amount of federal support to those programs.

Two of the vessels loaned to the State of Massachusetts—*Patriot State*—and the State of New York are also Ready Reserve Force troop ships. Just a year and a half ago, the State of New York Ship, the *Empire State*, was called upon to go to Somalia to transport allied troops.

Mr. ROGERS. Where does support of the school ships rank in terms of your priorities with respect to your own operating budget, the Merchant Marine Academy, Title XI Guarantees, Maritime Security and all of your other programs?

Mr. HERBERGER. They are all important programs. I want to support them. I do not recommend that we cut deeply into any of the three areas.

Mr. ROGERS. I agree with you. I don't want to either, but if we have to.

Mr. HERBERGER. My recommendation on the 1996 budget was a 10-percent reduction at Kings Point, 10-percent at the state schools and 15-percent at MARAD. That was my recommendation on the 1996 budget. I thought that that was a good apportionment for the conditions that we had at that time. I would recommend something along that line. Maybe a little less on MARAD on this coming fiscal year.

MARITIME STUDENT SERVICE OBLIGATIONS

Mr. ROGERS. One of the biggest criticisms of the Maritime Academy and state schools is that many students do not fulfill their service obligations. The Transportation IG study that was not yet final for our hearings last year came out in June and recommended that MARAD needed to strengthen its controls to ensure graduates meet their service obligations.

What have you accomplished in enforcing those things?

Mr. HERBERGER. We have instituted four new initiatives to better track graduates' compliance with their service obligations.

We have a much better tracking system. First, we're coordinating with the Coast Guard to ensure that we have up-to-date information regarding licenses. Second, we have solicited support from the alumni and labor and professional organizations to remind graduates of the need to report their status on an annual basis. Third, the Academy faculty and staff are taking steps to ensure that the individuals are properly indoctrinated as to these obligations.

Finally, we are working with the Navy to see if on a regular basis we can acquire more active duty for training time. That takes resources that the Navy would have to provide out of their reserve funds. These four separate initiatives should ensure that, in the future, we will have no reoccurrence of what has happened a few years back.

Mr. ROGERS. When will the new computer be on-line?

Mr. HERBERGER. The Coast Guard information is on-line now. We are very close to having the capability to track this information with our own system. The most important thing is to have the individual fully realize that they have a contract with the federal government. That was probably the most important thing that we were able to do.

All of those individuals, contrary to the way it was depicted in the IG report, were still obligated for eight years in the reserves. That obligation was not in any way negated. One of the problems they had was getting sufficient active duty for training time, which was based primarily on the amount of money that the Navy had each year to allow reservists to do their two weeks active duty.

NAVAL ACADEMY PREPARATORY SCHOOL

Mr. ROGERS. How many students is the Merchant Marine Academy supporting at the Naval Academy Preparatory School?

Mr. HERBERGER. Six.

Mr. ROGERS. I just want to be sure that—

Mr. HERBERGER. And they are not athletes.

Mr. ROGERS. That's what I was driving at. You can assure me they are not football players.

Mr. HERBERGER. They may be football players, but they weren't drafted. They are minority for the most part. They are minority students. They came in under the Boost Program.

Mr. ROGERS. You are not spending the money to recruit football players.

Mr. HERBERGER. No, sir.

Mr. ROGERS. Given that the new Maritime Security Program is not yet enacted, how realistic is it that you will be able to spend the \$46 million appropriated in 1996, plus the \$100 million requested in 1997?

Mr. HERBERGER. It is not enacted yet, but I have every reason to be optimistic that within a few weeks it will go to the Senate floor and be passed. I'm very optimistic based on all of our visits to the Hill. I feel very confident that all of the progress is moving in the right direction. We've gotten very, very good bipartisan support.

SCRAP SHIP SALES

Mr. ROGERS. What's the current status of the sale of ships for scrap?

Mr. HERBERGER. We are unable at this time to take contracts to scrap ships if in fact they are going off-shore overseas. The reason for that is under an environmental law that was passed in 1990, no U.S. entity can export hazardous materials. These old ships have PCBs and asbestos which have been deemed to be hazardous materials. Therefore, if we allowed a vessel that we wanted to scrap go off-shore, we would have to clean it up first.

We are in the process now of trying to determine with two vessels what's the most cost effective way to clean them up so that we can put them out for worldwide scrapping. We thought we had a good project with India just up until a short time ago. The Indian Government has held us up. We are now attempting with Mexico to see if they will accept two vessels that have been cleaned up.

Once we can perfect this program, we can get the cost of cleaning them down to a reasonable amount. My fear is that under the old system, it will cost more to clean the ships than we will get out of the scrap value, depending on the type of ship.

If it is a Navy ship or a Coast Guard cutter with a lot of valuable salvageable material, we will probably end up getting money for

the scrap value. If it is some of the older merchant hauls that we have, then it will cost us more to clean them up than we will get in the scrap value.

We've been at a grid-lock now for a better part of a year and a half. I have 65 vessels stripped and ready to scrap if I can find a way to do it.

Mr. ROGERS. Is the EPA working with you?

Mr. HERBERGER. We are working closely with them. My Chief Counsel spends a better part of her life trying to work this out.

Mr. ROGERS. I can imagine.

Do you have any idea of the value of the scrap that you have?

Mr. HERBERGER. The Victory and Liberty ships, the older ships that we still have from World War II, we were getting about \$350,000 per ship just two years ago. A Coast Guard cutter or a Navy ship with a lot of highly salvageable materials could get up to a half a million, \$600,000. That was the world market at that time.

Mr. ROGERS. So, roughly \$20 million worth?

Mr. HERBERGER. Well, if I have to spend a million to clean the ship up.

Mr. ROGERS. Absent the cleaning cost.

Mr. HERBERGER. Absent the cleaning, can I get back to you on that?

Mr. ROGERS. Sure.

Mr. HERBERGER. Because it depends on the type of ship. We'd have to go down category-by-category. I can give you a reasonably accurate number.

[The information referred to follows:]

THE VALUE OF SHIPS AVAILABLE FOR SALE FOR SCRAPPING ABSENT THE CLEANING COSTS

There are currently 65 vessels in the National Defense Reserve Fleet (NDRF) scheduled for sale for scrapping over the next few years, pursuant to the National Maritime Heritage Act (Pub. L. 103-451), which requires MARAD to dispose of all obsolete vessels in the NDRF by the end of 1999.

Vessels are sold according to light ship weight, which is the weight of the ship minus fixed or liquid ballast. The total light ship weight of the 65 ships available for scrapping is approximately 400,000 long tons (2,240 lbs/long ton). It should be noted that the ship scrapping market fluctuates and it is therefore difficult to determine value other than for a specific point in time.

No vessels have been offered for sale by MARAD since March 1995, due to negotiations with the Environmental Protection Agency (EPA) regarding environmental issues. EPA is involved because the vessels contain polychlorinated biphenyls (PCBs), a toxic substance regulated by EPA under the Toxic Substances Control Act (TSCA).

Bids received in March 1995 were about \$50 per ton for a vessel to be exported for actual demolition and about \$15 per ton for scrapping in the United States. If the estimated value of the vessels were based on 1995 offers of \$50/ton, the value would be \$20 million; if sold for \$15/ton, the value would be \$6 million.

However, since MARAD is required to remove environmental contaminants such as PCBs from the vessels prior to sale, significant costs would be incurred. In 1994 MARAD estimated that a 13,000 ton ship would cost about \$100 per ton for PCB remediation and repair of the ship for towing afterwards. In addition, if PCB remediation occurs, the value of the ships is expected to decrease, and there is a strong likelihood that the value of the scrap could be completely eroded by the PCB remediation process if scrapping is limited to U.S. facilities. Further, additional appropriations might be needed to cover the cost, if PCB remediation exceeds the sales price.

Since PCB remediation has not been accomplished on any MARAD vessel to date, MARAD hired a private firm to, among other things, determine the cost of this process. The study is expected to be completed in August 1996.

MARAD also hopes to sell two vessels this year, pursuant to an EPA letter of enforcement discretion. As background, on November 30, 1995, EPA issued a discretionary enforcement letter allowing MARAD to dispose of two obsolete vessels in the NDRF. In the letter, the EPA granted MARAD permission to scrap the vessels overseas -- provided that all of the items which EPA presumes contain PCBs in regulated quantities are removed from the vessels prior to export.

On January 18, 1996, the State Department notified the Government of India that the hulls of these ships may eventually be exported to India for scrapping. On March 18, 1996, the Government of India requested until June 18, 1996, to review whether they would accept the two ships. Following the response from the Government of India the proposed purchaser of the two ships requested that MARAD look into the possibility of exporting the hulls to Mexico for scrapping instead. The State Department is in the process of determining if the export of the vessels to Mexico is covered by an existing bilateral agreement; if so, it will have to obtain Mexico's consent prior to export.

MARAD and the EPA have already held some discussions concerning a more comprehensive federal facilities compliance agreement to permit the disposal of the remaining vessels, but are awaiting the outcome of the two sample vessels.

The sale of the two ships and the results of the study should provide definitive information on the impact of PCB remediation on the scrap value of the NDRF vessels available for sale.

Mr. ROGERS. Have you determined the cost of cleaning up all of the ships?

Mr. HERBERGER. The cost two years ago to clean up one of the older ships was over a million dollars. By being able to get about \$350,000 from sales, it would have been a net loss. It would have cost us quite a bit of money.

Mr. ROGERS. Do you know somewhere in your records, roughly the cost of cleaning up each of the ships that you have?

Mr. HERBERGER. We did not clean them up prior to just recently. We were able to, without any problems, sell them on the open market to the highest bidder.

Mr. ROGERS. No, no. What I'm asking is do you know what it is going to cost you to clean up each ship?

Mr. HERBERGER. No. We could only estimate.

Mr. ROGERS. Well, you've got a rough estimate?

Mr. HERBERGER. They'd have to be cleaned up in U.S. yards.

Mr. ROGERS. I said, you have a rough estimate of what it would cost.

Mr. HERBERGER. Rough, yes.

Mr. ROGERS. That's what I want. I just want you to put into the record a rough estimate of what it would cost to clean up each ship and the estimated value of that ship so we will know, along with you, what we are dealing with here.

Mr. HERBERGER. Yes.

Mr. ROGERS. You are telling me, bottom line, as a general rule, we will lose money selling them for scrap if you've got to clean them up.

Mr. HERBERGER. Yes, no doubt.

Mr. ROGERS. I'm figuring in the cost of storage and continued—

Mr. HERBERGER. That's very minimal now. They are sitting in our reserve fleets. It is very minimal.

TITLE XI PROGRAM

Mr. ROGERS. Now, you've requested another \$40 million in Title XI loan subsidy this year. What is the current amount of carry over in that program? How much do you anticipate carrying over in to 1997?

Mr. HERBERGER. We have approximately \$47 million of carryover from prior years. We have applications that would easily use that. We have quite a few applications. Again, if they are successfully processed, we have enough to use the funds we have today, plus be able to use that \$40 million. The requests far exceed the amount that we have in the fund or will get next year.

Mr. ROGERS. You are asking for a half a million dollar increase in administrative support costs for that program.

Mr. HERBERGER. \$4 million, yes.

Mr. ROGERS. Why do you ask for an increase?

Mr. HERBERGER. Is that a half a million more?

Mr. ROGERS. Yes.

Mr. HERBERGER. I wasn't aware of that. That number is based on the number of people that we have within MARAD that support the Title XI Program.

Mr. ROGERS. Let me thank both of you for your testimony. You've been helpful to us. I don't know yet what the allocation that we will have for our subcommittee from the full committee will be. I do, I think, know this. It is not going to be very pleasant for all of the agencies that we have to fund.

It is especially tough because it is tough for us to trim costs off the court system and the Department of Justice, particularly, with the law enforcement functions involved there and the war on crime and drugs. It is not going to be a very pleasant year again I'm here to inform you.

I don't think that's any great news. We want to work with you. I know it is tough to do business with declining budgets. I know that from our own experience here. I know how tough you've been working to try to contain the damage from reduced funding.

I guess what I'm saying is, Admiral, especially to you, we're going to have to help you find ways to better target your monies onto the high priority parts of your budget, anticipating we will have fewer dollars to spend, which I think we have to do at this stage.

We want to work with you and do our best to help you achieve your goals, all the while we are trying to achieve the big goal of reducing spending for the whole government. So, perhaps we have two conflicting goals here. But we want to work with you as best we know how and I'm sure you with us.

Mr. HERBERGER. Yes, sir.

Mr. CREEEL. Yes, sir.

Mr. ROGERS. Thank you very much.

Mr. HERBERGER. Thank you, Mr. Chairman.

Mr. CREEEL. Thank you.

[Questions submitted by Congressman Taylor for the Maritime Administration.]

QUESTIONS FOR THE RECORD
FROM CONGRESSMAN TAYLOR

TITLE XI PROGRAM

Question. In the mid-1980s, the Title XI program experienced massive defaults. Congress passed legislation in 1984 in response to the massive defaults, which included "economic soundness" criteria. How many loan guarantees have you issued in the past two years? Please provide details of these guarantees, the amount involved, parties guarantees were granted to, terms, etc.

Answer. Following implementation of the National Shipbuilding and Shipyard Conversion Act of 1993 in November 1994, approximately \$290 million in Title XI financing was approved for projects costing approximately \$402 million in FY 1994. During FY 1995, thirteen companies received approval for \$419 million in Title XI loan guarantees to construct a total of 36 ships and barges at U.S. shipyards. During the first eight months of FY 1996, thirteen applications were approved for \$493 million in Title XI loan guarantees to construct 161 vessels at U.S. shipyards. Title XI financial guarantees have been approved for four shipyard modernization projects, one in FY 1994, one in FY 1995, and two during the first eight months of FY 1996. See the attached table for identification of the specific companies and amounts for each of the Title XI approvals over the past three years.

May 1, 1996

APPROVED APPLICATIONS

FY 94

<u>COMPANY NAME</u>	<u>SHIPYARD</u>	<u>NO. & TYPE OF PROJECT</u>	<u>PROJECT COST</u>	<u>TITLE XI GUARANTEE**</u>	<u>DATE APPROVED</u>
Cenac Towing Company, Inc.	NABRICO (Nashville Bridge Co.)	40 Double-Skin 30,000 Barrel Onshore Tank Barge	\$51,108,701.00	\$44,720,000.00	5/11/94
Penn Barge, Inc.	Alabama Shipyard, Inc./Halter Marine, Inc.	2 Integrated Tug/Barges	\$35,000,000.00	\$26,250,000.00	6/23/94
Puerto Quetzal	McDermott Incorp.	2 U.S.-Flag Power Barges	\$95,000,000.00	\$25,000,000.00	5/11/94
Global Industries, Ltd.	Aker Gulf Marine	1 Swath Dive Support Vessel	\$23,711,000.00	\$20,852,000.00	7/6/94
National Steel & Shipbuilding Company	National Steel & Shipbuilding Company	N/A Phase I and Phase II Capital Improvement Projects	\$28,000,000.00	\$22,700,000.00	7/15/94
Coastal Ship, Inc.	Trinity Marine Group	2 Catamaran-hull RO/RO	\$132,472,404.00	\$115,912,000.00	7/26/94
*Compania de Electricidad de Puerto Plata	McDermott Incorp.	1 Barge Mounted Power Plant	\$39,551,868.00	\$34,293,000.00	8/8/94
TOTAL		48	\$402,843,973.00	\$289,727,000.00	

APPROVED APPLICATIONS

FY 95

<u>COMPANY NAME</u>	<u>SHIPYARD</u>	<u>NO. & TYPE OF PROJECT</u>	<u>PROJECT COST</u>	<u>TITLE XI GUARANTEE**</u>	<u>DATE APPROVED</u>
Avondale Industries Inc.	N/A	N/A Shipyard Modernization	\$20,320,000.00	\$17,780,000.00	10/24/94
*Fleets Shipping Corporation	Newport News Shipbuilding & Drydock Company	4 Product Tankers	\$152,620,000.00	\$133,542,000.00	10/31/94
Edison Chouest Offshore	North American Shipbuilding	1 Undersea Warfare surface Support Ship	\$13,659,432.00	\$11,658,282.00	2/01/95
Bay Transportation Inc. d/b/a St. Phillip Towing	Nashville Bridge Co.	2 Stern drive tractor tugs	\$11,628,540.00	\$10,174,000.00	2/7/95
American Heavy Lift Shipping Company	Avondale Industries, Inc.	4 Double-hulled Product Tankers	\$159,273,686.00	\$139,364,475.00	2/6/95
Surf Express, Inc.	Gulf Coast Yachts, Inc.	1 Wave Piercer Catamaran Ferry	\$1,850,000.00	\$1,480,000.00	2/14/95
Alpha Marine Services	North American Shipbuilding	6 Tractor-Type Tugs	\$13,484,704.95	\$11,799,000.00	2/24/95
Canal Barge Company, Inc.	Trinity/Newpark Ship/Conrad Ind.	4 Steel Liquid Tank Barges 1 260' Deck Barge 1 120' Deck Barge	\$4,982,452.00	\$4,359,645.00	4/13/95
Manson Construction & Engineering Company	Nichols Marine – Portland, OR	3 Dump Barges	\$9,766,976.00	\$8,544,000.00	5/31/95
Maryland Marine, Inc.	Trinity – Madisonville, LA	4 Double-skill unmanned tank barges	\$5,142,860.00	\$4,500,000.00	6/14/95
Martin Gas Marine, Inc.	AMFELS – Brownsville, TX	2 Tug/Barge unit	\$17,000,000.00	\$14,875,000.00	07/25/95
Great AQ Steam Boat Company (formerly Delta Queen Steamship Development, Inc.)	McDermott – New Orleans, LA	1 Paddlewheel Steamboat	\$69,424,647.00	\$60,746,000.00	07/26/95

FY 95 (con't)

<u>COMPANY NAME</u>	<u>SHIPYARD</u>	<u>NO. & TYPE OF PROJECT</u>	<u>PROJECT COST</u>	<u>TITLE XI GUARANTEE**</u>	<u>DATE APPROVED</u>
Alpha Marine Services, Inc.	North America - Larose, LA	1 Deepwater Supply Vessel	\$6,000,000.00	\$5,250,000.00	8/11/95
Edison Chouest Offshore, Inc.	North America - Larose, LA	1 Self-sustaining breakbulk Container vessel	\$17,000,000.00	\$12,883,000.00	8/21/95
TOTAL		36		\$502,153,297.95 \$436,955,402.00	

APPROVED APPLICATIONS

FY 96

<u>COMPANY NAME</u>	<u>SHIPYARD</u>	<u>NO. & TYPE OF PROJECT</u>	<u>PROJECT COST</u>	<u>TITLE XI GUARANTEE**</u>	<u>DATE APPROVED</u>
North American Shipbuilding, Inc.	North American - Larose, LA	N/A Shipyard Modernization	\$7,408,519.00	\$6,386,000.00	10/23/95
		Self-propelled, Self-elevating Vessels	\$60,197,928.00	\$43,961,000.00	10/26/95
SEAREX, Inc.	Gulf Coast - Lakeshore, MS	4 Elevating Vessels			
Great Independence Ship Co.	Newport News - Newport News, VA	1 Reconstruction/Reconditioning of INDEPENDENCE	\$46,399,628.00	\$33,332,000.00	11/16/95
Parker Towing Company, Inc.	Trinity Marine - Nashville, TN	20 Hopper Barges 1 Rake deck barge 1 Rake deck crane barge	\$6,709,782.00	\$5,570,000.00	11/22/95
Tugz International L.L.C.	Runyan - Pensacola, FL	2 Tractor Tugs	\$7,426,900.00	\$6,498,537.00	12/19/95
*Dannebrog Rederi AS	Alabama Shipyard - Mobile, AL	2 Double-hull 16,000 DWT Tankers	\$53,274,933.00	\$46,615,000.00	12/20/95
Canal Barge Company, Inc.	Trinity Marine - Gulfport, MS Newport News	20 Steel Liquid tank barges 1 260' deck barge	\$20,321,280.00	\$17,781,000.00	12/22/95
*Smith/Enron Cogeneration Limited Partnership	Trinity Marine - Beaumont, TX	2 ABS Classed, power barges	\$205,000,000.00	\$50,000,000.00	12/22/95
Bay Transportation Corporation	Trinity Marine - Gulfport, MS	2 6700 HP Stern Drive Tractor Tugs	\$12,467,380.00	\$10,908,958.00	12/29/95
Hvide Van Ommeren Tankers I-V L.L.C.	Newport News - Newport News, VA	5 Double Eagle Product Tankers	\$246,700,000.00	\$215,862,500.00	2/9/96
Port Imperial Ferry Corp.	Gladding Heam - Somerset, MA	5 96-foot Aluminum Monohull Vessels	\$6,991,980.00	\$5,117,000.00	3/7/96
T T Barge Services Inc.	North America - Larose, LA	N/A Shipyard Modernization	\$3,822,000.00	\$3,057,000.00	3/18/96

FY 96 (con't)

<u>COMPANY NAME</u>	<u>SHIPYARD</u>	<u>NO. & TYPE OF PROJECT</u>	<u>PROJECT COST</u>	<u>TITLE XI GUARANTEE**</u>	<u>DATE APPROVED</u>
Alpha Marine Services, Inc.	North America - Larose, LA	1 Deep submergence rescue vehicle support ship	\$15,640,000.00	\$13,000,000.00	3/21/96
Global Industries, Ltd.	Service Marine - Morgan City Bollinger Shipyards - Lockport, LA	1 Launch Barge 2 Lift Boats 1 Deck Barge	\$24,200,000.00	\$19,650,000.00	3/29/96
R.S.I. Barge Company, L.C.	Trinity Marine - Madisonville, LA	90 U.S. - flag Covered Hopper Barges	\$28,393,940.00	\$24,844,000.00	4/24/96
TOTAL		161	\$744,954,270.00	\$502,582,995.00	

*Export

**Reflects adjustments to originally approved amount as applicable

Question. I have been told that the two most recent loan guarantees represent an addition of approximately 20% capacity to the coastwise product tanker market. Is this true?

Answer. No. The two most recent loan guarantees for U.S.-flag tankers were granted to American Heavy Lift Shipping Company (AHL) on February 6, 1995, and Hvide Van Ommeren Tankers I-V L.L.C. (Hvide) on February 9, 1996. The AHL project represents double hull retrofitting of four existing vessels and does not represent a significant increase in capacity. The five Hvide vessels represent an eight to ten percent increase in capacity in the 10,000 DWT to 70,000 DWT self-propelled tanker fleet as of October 1, 1995.

Question. Are you certain that there is a market for these tankers? How did you determine this? Did you look at future market conditions or current market demand?

Answer. We believe that there will be a strong market for these tankers over their 25 year economic life. In reaching this conclusion, we considered a number of factors: 1) current employment patterns, 2) phase out dates of the existing fleet mandated by the Oil Pollution Act of 1990, 3) age profile of the fleet, 4) special survey dates for the fleet, and 5) expected changes in trade volumes. As part of this analysis, the Maritime Administration met with tanker owners, brokers, oil company representatives and others familiar with the trade. We also received a number of reports prepared by consultants to the industry.

Question. In the past, term contracts were used in the coastwise product tanker market. What are the reasons for the decline in these contracts?

Answer. The decline in long term contracts is due to the sharp drop in time charter rates in the mid-1980's after companies were locked into high rates on long term charters (greater than one year).

Question. What type of recourse does the government have if the tanker projects fail?

Answer. If the tanker projects fail and MARAD is required to pay off the outstanding Title XI debt on the vessels pursuant to its guarantee, MARAD typically will take appropriate action to arrest the vessel and initiate foreclosure proceedings. All recoveries, including sale proceeds, Reserve Fund deposits, etc., will be credited towards any deficiency. In lieu of MARAD paying off the Title XI debt, MARAD may assume the outstanding debt and charter/transfer the vessel to a third party.

Question. According to the Wall Street Journal of March 11, 1996, MARAD has agreed to let Tenneco and its partners repay the loan principal at a slow enough rate to avoid projecting losses for the first several years. That seemed unusual to me. Please explain why did you do this?

Answer. Hvide Van Ommeren Tankers I-V L.L.C. (Hvide) requested that its Title XI debt be amortized on a level debt basis. Level debt payment is permitted under the Title XI regulations and has been utilized in many transactions. The level debt amortization for Hvide reduces the debt service by approximately \$2,700 per day or \$1 million annually per vessel in the earlier years compared to straight line amortization. The level debt amortization provides a means for Hvide to build up cash at an early stage in their operation. It is the early years where the greater uncertainty exists as to the pace of the OPA-90 requirements, potential de-rating of vessels and the overall level of demand relative to supply. In addition, in exchange for level debt amortization, Hvide has agreed to fund in addition to the required equity an additional \$9 million and to make additional Reserve Fund deposits to compensate for the lower level of amortization.

THURSDAY, APRIL 25, 1996.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

WITNESS

GILBERT F. CASELLAS, CHAIRMAN

Mr. ROGERS. This morning we would like to welcome the Chairman of the Equal Employment Opportunity Commission, Gilbert Casellas. He will testify today in support of the budget request and activities of the EEOC.

The EEOC is the federal agency responsible for enforcement of laws that prohibit employment discrimination of federal and private sector employees based on race, sex, religion, national origin, age or handicap status. For 1997, the EEOC has requested a budget of \$268 million, an increase of \$35 million or 15 percent over the current level in 1996.

As I have told all of the agencies that have appeared before this subcommittee, fiscal year 1997 will be as austere as this year when it comes to resources available to this subcommittee. We commend you for the changes that you've already made to accomplish your workload in a more efficient manner and reduce your backlog. We ask you to continue to search for ways to change the structure in the way you do business.

We will insert your written statement in the record at this point, Mr. Chairman, and you may proceed with your oral statement.

OPENING STATEMENT BY THE CHAIRMAN OF THE EEOC

Mr. CASELLAS. Thank you, and good morning, Mr. Chairman.

I am pleased to have this opportunity to testify before you today on behalf of the EEOC's fiscal year 1997 budget request of \$268 million. It is the same request that we made last year, sir.

I hope that I can provide you with a fuller understanding of why the funding we are requesting is so vital to improving our ability to fulfill our mandate to fight illegal discrimination in the American work place.

When I first appeared before this Subcommittee in May of 1995, I outlined the many challenges that confronted me as the new Chairman of the EEOC and the immediate steps that I took to address the agency's many serious and long-standing management and operational problems.

Today, a year later, I can report that we have made significant progress in addressing many of these problems. We entered fiscal year 1995 when I arrived with a backlog of more than 96,000 pending private charges. This backlog climbed to more than 111,000 charges by the end of the third quarter of that fiscal year.

Reducing this enormous backlog has been one of my highest priorities. A central component of our new strategic plan to reinvent

the charge processing system was rescinding the full investigation, full remedies and litigation enforcement policies that the Commission had adopted in the mid-1980s. These policies directly impeded the agency's ability to effectively manage a growing workload because they required that every charge filed with the agency be treated equally.

Whether warranted or not, each charge was fully investigated and the full set of remedies applied. Also in each case where cause was found, but conciliation had failed, litigation was mandated. Clearly, this enforcement approach created excessive busy work. It generated unnecessary lawsuits and with an escalating workload, decreasing staff levels and limited resources was no longer viable.

We have now replaced the old one-size-fits-all procedure with a system that maximizes our limited resources while ensuring due process. Two of the most critical elements of our new enforcement approach are now in place. The new system prioritizes charges at intake, allowing early dismissal of certain charges.

Settlement of charges is now encouraged at every stage of the investigation, with appropriate relief sought for the aggrieved party. These new procedures give our staff the flexibility to prioritize complaints to determine the appropriate level of investigation.

Our fiscal year 1995 year end numbers dramatically reflect the success of our new policy and program initiatives. By the close of fiscal year 1995, our pending inventory of charges had dropped nearly 12 percent, down to 98,000 from more than 111,000 charges at the end of the third quarter.

In addition, in February of 1996, the Commission approved a national enforcement plan to strategically maximize our limited resources to pursue our mission. This national enforcement plan delineates three general governing principles for our enforcement efforts.

First, preventing work place discrimination through education and outreach. Two, resolving disputes through voluntary conciliation. Three, where voluntary resolution fails, engaging in strong and fair enforcement.

The NEP also establishes national enforcement priorities that will yield the greatest dividends for achieving equal employment opportunity. It sets out general guidelines for the development of local enforcement plans consistent with the mandates of our national plan that are tailored to meet the particular needs of the various regions and communities the EEOC serves.

Further complementing these measures and consistent with the governing principles of our new enforcement strategy, we also plan to incorporate the use of voluntary mediation-based alternative dispute resolution to enhance the EEOC's charge processing system when the law and our resources allow.

The Commission has also forged a new partnership with state and local fair employment practices agencies. We contract with these agencies to annually process more than 48,000 charges. Recognizing our common mission, we've been working together to streamline our work sharing relationship by eliminating unnecessary and costly duplication in our shared charge processing procedures and abolishing unduly burdensome reporting requirements.

Like the comprehensive review I initiated to improve our private sector operations, in the fall of 1995, we began a review of our federal sector equal employment opportunity operations. As in the private sector, we face the challenge of managing an increasing work load with limited resources. This review is thus focusing on ways to make our federal operations more cost effective and efficient.

Along with our enforcement reform successes, we also succeeded in addressing critical labor management issues that had been eroding the agency's ability to effectively accomplish its mission. Through negotiation rather than costly litigation, we resolved all pending employee grievances related to the invalidated performance system, as well as a major dispute relating to overtime compensation.

The goodwill, the teamwork and the trust that came out of these negotiations have resulted in a new Collective Bargaining Agreement, the framework for a new performance appraisal system and the execution of an historic labor management partnership agreement between EEOC, labor and management.

Last month, Vice President Gore's National Performance Review recognized our labor management efforts by presenting the agency with its Hammer Award. Throughout 1995, the agency also issued a number of well-received policy guidances in order to facilitate compliance with the laws that we enforce.

Taken together, our efforts in fiscal year 1995 laid a strong foundation on which we are building successful responses to the significant challenges that we face this fiscal year. We began this current 1996 fiscal year faced with the challenge of addressing a budgetary shortfall. This challenge is compounded by the fact that the current shortfall directly strikes those areas that, to the detriment of the agency, have been hit hardest in the past.

In fiscal year 1995, we implemented several cost saving measures to meet a \$5 million deficit resulting from the inevitable increases in fixed costs. Since approximately 90 percent of EEOC's projected costs are salaries, rent and overhead, and our work is necessarily labor-intensive, deficit reduction can only be achieved through decreases in the remaining 10 percent of our appropriation.

This 10-percent supports functions essential to the effectiveness and efficiency of our work: employee training, computer technology, litigation support, travel and required staff support. We have continued strict cost cutting measures into fiscal year 1996 to keep the agency within its authorized budget by absorbing a \$6 million shortfall resulting from the level of funding provided under the Continuing Resolution.

However, to fully understand the extent of the operational challenges we face, I must draw your attention to the effects of chronic under-funding, especially in four areas that are directly linked to the success of our operations: staffing, training, education and outreach and technology.

These four areas have suffered the most from the continuing lack of resources with a direct negative impact on the agency's productivity and ability to handle its workload. Significant resources must be allocated to these areas if the agency is to have even a fair chance of achieving desired levels of efficiency and effectiveness.

To close the fiscal year 1996 budget gap, we've had to forestall or indefinitely postpone many initiatives in precisely these four areas, including education and outreach activities and implementation of mediation-based alternative dispute resolution, two key components that are critical to the success of our new enforcement strategy.

In addition, despite cost cutting measures and delays in undertaking vital programs and activities, we may be required to schedule a minimum one-day nationwide furlough before the end of this fiscal year.

I'm confident that the reforms we have instituted will ensure that the agency operates as effectively and efficiently as possible within its limited resources. These efforts alone, however, cannot solve the ultimate problem that confronts us: too little funding for too much work.

By the end of the fourth quarter of fiscal year 1995, the first full quarter following implementation of our new procedures, our investigators resolved a record number of charges. We resolved 20,000 more charges in 1995 than in 1996 and I dare say probably more charges than ever in EEOC's 30-year history.

As a result, our pending inventory grew by only 1,500 charges. The task now remaining, to reduce this workload to manageable levels, cannot be accomplished without additional resources. We've reached peak productivity with existing available staff. We've come to the point where we cannot continue to do more with less.

Our projections are that by the end of fiscal year 1997, without additional resources, our pending inventory will have climbed to 145,000 charges. So, this reduction in staff levels also has to be taken in the context of our increased enforcement responsibilities under the Americans With Disabilities Act and the Civil Rights Act of 1991.

By the end of 1995, our investigators each had an average caseload of 122 cases. In 1990, in contrast, each investigator averaged 51 cases. Without additional staff, our private sector pending inventory will continue to grow.

With no additional staff, the months of charges or complaint caseload will increase from 16.3 months at the end of the first quarter of the current fiscal year, to 36.8 months in fiscal year 2000. Our federal sector workload mirrors the challenges of the private sector.

The \$35 million increase in appropriations that EEOC has requested for fiscal year 1997 will provide the agency with the people we need, well-trained and equipped with the necessary tools to accomplish the task before us. The foundation has been laid. We seek your assistance and support for our efforts.

The President's \$268 million budget request is critical because it will allow us to increase the number of investigators and attorneys and their productivity through new investments in technology systems and training.

The budget provides needed increases in the following areas: an increase of \$2.1 million for staff training; \$9 million to provide the resources essential to develop a comprehensive and unified management information system; \$1.1 million for alternative dispute resolution; \$213,000 to support a coordinated and extensive edu-

cation, outreach and technical assistance effort to employers and employees; and an additional \$1 million to support our collaborative efforts with state and local fair employment practices agencies.

Mr. Chairman, we've accomplished much toward making my vision for EEOC become a reality. We have reinvented ourselves to operate as an efficient and effective business and dedicated to serving the public. We have much more to do, especially in this time of increasing anxiety about jobs and economic security.

We will remain a strong enforcement agency by vigorously enforcing the laws within our mandate with this committee's help. We seek your support and guidance to fairly and effectively address the concerns of tens of thousands of Americans who turn each year to us, as they must, to avail themselves of the only federal administrative process through which their rights to equal employment opportunity can be guaranteed.

Mr. Chairman, America stands for freedom and opportunity. The EEOC is the only vehicle to ensure equal opportunity in the work place. I thank you for the opportunity to appear in support of this budget request. I will be happy to answer any questions you have, sir.

[The statement of Mr. Casellas follows:]

**STATEMENT OF
GILBERT F. CASELLAS, CHAIRMAN
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
BEFORE THE
SUBCOMMITTEE ON COMMERCE, JUSTICE, STATE,
THE JUDICIARY AND RELATED AGENCIES
COMMITTEE ON APPROPRIATIONS
U.S. HOUSE OF REPRESENTATIVES
APRIL 25, 1996**

Mr. Chairman and members of the Subcommittee, I am pleased to testify before you today on behalf of the Equal Employment Opportunity Commission's fiscal year 1997 budget request of \$268 million. In my testimony today, I hope to provide you with a fuller understanding of why the funding we are requesting is so vital to improving the Commission's ability to fulfill its mandate to fight illegal discrimination in the American workplace.

When I first appeared before this Subcommittee in May of 1995, I outlined the many challenges that confronted me as the new Chairman of the EEOC and the immediate steps I took to address the agency's many serious and longstanding management and operational problems. Today, a year later, I can report that we have made significant progress in addressing many of these problems; most notable are reforms in our enforcement procedures, improvement in labor/management relations, and clearer policy guidance.

ACCOMPLISHMENTS

Enforcement Reforms

The Private Sector: The EEOC entered fiscal year 1995 with a backlog of more than 96,000 pending private charges. This backlog climbed to more than 111,000 charges by the end of the third quarter of that fiscal year. Reducing this enormous backlog is one of my highest priorities. Shortly after my arrival I appointed three commissioner-led task forces to conduct "clean sheet" reviews of the agency's private sector operations.

I asked members of the task forces to concentrate their work in three areas: the charge processing system; alternative dispute resolution implementation; and the agency's relationship with state and local fair employment practices agencies. We are now implementing major reforms based on recommendations from the task forces.

Reinventing the Charge Processing System: A central component of the Commission's strategic plan to reinvent the charge processing system was rescinding the "full" investigation, "full" remedies, and litigation enforcement policies the Commission had adopted in the mid-80's. These policies directly impeded the agency's ability to effectively manage a growing workload because they required that every charge filed with the agency be

treated equally. Whether warranted or not, each charge was fully investigated and the full set of remedies applied. Also, in each case where cause was found but conciliation had failed, litigation was mandated. Clearly, this enforcement approach created excessive busywork, generated unnecessary lawsuits, and with an escalating workload, decreasing staff levels, and limited resources, was no longer viable.

We have now replaced the old "one-size-fits-all" procedures with a new customized system that maximizes our limited resources, while ensuring due process. Two of the most critical elements of the agency's new enforcement approach are now in place:

- **Priority Charge Handling Procedures.** In June 1995, we implemented new procedures which permit EEOC field offices to better manage both incoming and pending charges. The new system prioritizes charges at intake, allowing early dismissal of nonjurisdictional, self-defeating or unsupported charges. Settlement of charges is now encouraged at every stage of the investigation, with appropriate relief sought for the aggrieved party. These new procedures give our staff the flexibility to prioritize complaints to determine the appropriate level of investigation. The new procedures also shift authority and responsibility for enforcement and litigation decisions from headquarters to the field. Employees directly responsible for charge processing now are empowered to make informed decisions at the front-line.

In July 1995, EEOC field offices began to implement the new charge processing procedures. Our fiscal year 1995 year-end numbers dramatically reflect the success of our new policy and program initiatives. By the close of fiscal year 1995, our pending inventory of charges had dropped nearly 12% -- down to 98,269 from more than 111,000 charges at the end of the third quarter. While we do not expect to be able to sustain such significant rates of reduction in the future, our new procedures will help us to better focus and use our resources.

- **National Enforcement Plan.** In February 1996 the Commission approved a National Enforcement Plan (NEP) to strategically maximize the agency's limited resources to pursue its mission. The NEP delineates three general principles governing the Commission's enforcement efforts: (1) preventing workplace discrimination through education and outreach; (2) resolving disputes through voluntary conciliation; and (3) where voluntary resolution fails, engaging in strong and fair enforcement. The NEP also establishes national enforcement priorities that will yield the greatest dividends for achieving equal employment opportunity. Additionally, the NEP sets out general guidelines for the development of local enforcement plans, consistent with the mandates of the national plan, that are tailored to meet the particular needs of the various regions and communities EEOC serves. EEOC field offices have developed these local plans and the Commission is presently reviewing them. Further, as part of the NEP, the Commission has delegated significant litigation authority to the Office of General Counsel.

The Priority Charge Handling Procedures and the National Enforcement Plan are included as Attachments A and B of this statement.

Alternative Dispute Resolution: Further complementing these measures, and consistent with the governing principles of our new enforcement strategy, we also plan to incorporate the use of voluntary, mediation-based Alternative Dispute Resolution (ADR) to enhance EEOC's charge processing system when the law and our resources allow. Our field offices have developed ADR proposals that are tailored to meet the needs of the local jurisdictions they serve. We eagerly await the passage of the Administrative Dispute Resolution Act (ADRA), which I will discuss later in my testimony, which depending on the state of our budget, will allow us to go forward with these proposals.

Partnership with State and Local Fair Employment Practices Agencies: The Commission has forged a new partnership with state and local fair employment practices agencies (FEPAS). EEOC has contracts with FEPAs to annually process more than 48,000 charges. Recognizing our common mission, we have been working together to streamline our worksharing relationship by eliminating unnecessary and costly duplication in our shared charge processing procedures and abolishing unduly burdensome reporting requirements.

Federal Sector Review: Like the comprehensive review I initiated to improve our private sector operations, in the fall of 1995 we began a review of our federal sector equal employment opportunity operations. As in the private sector, we face the challenge of managing an increasing workload with limited resources. This review is thus focusing on ways to make our federal operations more cost effective and efficient. Working groups have been identified and progress is ongoing. We will keep you posted about our efforts in this area.

Labor-Management Partnership

Along with our enforcement reform successes, we also have succeeded in addressing critical labor-management issues that had been eroding the agency's ability to effectively accomplish its mission. I began an early and ongoing dialogue with labor representatives in an effort to create a new labor-management partnership. As a result, within weeks after my arrival, we resolved many longstanding labor-management disputes. Since 1994, when a labor arbitrator nullified the agency's performance appraisal system, there was no means to assess employee work performance. Through negotiation, rather than costly litigation, we resolved all pending employee grievances related to the invalidated performance system, as well as a major dispute relating to overtime compensation.

The goodwill, teamwork and trust that came out of these negotiations have resulted in a new collective bargaining agreement, the framework for a new performance appraisal system, and the execution of an historic partnership agreement between EEOC labor and management. Last month, Vice President Gore's National Performance Review recognized EEOC's labor-management efforts by presenting the Agency with its Hammer Award.

Enforcement Policy

Throughout 1995 the agency issued a number of well-received policy guidances. To facilitate compliance with the ADA, the Agency published long-sought instructions for determining a "disability." We also issued a guidance clarifying the differences between disability-related and service-related retirement plans and offered enforcement guidance allowing more flexibility with pre-employment disability-related questions and medical examinations. In what is a first for both EEOC and civil rights law enforcement, the Agency is using negotiated rule-making to determine the validity of waivers under the Age Discrimination in Employment Act.

Taken together, our efforts in fiscal year 1995 laid a strong foundation on which we are building successful responses to the significant challenges that we face this fiscal year.

FISCAL YEAR 1996 CHALLENGES

We began the current fiscal year again faced with the challenge of addressing a budgetary shortfall. This challenge is compounded by the fact that the current shortfall directly strikes those areas that, to the detriment of the agency, have been hit hardest in the past.

In fiscal year 1995, we implemented several cost saving measures to meet a \$5 million deficit resulting from inevitable increases in fixed costs. Since approximately 90 percent of EEOC's projected costs are fixed -- that is, salaries, rent, and overhead -- deficit reduction can only be achieved through decreases in the remaining 10 percent of our appropriation. This 10 percent supports functions essential to the effectiveness and efficiency of our work: litigation, including transcript costs and expert witnesses; operational travel; employee training; computer technology; printing; equipment; and other required staff support.

In fiscal year 1995, we reduced administrative travel to only that which was determined essential, and limited equipment purchases and new hires. We requested and received approval from the Office of Personnel Management to offer an early out retirement opportunity, and extended to our employees opportunities for part-time employment or extended leave without pay for personal or professional purposes.

We have continued these cost-cutting measures into fiscal year 1996 to keep the agency within its authorized budget by absorbing a \$6 million shortfall resulting from the level funding provided under continuing resolutions.

However, to fully understand the extent of the operational challenges EEOC faces, I must draw your attention to the effects of chronic underfunding, especially in four principal areas that are directly linked to the success of the agency's operations: staffing, training, education and outreach, and technology. These four areas have suffered the most from the

continuing lack of resources, with a direct negative impact on the agency's productivity and ability to handle its workload. Significant resources must be allocated to these areas if the agency is to have even a fair chance of achieving desired levels of efficiency and effectiveness.

To close the fiscal year 1996 budget gap, we have had to forestall or indefinitely postpone many initiatives in precisely these four areas, including education and outreach activities and implementation of mediation-based alternative dispute resolution -- two key components that are critical to the success of our new enforcement strategy.

Ongoing budget constraints have impeded the Commission's continued efforts to mount aggressive outreach and prevention programs. If implemented, such programs would have helped ensure greater voluntary compliance with the laws we enforce and, ultimately, fewer charges filed.

Likewise, available funds for staff training have been scarce. There has been no agency-wide employee training since 1992, the year the Americans with Disabilities Act went into effect, although significant changes to our charge processing system mandates that we provide at least initial employee training in fiscal year 1996.

And, once again, EEOC has been forced to delay plans to modernize our antiquated, overburdened, and redundant management information systems.

In addition, and despite our cost-cutting measures and delays in undertaking vital programs and activities, we may be required to schedule a minimum one-day nationwide furlough before the end of this fiscal year.

FISCAL YEAR 1997 REQUEST

I am confident that the reforms we have instituted will ensure that the agency operates as effectively and efficiently as possible within its limited resources. These efforts alone, though, cannot solve the ultimate problem that confronts us -- too little funding for too much work. However, even within our incredibly limited resources we have been able to establish a strong foundation for a more efficient and effective process to achieve our mission.

By the end of the fourth quarter of fiscal year 1995 -- the first full quarter following implementation of our new charge procedures, EEOC investigators resolved a record number of charges. At year's end, EEOC had received a total 93,279 charges and resolved 91,774, surpassing fiscal year 1994 charge resolutions by 20,211. As a result, our pending inventory grew by only 1,505 charges.

The task now remaining, to reduce this workload to manageable levels, cannot be accomplished without additional resources. We have reached peak productivity with existing available staff and have come to the point where we cannot continue to do more with less.

EEOC began fiscal year 1995 with a staff level of 2,851 FTE. The hiring controls we put into place as part of our spending reduction plan further reduced our FTE level to 2,785 by the end of July 1995, a decrease of more than 600 from our fiscal year 1980 staffing level of 3,390 full-time equivalent positions.

This reduction in staff levels can only be appreciated within the context of the agency's increased enforcement responsibilities under the Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991.

While the decline in FTEs has been good for the balance sheet, it has had a direct, negative effect on basic operations, particularly on caseload reductions. By the end of fiscal year 1995, our investigators each had an average active caseload of 122.7 cases. In 1990, by contrast, each investigator averaged 51 cases.

Clearly, without additional staff our private sector pending inventory will continue to grow. With no additional staff, the months of charges or complaint caseload will increase from 16.3 months at the end of the first quarter of fiscal year 1996 to 36.8 months in fiscal year 2000.

Our federal sector workload mirrors the challenges of the private sector. During fiscal year 1995, the average production per appellate attorney increased from 146 appeals in fiscal year 1994 to 154 by the end of fiscal year 1995. As a result, the appeals inventory grew from 4,363 in fiscal year 1994 to 6,498 in fiscal year 1995.

Although federal sector hearings receipts leveled off in fiscal year 1995, compared to fiscal year 1994, the more than 25% increase in inventory in fiscal years 1993 and 1994 created 11 months of pending inventory (330 days).

The \$35 million increase in appropriations that EEOC has requested for fiscal year 1997 will provide the agency the people we need, well-trained and equipped with the necessary tools, to accomplish the task before us. The foundation has been laid, and we seek your assistance and support for our efforts. The President's \$268 million budget request is critical because it will allow us to increase the number of investigators and attorneys and their productivity through new investments in technology systems and training.

The President's budget also will provide a level of funding needed to acquire the experts and depositions critical to the litigation process, both for individuals who have suffered from discriminatory practices in the workplace, as well as to support class and pattern and practice case litigation.

The budget provides needed increases in these areas:

- An increase of \$2.1 million for staff training. Front line field staff must receive training to ensure that they are prepared to competently handle a diverse and

increasingly complex workload. Investigators and attorneys must be well versed in new charge processing procedures and enforcement personnel must receive updated training on various aspects of the law, new legislative or regulatory requirements, new programmatic requirements, as well as procedural changes.

- \$9.05 million to provide the resources essential to develop a comprehensive and unified management information system. As noted earlier, EEOC's antiquated information system undermines our ability to efficiently and effectively enforce the law. It is essential that the agency be able to develop an integrated information system to track and manage cases. The current multiplicity of independent systems has resulted in redundant data entry and storage, duplicate processes and procedures, inadequate data integrity and difficulties in accessing information.
- \$1.1 million for Alternative Dispute Resolution. As I noted earlier, EEOC's field offices developed proposals for ADR systems and initially planned to implement these proposals in fiscal year 1996, as agency resources permitted. A principal element of many of these proposals is the use of volunteer mediators. While the Administrative Dispute Resolution Act of 1990 (ADRA) provided the Commission with the legal authority to use such volunteers, it expired on October 1, 1995. Although legislation is currently pending before Congress to reauthorize the ADRA, EEOC is currently precluded from using this valuable resource to enhance our ADR program until specific authorization is restored.
- \$213,000 to support a coordinated and extensive education, outreach and technical assistance effort to employers and employees. Such efforts not only play a critical role in the performance of our mission by focussing on the prevention of employment discrimination, but also are part of the agency's statutory mandate. Other than technical assistance funding for the Americans with Disabilities Act, the Commission has never received targeted funding for education and outreach efforts, even though, since 1991 the agency has been specifically required to provide these services to the Hispanic, Asian Pacific American, and Native American communities that historically EEOC has underserved.
- An additional \$1 million to support our collaborative efforts with state and local fair employment practices agencies. The increase will allow us to strengthen our efforts to reduce the FEPA charge inventory, as well as enhance data systems and investigator skills.

We have accomplished much toward making my vision for EEOC become a reality. We have reinvented ourselves to operate as an efficient, effective business, and dedicated to serving the public. But we have much more to do, especially in this time of increasing anxiety about job and economic security.

With your help, we will remain a strong enforcement agency by vigorously enforcing the laws within our mandate. We seek your support and guidance to fairly and effectively address the concerns of tens of thousands of Americans who each year turn to us to avail themselves of the only process through which their rights to equal employment opportunity can be guaranteed.

I thank you for the opportunity to appear before you in support of the President's Budget request for the agency. I will be happy to answer any questions you may have.

ATTACHMENT A:

PRIORITY CHARGE HANDLING PROCEDURES

**U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

PRIO~~R~~ITY

CHARGE

HANDLING

PROCEDURES

**GILBERT F. CASELLAS
CHAIRMAN**

JUNE 1995

INDEX**Page****PRIORITY CHARGE HANDLING PROCEDURES**

INTRODUCTION	1
I. BACKGROUND: The Commission's and Chairman's April 19, 1995, Initiatives	2
1. National and Local Enforcement Plans.	2
2. Priority Charge Handling Procedures to Focus Resources on Charges with the Most Law Enforcement Potential.	2
3. Rescission of the "Full Investigation" Policy.	2
4. End Use of Substantive "No Cause" LODs.	2
5. Rescission of the "Enforcement Policy;" Authorization of the Exercise of Prosecutorial Discretion in Litigation Decisions.	3
6. Rescission of the Remedies Policy; Authorization of More Discretion in Settlement.	3
7. Procedures for Commissioner Charges And Directed Investigations.	3
II. PRIORITY CHARGE HANDLING PROCEDURES IN PRIVATE AND NON-FEDERAL PUBLIC SECTOR CASES FILED BY CHARGING PARTIES	4
A. PRIORITY CATEGORIZATION SYSTEM	4
<u>Category A:</u> Enforcement Plan/Potential Cause Charges.	4
<u>Category B:</u> Charges Requiring Additional Information.	4
<u>Category C:</u> Charges Suitable For Dismissal.	5
B. CHARGE RECEIPT: INITIAL CASE CATEGORIZATION	6
1. Charge Receipt Counseling	6
2. Prompt Charge Assessment	7
C. CATEGORIZATION OF EXISTING CHARGE INVENTORY	8

(revised - 6/20/95)

1

D. INVESTIGATION AND PROCESSING AFTER INITIAL CATEGORIZATION	9
1. Investigation	9
2. Continuing Priority Assessment	10
E. SETTLEMENT OF CHARGES	10
F. DETERMINATIONS	11
1. Elimination Of Substantive "No Cause" LODs	11
2. Determination Counseling	12
3. Requests for Reconsideration	12
G. SPECIFIC ISSUES	13
1. Expedited Subpoena Issuances	13
2. Title VII/ADA Notice of Right to Sue (NRTS) Issued on Request; ADEA § 7(d) Conciliation on Request	13
3. CP Has Sued on the Same Issue under State Law or on a Different Basis	13
4. ADEA Charges Filed More Than 180/300 Days after Date of Violation	14
5. Bankrupt Respondents	14
H. CONTINUED COMMUNICATION WITH STAKEHOLDERS	14
I. MANAGEMENT OPTIONS	15
1. Processing of Pending Inventory, Including Backlog Cases	15
2. Improved Coordination Between Enforcement and Legal Staff	16
3. Potential Additional Options	16
III. PROCEDURES FOR COMMISSIONER CHARGES AND DIRECTED INVESTIGATIONS	17
A. INTRODUCTION	17
B. BACKGROUND	17

C. GENERAL PROCEDURES	18
1. Identification of Potential Commissioner Charges and Directed Investigations	18
2. Development of the Charge and/or Investigation	18
3. Management of Directed Investigations	18
4. Commissioner Charges	18
a. The Charge Proposal	18
b. Submission of the Charge Proposal	19
c. Investigation and Disposition of Commissioner Charges	19
CONCLUSION	20

(revised - 6/20/95)



PRIORITY CHARGE HANDLING PROCEDURES

INTRODUCTION

In order to more effectively implement the agency's mission of eradicating employment discrimination, and to address the growing backlog of cases, on December 1, 1994, Chairman Gilbert F. Casellas authorized a task force chaired by Vice-Chairman Paul M. Igasaki to conduct a "clean slate" review of the Commission's charge processing procedures.

On April 19, 1995, the Commission adopted a series of motions incorporating key recommendations of the task force. In addition, the Chairman announced a number of action items implementing the new procedures.

The new procedures are based upon the development of a national enforcement plan, which will provide a coordinated approach to achieving the agency's mission through investigation, conciliation, and litigation, in addition to technical assistance and public education. Central to the new approach is a charge prioritization system, the subject of this memorandum, which provides for the classification of charges into three categories: Category A (charges that fall within the national or local enforcement plans as well as other charges in which it also appears "more likely than not" that discrimination has occurred); Category B (charges where further evidence is required to determine whether it is more likely than not that a violation has occurred); and, Category C (charges subject to immediate dismissal). Category A cases will receive priority treatment; Category B cases will be investigated as resources permit; and, Category C cases will be dismissed.

The new standards give field personnel flexible procedures for processing charges, including discretion to decide the appropriate level of resources to be utilized for each charge and permitting settlement in appropriate cases. They place substantial decision-making authority in field offices and with front line investigators and attorneys. These priority charge handling procedures apply to both incoming charges and the charge inventory.

The Commission's actions are fully consistent with the President's National Performance Review which supports "reinvention" based on stakeholder input, greater responsibility for front line staff and reduced levels of administrative review. In addition, broad agreement exists among the agency's stakeholders, including representatives of employers, employees, and labor, civil rights and advocacy organizations, and the bar, as well as the agency's own staff, that such change is needed.

(revised - 6/20/95)

I. BACKGROUND: The Commission's and Chairman's April 19, 1995, Initiatives

The principal initiatives from the April 19th meeting are as follows:

1. National and Local Enforcement Plans.

The Commission will adopt a national enforcement plan to identify priority issues and set out a plan for administrative and litigation enforcement. Each district office will then develop a local enforcement plan to be reviewed by the General Counsel and Director of the Office of Program Operations for consistency with the national plan, and approved by the Chairman. Union and management, and field and headquarters staff, across-the-board, will be involved in the common effort to develop and implement the plans. Moreover, stakeholders' views regarding national and local priorities will be solicited in developing these plans.

2. Priority Charge Handling Procedures to Focus Resources on Charges with the Most Law Enforcement Potential.

Consistent with the priority charge handling procedures approved by the Commission, field offices will develop methods for classifying charges into three basic categories. As rapidly as possible, new charges as well as charges in the current inventory will be assigned a category and handled under the new procedures.

3. Rescission of the "Full Investigation" Policy.

The "full investigation" policy as well as the December 6, 1983, Commission resolution on which it was based, was rescinded. The investigation to be made in each case should be appropriate to the particular charge, taking into account the EEOC's resources.

4. End Use of Substantive "No Cause" LODs.

The Commission ended the use of the substantive "no cause" letters of determination in cases where an appropriate investigation has not established that a violation has occurred. Instead, the parties will be informed in a short-form determination that the investigation failed to disclose a violation. However, communication with CPs regarding the basis for the dismissal of their charges remains essential.

5. Rescission of the "Enforcement Policy;" Authorization of the Exercise of Prosecutorial Discretion in Litigation Decisions.

The Commission rescinded the September 11, 1984 "Statement of Enforcement Policy" that: 1) set forth a cause standard that was commensurate with a finding of litigation worthiness; and 2) required the litigation of all conciliation failures. Offices may now find violations and attempt conciliation in all cases where there is reasonable cause to believe that it is more likely than not that a statute has been violated – whether or not the case is litigation worthy. In addition, the General Counsel has been delegated substantial prosecutorial discretion in deciding which cases to litigate and is encouraged to redelegate that authority to the Regional Attorneys (RAs) to the maximum extent feasible.

6. Rescission of the Remedies Policy; Authorization of More Discretion in Settlement.

The Commission repealed the February 5, 1985 "Policy Statement on Remedies and Relief for Individual Cases of Unlawful Discrimination," which stated that the EEOC would not settle for less than full relief when there was reasonable cause to believe that a violation had occurred. The Commission unanimously approved the following motion:

That settlement efforts be encouraged at all stages of the administrative process and that the Commission may accept settlements providing "substantial relief" when the evidence of record indicates a violation or "appropriate relief" at an earlier stage in the investigation.

7. Procedures for Commissioner Charges And Directed Investigations.

The Chairman directed that:

- New systemic cases developed in the field offices based on individual or Commissioner charges shall not require prior approval or oversight of the investigation by the Office of Program Operations (OPO); and
- Directors are encouraged to increase the use of directed investigations in ADEA and EPA cases. Requests for directed Commissioner charges in Title VII and ADA cases may be submitted directly to the Commission, and if signed by a Commissioner, shall be investigated like other charges, without OPO oversight of the investigation.

II. PRIORITY CHARGE HANDLING PROCEDURES IN PRIVATE AND NON-FEDERAL PUBLIC SECTOR CASES FILED BY CHARGING PARTIES

Set forth below is the framework for priority charge handling procedures in private and non-federal public sector cases filed by charging parties (CPs). It includes standards to be applied, revised charge receipt procedures, suggested investigative procedures to resolve the majority of charges more rapidly, and options for addressing the charge inventory, including the backlog. All priority charge handling procedures must take into account the agency's limited resources. However, this should be construed consistent with giving charging parties a fair opportunity to present their case.

The new procedures are effective as of June 13, 1995 and, where inconsistent with Volume I of the Compliance Manual, supersede the Compliance Manual guidance. Except as inconsistent with this document, Volume I of the Compliance Manual will continue as a guide, useful to the field staff in exercising its discretion.

A. PRIORITY CATEGORIZATION SYSTEM

Charges are to be classified into one of the three categories described below. Field offices may utilize subcategories within the three categories so long as the essential priority handling scheme is preserved and operates effectively.

Category A: Enforcement Plan/Potential Cause Charges.

The first category includes (1) charges that fall within the national or local enforcement plan and (2) other charges where further investigation will probably result in a cause finding. Cases should also be classified as Category A if irreparable harm will result unless processing is expedited.

For enforcement plan and potential cause cases, the office will conduct an appropriate investigation to obtain the necessary information, as resources permit. Within resource constraints, enforcement plan cases are the highest priority.

Category B: Charges Requiring Additional Information.

Many charges will initially appear to have some merit but will require additional evidence to determine whether continued investigation is likely to result in a cause finding. In addition, in other cases it will simply not be possible to make a judgment regarding the merit of the charge at charge receipt. In these cases, additional investigation will be needed, as resources permit, to determine whether these charges should be moved into Category A and given priority status or moved into Category C and dismissed. In addition to reclassification or settlement, Category B charges may be placed in suspense where CP has filed suit based on the issues raised in the charge. See II. G.3.

Category C: Charges Suitable For Dismissal.

A charge may be placed in Category C and dismissed when the office has sufficient information from which to conclude that it is not likely that further investigation will result in a cause finding.

An office will have "sufficient information" when it has conducted an investigation appropriate to the particular charge, factoring in resource considerations, and has assured that the CP has been provided a fair opportunity to present his or her case.

Examples of cases that can be resolved under Category C after completion of charge receipt are:

- Nonjurisdictional charges and those failing to state a claim (dismissed under 29 CFR §§ 1601.18).
- Charges unsupported by any direct or circumstantial evidence of discrimination, and the CP was in a position to have access to such evidence (dismissed under 29 CFR § 1601.19; *see also* §§ 1601.15(b) and 1601.18(b)).
- Self-defeating charges (dismissed under 29 CFR § 1601.19)
- Charges where the allegations are not credible, including cases filed by repetitive charge filers where, based on the large number of charges, the charging party is not credible. (dismissed under 29 CFR § 1601.19).
- ADEA charges filed more than 180/300 days after the date of violation (DOV).

As with all charges that are filed, these charges must be served on the respondent. However, offices should not request submission of position statements or other documents from respondents.

Cases can also be dismissed for "non-merit" reasons at a later stage of processing. Examples include:

- Cases where the CP has rejected a settlement offer which would afford full relief. (Dismissed under 29 C.F.R. § 1601.18) (but note that the Commission has withdrawn the "full relief" policy; offers consistent with the new procedures may, nonetheless, not meet the regulatory standard for dismissal).
- Cases where the CP has failed to respond to a 30-day notice provided for in § 1601.18(b).

Office Directors are authorized to give supervisory and line staff discretion to identify charges eligible for dismissal under this standard.

B. CHARGE RECEIPT: INITIAL CASE CATEGORIZATION

Charge receipt is a critical point under the new procedures since an initial assessment of a charge's priority status will be made at this stage of the investigation. However, it is important to keep in mind that many cases will be provisionally categorized into Category B, with the final categorization dependent on further analysis or investigation.

The charge receipt process, whether conducted in person, by phone or by mail, should include a CP interview conducted by experienced personnel who will counsel the CP and recommend an assessment or disposition of the charge. This interview may be lengthy in certain circumstances, for example, when the case appears to involve systemic discrimination. In other situations a shorter interview may be appropriate, for example, where the individual alleges age discrimination, but is 38 years old, and therefore not within the age group protected by the ADEA, and there are no allegations that would suggest a broader pattern or practice of discrimination. The following sets out guidance for the counseling and assessment processes.

1. Charge Receipt Counseling

The following are essential elements of charge receipt counseling:

- The individual should be explicitly informed by charge receipt personnel that he or she has a right to file a charge and that filing the charge is necessary to preserve the right to file a private suit under Title VII, ADA, or the ADEA. The office should also explain to the individual that if a formal charge is filed, the EEOC must provide notice of the charge to the respondent. The individual should be informed about the risk of retaliation, that retaliation is itself a violation of federal discrimination law, and that a CP may amend a charge to include an allegation of retaliation.
- To enhance the explanation of our processes, a notice taking into consideration the particular needs of an office and the communities it serves should be given to potential CPs, in an accessible format, of what they may expect during the processing of their charge. We will be working closely with appropriate offices to develop and disseminate model notices as soon as possible. The field will be provided forms in languages other than English to meet the needs of their particular communities. Consideration is also being given to the development of videos and other formats for providing the necessary information.

- Potential CPs should not be discouraged from filing a charge. Where, based on the initial interview, the charge appears to be weak, the CP should be told that and counseled about our process. If the CP wishes to file a charge, he or she should be told that it will be served on the respondent and might be dismissed at or shortly after that time. While the number of charges filed will be less critical to our operations than previously, because now the resources devoted to each charge will depend on its merits, staff must remain cognizant that the decision regarding whether to file is very important to the CP and must be made by the CP. Additional guidance will be forthcoming on this issue.
- Charge receipt staff should give CPs their best initial assessment of the evidence. This assessment will assist CPs in making an informed decision about whether and how to proceed. In addition, such assessment will enable CPs to assist more efficiently in the development and investigation of their charge.
- Throughout this process it is vital to convey fairly and honestly to potential CPs the status of their case, how it fits into our new procedures, and what they can expect to happen.

2. Prompt Charge Assessment

Efforts should be made to assess as promptly as possible new charges after they are filed (or for mail and telephone charges, during the period the charge is being perfected).

In connection with charge assessment, offices should consider the following guidance:

- Offices may provide literature and questionnaires asking for information relating to statute, basis, and issue to potential CPs as an aid to effective intake interviewing.
- Offices should consider the use of an appointment system for charge receipt.
- Charge receipt staff should assemble intake notes/memoranda to the file, gathering as much information as necessary to facilitate priority charge assessment. Affidavits or declarations may be taken at the discretion of the office when they serve an investigative purpose. For example, obtaining an affidavit or other statement at the charge receipt stage or shortly thereafter, regarding matters within the CP's knowledge, may preserve valuable evidence and save investigative resources later on.

- The inclusion of information on the charge form sufficient to allow Respondents to adequately respond to the charge, or a Request for Information ("RFI") if one is issued, can expedite charge processing.
- Pursuant to 29 CFR § 1601.15(b), the office may require in appropriate cases that the CP provide a statement that includes: each specific harm the person has suffered and the date on which each harm occurred; for each harm, a specification of the act, policy, or practice that is alleged to be unlawful; and for each act, policy, or practice that is alleged to have harmed the person, the facts that lead the person to believe that the act, policy, or practice is discriminatory.
- In limited cases, calls to respondents or witnesses during charge receipt may be helpful to explore settlement or gather information. While this practice will not always be appropriate, pursuing such opportunities may save resources and/or benefit a party. For example, if contacted during charge receipt, a witness may or may not verify a CP's version of the facts or an employer might have second thoughts about a recently taken adverse action.
- If a case is initially categorized into Category A or B, CPs should be told how long the additional investigation may take, and when they may obtain a status report from the field office.
- If a charge is eligible for immediate dismissal (Category C), the CP should be informed promptly that the EEOC is unlikely to pursue the claim, and that he or she will have to undertake private enforcement if he or she wants to continue to challenge the alleged discrimination.
- Offices should develop effective attorney referral procedures, including lists of attorneys who can aid those who wish to bring suit. The question of appropriate referrals of CPs to advocacy and civil rights groups will be addressed as part of the communications plan which will be disseminated as soon as it is available. At a minimum, it is important to assure that any group to which a CP is referred is aware of the changes to the charge processing system and has the resources and is otherwise able to assist CPs.

C. CATEGORIZATION OF EXISTING CHARGE INVENTORY

Field offices should categorize pending charges according to the same priority handling standards set out in this memorandum. As promptly as possible they should investigate those charges in Category A and dismiss those in Category C.

The staff who have been assigned charges are most familiar with the contents of the file. As a result, supervisors and investigators should normally prioritize the cases in their own inventories. Field managers can support the process by providing staff with definitions and benchmarks based on local conditions and continuing guidance for prioritizing the caseload into categories.

D. INVESTIGATION AND PROCESSING AFTER INITIAL CATEGORIZATION

1. Investigation

The investigation to be made in each case should be appropriate to the particular charge, taking into account the EEOC's resources. In general, an appropriate investigation is one where the field office determines that a statute has been violated or that there is sufficient information to conclude that further investigation is not likely to result in a finding that there is reasonable cause to believe that a statute has been violated.

Offices will need to develop a flexible process under which investigators will seek only that amount of evidence needed to make an informed decision as to whether it is more likely than not that a violation of the statute may be found. This will avoid misapplying resources by over-investigating charges that could be resolved with less information, or by pursuing cases that are facially non-meritorious. At the same time, it will have the beneficial effect of shifting the agency's limited resources to cases that are the most likely to fall within the enforcement plans and otherwise result in findings of violations.

As soon as practicable after receipt of a position statement or a response to a RFI, the office should decide whether to take further investigative or settlement action. If no further investigative or settlement action is appropriate, the charge should be dismissed at that time.

While this document is not intended to address in detail the investigation of charges, the following guidance addresses particular issues regarding investigations in the context of charge prioritization.

- a. Offices should determine how decisions will be made about the scope and limitations of investigations, including the specific practices and/or policies to be addressed as well as the time period to be covered.
- b. A thorough statement of the information provided by the CP should be contained in the file. This information may be in the form of a memorandum to the file, the CP's affidavit, the CP's responses to a questionnaire, and/or intake notes setting out all the relevant CP information. The focus is on substance, not on whether a particular type of document is in the file.

- c. Offices should eliminate forms and documents that are unnecessary or duplicative (e.g., detailed "no violation" investigative memoranda (IMs) when a short memo to file will suffice). However, there should be documentation in the file setting out the rationale for the resolution. Revised EEOC Form 291 (Attachment A) may be used for this purpose. The form has been placed on the EEOC Bulletin Board and may be downloaded for your use. Note that the form has also been modified for use when a NRTS is requested and the charge is to be closed.
- d. The Chairman has directed that charging parties and respondents should normally be provided with access, upon request, to the positions of the other. This exchange, including documents as appropriate, should permit the parties to narrow the issues, encourage them to resolve disputed facts, and reduce the burden on the office in handling FOIA/ § 83 document requests.
- e. For those cases that have been pending for several months since contact with either party, the office should communicate with the parties, by phone or in writing, a brief report on the status of the case.
- f. In appropriate cases, early involvement of legal staff to provide guidance will be extremely helpful.
- g. "Boilerplate" Requests for Information (RFIs) should be eliminated. Instead, RFIs tailored to the particular charge should be used.

2. Continuing Priority Assessment

Cases that are categorized for further investigation (A and B) should be reviewed as needed during processing to determine whether they should be re-categorized. These procedures will be applied to both new charges and charges currently in the inventory.

E. SETTLEMENT OF CHARGES

The EEOC's former "full" remedies policy has been rescinded. Now, cases in which the Director has issued, or is prepared to issue, a cause letter of determination may be settled for "substantial" relief; other cases may be settled for "appropriate" relief except that EEOC will not facilitate settlements of Category C cases.

Settlement is an important enforcement option. It should be encouraged by working closely with both charging parties and respondents to explore whether an amicable resolution

of their differences is possible. Offices will have discretion in evaluating whether settlements are appropriate in particular cases. As part of the exercise of this discretion, offices should take into careful consideration the interests of the affected parties and not simply impose their view of appropriate relief. At the same time, however, offices should not encourage or facilitate settlements simply to dispose of cases.

The following principles will guide the settlement process:

1. Minimum settlement terms for agreements to which the EEOC is a party are set out in the model agreements in § 15 of Vol. I, and remain in effect.
2. Charges under investigation that do not fall within the national or local enforcement plans and that are in Categories A or B may be settled at any time by the enforcement staff, with or without consultation with legal staff, as appropriate.
3. Category A charges under investigation that fall within the enforcement plans can be settled at any time in consultation with the Regional Attorney. This will assure that enforcement plans are implemented consistently and appropriately.
4. Category C charges, which are appropriate for dismissal, will not be the subject of EEOC settlement efforts. However, staff should not stand in the way of parties who are interested in reaching a settlement of their dispute.

F. DETERMINATIONS

1. Elimination Of Substantive "No Cause" LODs

Substantive "no cause" determinations will no longer be used. Instead, the parties will be informed in a short-form determination that the investigation failed to disclose a violation. These determinations will not include particularized factual findings, but rather will use the following uniform language which is included in the dismissal form approved on May 1, 1995, and a copy of which is attached as Attachment B:

Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issue that might be construed as having been raised by this charge.

2. Determination Counseling

Because of the elimination of substantive "no cause" determinations, it is critical that substantial care be exercised in explaining the disposition and the CP's enforcement options to the CP. Because, under the new procedures, there is an even greater need for effective communications with CPs than before, determination counseling will remain mandatory. However, there is no set formula or method. Offices should develop the best methods for effectively communicating to CPs the reason for the determination, the realities and limitations of our process, and their private enforcement options. Options include the following (offices should feel free to add to or adapt these options as circumstances suggest):

- In-person interview. In appropriate cases, the CP can be invited to visit the office to discuss the matter with the investigator or his or her supervisor. The goal is to fully communicate the reasons underlying the determination as well as the EEOC's resource limitations which may have affected the investigation, and to explain the CP's options to him or her. As needed, the investigator may ask to have a legal unit attorney meet the CP.
- Telephone or conference call. The investigator could arrange a phone conversation along the lines discussed in the previous paragraph, also involving a supervisor or legal unit attorney if appropriate.
- A written statement. A letter accompanying the LOD could be used to explain the disposition.
- Referrals. The office may refer the CP to a private attorney consistent with its attorney referral procedures. Referrals to civil rights or advocacy organizations should be consistent with the Commission's communication plan and should only be made where the organization has the resources and is otherwise able to assist the CP.

3. Requests for Reconsideration

Many parties request reconsideration of the resolutions of their charges. The EEOC has no statutory or regulatory duty to act on these requests, and Directors may decline to review such requests unless the CP presents substantial new and relevant evidence or a persuasive argument that the EEOC's prior decision was contrary to law or the facts. The Commission and headquarters staff are endeavoring to support the field in implementing the new procedures. Consistent with this commitment, offices should reconsider dismissals only when one of the following standards have been met:

- misconduct by an agency official which may have affected the outcome;

- substantial new and material evidence that was not previously considered and which may have affected the outcome; or
- an error in the interpretation of the law, which may have affected the outcome.

G. SPECIFIC ISSUES

1. Expedited Subpoena Issuances

The field can expedite the issuance of subpoenas from Area and Local Offices by using FAX, BBS, or teleconference procedures.

2. Title VII/ADA Notice of Right to Sue (NRTS) Issued on Request; ADEA § 7(d) Conciliation on Request

Cases where a Title VII/ADA CP has requested a Notice of Right to Sue (NRTS) prior to 180 days from filing may generally be closed and an NRTS issued if the Director has certified that processing cannot be completed within 180 days. All but a handful of district courts recognize jurisdiction over these cases. If a court subsequently dismisses the case because of the early NRTS, however, the case should be reopened. In addition, regulations permit an NRTS to be issued in any case on request after 180 days. In the case of a Category A charge that appears to be within a national or local enforcement plan, staff should issue a Title VII/ADA NRTS on request but should also consult with the Regional Attorney and determine whether the EEOC will continue its investigation.

ADEA charges generally may be closed with the issuance of a notice of dismissal or termination at the request of the CP prior to 60 days from filing after a § 7(d) conciliation attempt. In the case of a Category A charge that appears to be within a national or local enforcement plan, staff should not close the charge until staff has consulted with the Regional Attorney.

3. CP Has Sued on the Same Issue under State Law or on a Different Basis

Occasionally, CPs file suit on the same basis (such as race or age) under State law or challenge the allegedly discriminatory act on a different basis (e.g., as a contract or constitutional violation). Once such a charge has been reviewed and determined not to be in Category A, the CP may be informed that EEOC will take no further action until the pending litigation is resolved and that a NRTS will be issued at the CP's request. If the CP does not ask for a NRTS, the appropriate CDS suspense code can be reported and a decision on whether to take further action can be deferred until the end of the litigation, unless the case is properly classified in Category C, whereupon it should be dismissed. The office should check the status of the pending matter periodically to see if suspense status is still warranted.

4. ADEA Charges Filed More Than 180/300 Days after Date of Violation

Under both the current and the new procedures, when an ADEA CP files a charge more than 180/300 days from the DOV, absent equitable considerations, such charge is untimely for purposes of preserving private suit rights. The CP should be informed that if he or she chooses to file, the charge will be dismissed. CPs should be informed of the timeliness problem if they want to consider pursuing their private suit rights.

5. Bankrupt Respondents

When the office concludes that there is little chance of obtaining meaningful relief because the respondent has filed for bankruptcy, it should consider classifying the charge in Category C. This may be particularly appropriate where the respondent has gone out of business and filed for non-asset Chapter 7 bankruptcy. Nevertheless, the office should be aware that under certain circumstances a successor corporation may be liable for its predecessor's discrimination. See Compliance Manual Vol. II, Sec. 605.17b. If the respondent remains in business and files for Chapter 11 bankruptcy and reorganizes, the bankruptcy should generally not affect the investigation. However, in such cases the investigative unit staff should confer with legal staff about meeting requirements for filing a timely proof of claim with the bankruptcy court.

H. CONTINUED COMMUNICATION WITH STAKEHOLDERS

Currently, EEOC expends substantial resources responding to complaints from parties regarding the handling of their cases. It is reasonable to believe that the number of complaints may temporarily increase with adoption of priority charge handling procedures, since many charges will likely be dismissed within a relatively short period of time after filing. The success of the new procedures will depend on a full understanding by both internal and external stakeholders that the field has the discretion to make a wide variety of processing decisions, why these new procedures were implemented and how they will affect both charging parties and respondents.

To this end, the EEOC will pursue a more active role in stakeholder education. Further guidance on education and outreach will be disseminated shortly. Guidance on the appropriate handling of correspondence is also being developed and will be distributed as soon as it is available..

I. MANAGEMENT OPTIONS

1. Processing of Pending Inventory, Including Backlog Cases

It is critical that the agency deal with its charge backlog as expeditiously as possible in order to restore its credibility as a law enforcement agency. Moreover, the backlog requires substantial resources just to maintain the status quo and results in unmanageable burdens on investigators and other staff. It is no longer acceptable to permit the backlog to drive our law enforcement priorities.

Offices are encouraged to develop approaches for handling charges that meet their particular needs. The following are examples of management options that may be considered:

- Field offices may, in their discretion, handle older cases as a priority on a temporary basis (although not at the expense of Category A cases). Dedicated teams could be formed, or pending charge assignments could be made to individual employees. Such cases could be assigned to professional staff as appropriate.
- Pending charges may be transferred from one office to another, applying procedures similar to those for transferring hearings cases, provided that the receiving field offices can absorb them without substantially interfering with their own enforcement plans.
- Notices could be sent to Category B CPs who have not been contacted recently to determine if they want to proceed. If the CP does not wish to proceed a withdrawal might be appropriate or a NRTS could be issued. In addition, if the CP fails to provide requested necessary information, fails or refuses to appear or be available for interviews, or otherwise fails to cooperate, after due notice and 30 days in which to respond, the office may dismiss the case and issue a NRTS. If the CP wants to go forward, the office should review options with the CP, including settlement as well as a review of evidence which may have been developed.
- The office can "troubleshoot" the inventory for cases that can be dismissed either for lack of jurisdiction or on the merits.
- The office could conduct expedited fact-finding conferences.
- The office could "stand down" for all purposes other than taking charges in order to work on older cases or hold a "settlement week."

- Cases could be grouped geographically, by respondent, or by issue, to permit a significant number of cases to be investigated and/or processed at one time. Consolidating cases by respondent would also allow for avoidance of duplicative document requests and, at the same time, permit identification of company patterns and practices.
- Offices may inform CPs and respondents of the time it will take to reach a particular charge and that there is no impediment to pursuing voluntary alternate dispute resolution (ADR) or other settlement efforts during that time.

2. Improved Coordination Between Enforcement and Legal Staff

Legal unit attorneys in the district offices should be involved early in the investigation and classification of Category A charges in order to identify and guide the legal development of cases that might result in EEOC litigation. Offices should consider devising team arrangements and other collaborative approaches to providing that assistance. In order to allow legal unit attorneys to focus greater effort on those priority charges, offices should also consider new ways of providing legal advice to investigators working on Category B and C charges. Offices should keep in mind that the Office of Legal Counsel is available to assist with policy and procedural questions.

3. Potential Additional Options

We are exploring the possibility of authorizing field offices, within the framework of labor-management partnerships, to elect the following options:

- a. Establish a separate intake unit with qualified personnel.
- b. Establish a rotation system for assigning staff to intake, using either a small team approach (e.g., a member from each team rotates into intake for a prolonged period while other team members are assigned to the team's pending workload), or a long-term assignment (e.g., nine months).
- c. Establish a specialized ADA unit to handle intake, assessment, and resolution of ADA cases.

III. PROCEDURES FOR COMMISSIONER CHARGES AND DIRECTED INVESTIGATIONS

A. INTRODUCTION

In his April 19, 1995 announcement of steps to implement recommendations of the charge processing task force, the Chairman reasserted the importance of Commissioner charges and directed investigations as part of the EEOC's enforcement mission. In addition, he mandated the development of new, streamlined procedures for the approval of Commissioner charges and the conduct of the resulting investigations. This section provides the information necessary to carry out these directives. As with other sections of this memorandum, it supersedes instructions currently in Volume I of the Compliance Manual regarding headquarters supervision of these charges but should otherwise be read in conjunction with the guidance in the Compliance Manual.

B. BACKGROUND

Enforcement of Title VII, the ADEA, the EPA and the ADA is not limited to charges filed by individuals. In the absence of an individual charge, a Commissioner may initiate action under Title VII or the ADA through a "Commissioner charge," while field directors and the director of OPO have the authority to initiate "directed investigations" in ADEA and EPA cases. Commissioner charges and directed investigations are integral to EEOC's law enforcement mission and are an important complement to the enforcement of the law through individually initiated charges. They recognize that some types and incidents of illegal discrimination will not be the subject of individual charges but, nonetheless, constitute serious violations of the laws that should be the subject of enforcement action.

For example, discrimination against members of underserved communities may not be reflected in individually filed charges for the precise reason that members of such communities are not aware of their rights and/or of the processes available to pursue those rights. Persons not hired for discriminatory reasons may not be aware of why they were not offered a job, or that discrimination may have been a factor, and therefore fail to file a charge. Other discrimination victims may be too frightened to file an individual charge. Or, an individual may be jurisdictionally barred from filing a charge even though the evidence shows that the underlying discriminatory policy or practice persists.

C. GENERAL PROCEDURES

1. Identification of Potential Commissioner Charges and Directed Investigations

The identification and development of Commissioner charges and directed investigations should be consistent with the priorities in the national and local enforcement plans. Such charges and investigations may involve systemic discrimination issues as well as individual discrimination. They may be of broad or limited scope but will typically involve priority and/or novel issues.

2. Development of the Charge and/or Investigation

Field offices should determine the scope and limitations of the recommended Commissioner charge or directed investigation, including the practices and policies to be addressed as well as the period to be covered by the charge and investigation.

3. Management of Directed Investigations

Directed investigations under the ADEA and EPA will be managed entirely at the field office, in accordance with the same principles applying to individually filed charges.

4. Commissioner Charges

a. The Charge Proposal

The Commissioner charge proposal should be set out in a memo. The memo's content will depend on the sources of information relied on but should be sufficient for a Commissioner to be satisfied that there is a reasonable basis for the investigation. The Commissioner filing the charge must sign and verify the charge.

The proposal should include the Director's assurance that the district office has the resources to properly investigate the charge and that the charge is consistent with the national and local enforcement plan. In addition, the memo should include a brief general statement of the office's investigative methodology, a description of the basis for the proposed charge, and a brief statement of the potential remedial benefits, and/or impact that may reasonably result from the charge. It may also include descriptions of the content of affidavits, if any, or summaries of discussions with contacts; EEOC staff observations of possible discrimination; documentation of relevant matters; a brief summary of relevant current or previous EEOC, FEPA or other agency experience with the respondent; and/or any other pertinent information. If the field wishes to pursue a directed ADEA or EPA directed investigation along with a Title VII/ ADA Commissioner charge, this should be outlined in the Commissioner charge proposal memo.

b. Submission of the Charge Proposal

Field offices should submit proposed Commissioner charges directly to the Commission, through the Executive Secretariat.

Copies of the charge proposal should be sent to OPO which will assure that offices are not engaging in duplicative investigations. In the event of duplication, or where similar investigations of the same or related respondents are being undertaken, OPO will assure that the offices are coordinating effectively with each other consistent with the need to carry out effective investigations.

c. Investigation and Disposition of Commissioner Charges

Field Offices should investigate Commissioner charges in the same manner as individually filed charges, without headquarters supervision. Field offices can settle, decide and conciliate these charges in the same manner as other cases. Prior to a determination as to reasonable cause, the Commissioner who filed the charge may withdraw the charge with the consent of the Commission. Commissioners should be notified of the resolution of charges they have filed.

CONCLUSION

This memorandum on priority charge handling is designed to begin the implementation of the motions adopted by the Commission on April 19, 1995 and the Chairman's action items of the same date. The guidance and procedures it incorporates will assist the agency in more effectively carrying out its mission of eradicating employment discrimination through a coordinated strategy of investigation, conciliation, litigation, technical assistance and public education.

ATTACHMENT B:

NATIONAL ENFORCEMENT PLAN

NATIONAL ENFORCEMENT PLAN

February 1996



GILBERT F. CASILLAS
Chairman

PAUL M. IGARAKI
Vice Chairman

JOYCE E. TUCKER
Commissioner

PAUL STEVEN MILLER
Commissioner

C. GREGORY STEWART
General Counsel

Equal Employment Opportunity Commission



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION NATIONAL ENFORCEMENT PLAN

I. Introduction

In a motion unanimously adopted on April 19, 1995, the Commission directed the development, for its approval, of a National Enforcement Plan identifying priority issues and setting out a plan for administrative enforcement and litigation of the laws within its jurisdiction: Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the Equal Pay Act (EPA), and the Americans With Disabilities Act (ADA). Also on April 19, 1995, the Chairman directed District Directors and Regional Attorneys in each field office to develop Local Enforcement Plans that will be consistent with the National Plan and that will tailor their priorities to the specific needs of the many different communities served by the Commission.

This motion was adopted at a special meeting convened on April 19, 1995, to consider recommended reforms to enforcement policies that had been established by the Commission over a decade ago. The recommendations had been developed by the Task Force on Charge Processing (Task Force) created by Chairman Gilbert F. Casellas and led by Vice Chairman Paul M. Igasaki which was charged with reviewing and analyzing the private sector charge processing system. More recently, partially as the result of the Commission's increased statutory responsibilities, the number of persons filing charges annually with the EEOC has risen from less than 64,000 in fiscal year 1991 to more than 95,000 in fiscal year 1995, a 49% increase. More funding to support additional staffing and other resources necessary to meet these new challenges has not been forthcoming.

The Task Force recognized that the Commission's effectiveness as a law enforcement agency had been reduced by the overwhelming increase in its inventory of individual charges of discrimination, by the lack of financial resources needed to address the increased workload, and by a failure to strategically utilize its resources to pursue its mission through vigorous investigation, conciliation, and litigation. In the 1980's, a number of enforcement processing and litigation policies based on principles of "full investigation and enforcement" were implemented.

The Task Force concluded that the policies and practices now prevented the agency from using its limited resources strategically to pursue its mission of eradicating workplace discrimination. To address this problem, it recommended the adoption of policies that would permit the agency to make the most prudent use of its resources to accomplish its mission.

One of these recommendations was that the Commission develop National and Local Enforcement Plans that prioritize issues of discrimination for Commission action.

Given the comprehensive scope of the National Enforcement Plan, the Commission consulted with a broad range of external and internal stakeholders. Through this process, the Commission sought and received recommendations from dozens of representatives of the employer, employee, labor, and civil rights communities at both the national and local levels. In addition, the then-Acting General Counsel and then-Acting Director of the Office of Program Operations consulted with several District Directors and Regional Attorneys and asked all Regional Attorneys and District Directors to solicit suggestions from a wide range of EEOC staff, including union representatives.

Based upon this extensive consultative process and after its own careful consideration of the issues, the Commission adopts the following National Enforcement Plan (NEP) which will form the cornerstone of the Commission's efforts to achieve its statutory mission of eradicating discrimination from the workplace. The NEP recognizes that the Commission must use its limited resources more strategically to deter workplace discrimination, guide the development of the law, resolve disputes, and promote a work environment in which employment decisions are made on the basis of abilities, not on the basis of prejudice, stereotype and bigotry. The Commission also recognizes that regardless of resource issues, the development of this Plan is consistent with good management and reinventing government.

With this Plan, the Commission articulates the general principles governing the Commission's enforcement efforts, establishes national enforcement priorities, sets general parameters for the development of the Local Enforcement Plans, and delegates significant litigation authority to the Office of General Counsel so that the Commission can most effectively and efficiently accomplish its enforcement objectives.

II. Governing Principles

The National Enforcement Plan incorporates the following principles, which have guided its development and will govern its implementation.

A. The Commission is committed to an enforcement plan that encompasses a three-pronged approach to eliminate discrimination in the workplace: (1) prevention through education and outreach; (2) the voluntary resolution of disputes; and (3) where voluntary resolution fails, strong and fair enforcement.

First, the Commission recognizes that achieving its fundamental mission -- the eradication of employment discrimination -- requires not only enforcement of the law, but also prevention of the problem through public outreach and education. Therefore, within current resource limitations, the National Enforcement Plan encourages that public education,

outreach, and technical assistance be conducted at both the national and local level to support and enhance the enforcement activities directed by the NEP.

Second, the Commission is committed to the voluntary resolution of disputes where appropriate and feasible. The Commission recognizes that negotiated agreements that resolve claims of discrimination can directly advance the Commission's enforcement objectives, in addition to benefitting the parties to a particular dispute. The Commission believes that the use of Alternative Dispute Resolution (ADR) significantly furthers the Commission's mission as a law enforcement agency. Accordingly, the Commission strongly encourages its use as an integral part of our enforcement process.

Finally, the Commission is fully committed to firm and fair enforcement, including litigation, where voluntary efforts to achieve compliance fail. The Commission recognizes that an effective litigation program is critical to the furtherance of the Commission's enforcement agenda by enjoining current violations, deterring future violations, and providing remedies to victims of employment discrimination.

B. The Commission recognizes that given budget constraints under which it operates, it cannot be all things to all of its various constituencies. Moreover, the Commission must be candid with the public regarding the decisions that it makes. The adoption of this National Enforcement Plan and the subsequent adoption of Local Enforcement Plans will take critically important steps in this direction.

C. The combination of limited resources and increasing demands on the Commission requires a carefully prioritized and coordinated enforcement strategy. Strategic enforcement will assure the most effective use of the Commission's resources by assuring that available funds are devoted to efforts which have the potential to yield the greatest dividends in achieving equal employment opportunity. As part of this strategic enforcement strategy, the Commission is committed to the strategic and proactive use of its limited enforcement resources through, among other things, systemic investigations and litigation.

D. The Enforcement Plan must assure fair, aggressive and credible enforcement of all of the statutes enforced by the Commission regardless of the basis of discrimination or the issue.

E. Determination of whether a case should be pursued under the National Enforcement Plan will be based both on the issue raised and an assessment that the strength of the case supports the decision to proceed.

F. The Commission's enforcement activities will not be limited exclusively to the enumerated priority areas. With regard to charge processing, the Commission will issue cause findings in all cases in which it determines that it is more likely than

not that discrimination has occurred and will proceed to conciliation in such cases. With regard to litigation, the Commission may pursue certain cases in which it has found cause, even though those cases do not fall clearly within an enumerated enforcement priority. At the same time, the Commission will not pursue litigation on every charge which falls within the NEP or LEPs. The Commission recognizes that it will be required to forgo litigating some good cases in order to devote adequate resources to other cases. At every stage of the process, the Commission will assess the available facts to determine whether the strength of the case and the nature of the issue supports the decision to proceed.

G. Enforcement efforts must be directed to the resolution of the Commission's pending inventory, in addition to the approximately 100,000 new cases which are projected to be filed over the next year. The Commission's recently implemented charge prioritization policies have already significantly reduced the Commission's current inventory, and it is anticipated that this trend will continue barring unforeseen circumstances. Both the National and Local Enforcement Plans must provide immediate strategies for continuing to reduce the existing inventory of cases. Such strategies should not ignore each office's need also to provide the resources necessary to support priority cases and address new filings. The backlog of cases is unfair to charging parties and respondents alike, diminishes EEOC's credibility as a law enforcement agency, and consumes valuable resources.

While the charge prioritization policies reflected in the NEP will permit the Commission to dedicate significant resources towards the Commission's goal of achieving a manageable inventory, the Commission recognizes that without a significant increase in resources, this goal will remain elusive.

III. Enforcement Priorities

Based on the above principles, the Commission has identified three major categories of priorities, which include a series of subcategories, that will provide the foundation of the National Enforcement Plan. These priority categories will apply, as appropriate, to investigation, conciliation, and litigation, including both trial and appellate practice, as well as the EEOC's amicus curiae and intervention representation.

The Commission sets forth the following areas as priorities under the National Enforcement Plan. These priorities will apply to each of the statutes enforced by the Commission and to all persons protected by these statutes.

A. Cases involving violations of established anti-discrimination principles, whether on an individual or systemic basis, including Commissioner charge cases raising issues under the NEP, which by their nature could have a potential significant impact beyond the parties to the particular dispute.

1. Cases involving repeated and/or egregious discrimination, including harassment, or facially discriminatory policies.
 2. Challenges to broad-based employment practices affecting many employees or applicants for employment, such as cases alleging patterns of discrimination in hiring, lay-offs, job mobility, including "glass-ceiling" cases, and/or pay, including claims under the Equal Pay Act.
- B. Cases having the potential of promoting the development of law supporting the antidiscrimination purposes of the statutes enforced by the Commission.
1. Claims presenting unresolved issues of statutory interpretation under one or more of the statutes enforced by the Commission, as follows:
- a. Claims presenting unresolved questions regarding the allocation of burdens in disparate treatment cases as set forth in St. Mary's Honor Center v. Hicks.
 - b. Claims presenting questions regarding the scope of liability under the statutes enforced by the Commission, including issues of employer liability in harassment cases and individual liability.
 - c. Claims of national origin discrimination involving language issues, including accent discrimination and restrictive language policies or practices.
 - d. Claims clarifying the Title VII duty to reasonably accommodate religious practices.
 - e. Claims raising unresolved questions under the Americans with Disabilities Act regarding the meaning of "reasonable accommodation" and the term "qualified individual with a disability," as well as the defenses of "undue hardship" and "direct threat."
 - f. Claims presenting questions regarding the interpretation of the prohibition of disparate impact discrimination under the Civil Rights Act of 1991, the Age Discrimination in Employment Act, and the Americans With Disabilities Act.
 - g. Claims based on the intersection of two or more prohibited bases of discrimination (e.g., discrimination against women of color, older women, or minority persons with disabilities).

h. Claims addressing the legality of agreements that mandate binding arbitration of employment discrimination disputes imposed as a condition of initial or continued employment.

i. Claims presenting unresolved issues regarding the provision of employee benefits, including claims arising under Title I of the Older Workers Benefits Protection Act, and the Americans With Disabilities Act.

j. Claims of comparable significance identified and approved in the Local Enforcement Plans.

2. Cases involving legal issues where there is a conflict in the federal circuit courts on a Plan priority or in which the Commission is seeking Supreme Court resolution of such issue.

C. Cases involving the integrity or effectiveness of the Commission's enforcement process, particularly the investigation and conciliation of charges.

1. Cases involving allegations of retaliation against persons for participating in Commission proceedings or opposing unlawful employment discrimination, particularly cases where the scope of the statutory protection against retaliation is at issue.

2. Cases presenting challenges to Commission policy declarations, such as guidelines, regulations or policy guidance.

3. Cases protecting Commission access to information, including subpoena enforcement proceedings and proceedings to preserve or prevent the loss or destruction of evidence, except as set forth in paragraph 5 below.

4. Cases involving allegations of a material breach of an agreement to which the Commission was a party settling an earlier proceeding.

5. Cases involving alleged violations of the Commission's recordkeeping and reporting requirements where there is reason to believe that there may be another violation of statutes enforced by the Commission.

With the adoption of these priorities, and pursuant to a Motion unanimously adopted by the Commission on April 19, 1995, the Commission hereby withdraws all Priority Issues Lists that have previously set out priority issues for Commission consideration.

IV. Local Enforcement Plans

Each District Director and Regional Attorney shall develop a Local Enforcement Plan (LEP) and a supporting document detailing its plan to implement the LEP. These documents shall be submitted concurrently to the Commission, the General Counsel and Director of the Office of Program Operations, no later than forty-five (45) days from the date of the adoption of the National Enforcement Plan. In turn, the General Counsel and Director of Office of Program Operations shall review the LEPs and submit their recommendations to the Chairman no later than twenty-one (21) days from the date that the LEPs are submitted by the District Offices. The Commissioners may also submit their comments to the Chairman on the LEPs and the implementation documents, as well as on the recommendations submitted by OGC and OPO, no later than thirty-five (35) days from the date that the LEPs are submitted by the District Offices. Then, the Chairman shall have thirty (30) days to determine whether to approve the LEPs. LEPs are to be consistent with the National Enforcement Plan, but their specific goals and objectives should be tailored to reflect legal and factual issues specific to the communities served by each office, as well as each office's resources. In particular, LEPs shall include the following critical components:

A. An evaluation and strategy to address the provision of Commission services to underserved populations and geographic regions, as well as employment practices of particular importance in the region served by each district office.

B. A description and identification of the local issues which are on the NEP.

C. A description of each office's plan to resolve the pending cases in the office's inventory, including the long-term plans of the district office to use ADR techniques as part of its charge processing activities.

D. In addition, each district office shall develop an implementation document supporting the LEP. This document shall describe the district office's strategy for utilizing its resources and give Headquarters information critical for planning, staffing, and the allocation of resources in the field. This document shall:

1. Prioritize and justify the issues identified in the LEPs as to severity and need for local impact, taking into account industries, constituencies, and geographic areas involved;

2. Identify pending charges/suits or proposed charges/suits which fall within the local priority list and indicating those which would have the greatest impact;

3. Identify which of those current charges/suits can be pursued with available resources, as well as those others that could be pursued if additional resources were available; and

4. Describe how the plan results will be achieved, including time lines. Given that disclosure of the implementation documents would seriously circumvent the Commission's pending and proposed enforcement efforts, each implementation document will be treated by the Commission as confidential.

V. Delegation of Authority to General Counsel

The Commission, by resolution of April 19, 1995, delegated litigation authority in certain cases to the General Counsel until such time as the Commission adopts the National Enforcement Plan. With the goals of increasing strategic enforcement for the General Counsel and field attorneys, freeing the Commission to focus on policy issues, and increasing the efficiency and effectiveness of our litigation program, the Commission now provides such delegation as follows:

First, the Commission delegates to the General Counsel the decision to commence or intervene in litigation in all cases except the following:

A. Cases involving a major expenditure of resources, e.g. cases involving extensive discovery or numerous expert witnesses and many pattern-or-practice or Commissioner's charge cases;

B. Cases which present issues in a developing area of law where the Commission has not adopted a position through regulation, policy guidance, Commission decision, or compliance manuals;

C. Cases which, because of their likelihood for public controversy or otherwise, the General Counsel reasonably believes to be appropriate for submission for Commission consideration; and

D. All recommendations in favor of Commission participation as *amicus curiae* which shall continue to be submitted to the Commission for review and approval.

Second, the Commission ratifies its decision to give the General Counsel the authority to redelegate to regional attorneys the authority to commence litigation. The Commission encourages such redelegation of litigation authority as appropriate.

Finally, the Commission restates and ratifies its April 19, 1995 delegation to the General Counsel of the authority to refer public sector Title VII and ADA cases which fail conciliation to the Department of Justice, as well as the authority to redelegate this authority to Regional Attorneys. Regional Attorneys are encouraged to consult informally with designated "point of contact" attorneys at the Department of Justice regarding significant legal issues that arise in processing state and local government charges that appear to have litigation potential.

The General Counsel will report to the Commission quarterly on each new case filed pursuant to the delegated authority procedure set out above. The report will briefly describe the issue, basis, and scope of the case, and indicate whether authority to file it had been delegated to the Regional Attorney by the General Counsel. The General Counsel's report shall include an assessment of how the delegation authority has been exercised and whether the Commission's stated goals have been better achieved as a result of the delegation. Such reports shall be presented for discussion at the first regularly scheduled Commission meeting after the Report is prepared. The General Counsel will establish procedures for monitoring the performance of Regional Attorneys and will report to the Commission on such effectiveness once each year.

VI. Settlement and Alternative Dispute Resolution

The Commission's Policy Statement on Alternative Dispute Resolution (ADR), adopted on July 17, 1995, as well as the Commission's policy regarding settlements adopted on April 19, 1995, will apply to the implementation of the National and Local Enforcement Plans.

In the ADR Policy Statement, the Commission confirmed its strong commitment to using voluntary alternative methods for resolving disputes in all of its activities, including all aspects of the enforcement process, where appropriate and feasible. ADR is fully consistent with EEOC's mission as a law enforcement agency and is squarely grounded in the statutes enforced by the Commission. Used properly and in appropriate circumstances, ADR can provide less expensive, less contentious, and faster results in eliminating workplace discrimination.

ADR must be viewed as an integral component of its comprehensive enforcement program. ADR will complement current charge processing systems by facilitating early resolution of disputes where agreement is possible, thereby freeing up resources for identifying, investigating, settling, conciliating or litigating other matters. Improvements in the Commission's enforcement efforts should enhance the Commission's credibility as a law enforcement agency.

The Commission recognizes that negotiated agreements that resolve claims of discrimination can benefit the parties to a dispute as well as directly advance the Commission's enforcement objectives. While encouraging the use of ADR, the Commission recognizes that it must remain vigilant in assuring that ADR, as used by the Commission, does not conflict with or undermine our enforcement objectives.

Within these limitations, and in conjunction with ADR programs which it may itself implement, the Commission reemphasizes the important role of settlement and conciliation as an integral component of its comprehensive enforcement program.

VII. Enforcement Partnership With State and Local Fair Employment Agencies

On May 22, 1995, the Commission resolved to establish a new partnership with the state and local fair employment practices agencies (FEPA), recognizing our common mission to eliminate and prevent employment discrimination and to provide timely and effective redress for individuals who have been discriminated against. The Commission adopted the EEOC/FEPA Task Force's recommendation that the Chairman should take actions to forge this partnership by eliminating duplication of effort that might exist with respect to the processing of the charges. As part of this process, the Chairman requested the Director of OPO to consult with field offices and FEPAs to explore the feasibility of joint investigative and enforcement activities.

The FEPA's enforcement efforts must be viewed as an integral component of the Commission's enforcement efforts. To enhance the roles of the FEPAs in the Commission's enforcement efforts, the Chairman suggested that the Director of OPO, in consultation with the FEPAs, review and discuss the recommendations of the Task Forces on Charge Processing and Alternative Dispute Resolution, exploring ways in which the principles and recommendations, particularly those concerning priority charge handling and the measurement of results, may be used to further our joint mission of eradicating and preventing discrimination. Therefore, the District Offices are encouraged to solicit suggestions from the FEPAs in developing and implementing their LEPs in an effort to minimize the duplication of efforts.

VII. Implementation

While this plan does not, and is not intended to, define the operational implementation of the enforcement priorities, the following considerations should guide implementation steps:

- A. The top priority for charge processing (Category A), includes Enforcement Plan cases and, within resource constraints, other cases in which it appears more likely than not that discrimination has occurred.
- B. A determination that a charge falls within the Enforcement Plan requires a determination that the issue raised is an Enforcement Plan priority as well as an assessment that the strength and potential impact of the case supports the decision to proceed.
- C. Although it will be possible to categorize some charges as Enforcement Plan cases immediately upon receipt of the charge, the categorization of other cases will require further evaluation and investigation. The Commission is committed to devoting the appropriate level of resources to the evaluation and investigation of all cases potentially falling within the priorities enumerated in the NEP or Local Enforcement Plans. Nonetheless, district offices should endeavor to identify Enforcement Plan cases at the earliest possible time following receipt of charge.

D. Offices should develop procedures to assure routine and effective consultation between legal and investigative personnel in all phases of the identification and development of Enforcement Plan cases.

E. Cases falling under the enumerated priorities in the NEP and/or Local Enforcement Plans should be accorded priority in investigation with respect to speed, depth, and other measures of dedication of resources in order to assure that the investigation will support a subsequent and timely enforcement action if appropriate.

F. The Commission recognizes that some cases that fall within the enumerated priorities will require a commitment of substantial resources from the district office and may diminish that office's ability to pursue other cases in litigation.

G. In addition to charges filed by individuals, Commissioner's charges under Title VII and the ADA and directed investigations under the ADEA and EPA provide important enforcement tools under the Enforcement Plans.

H. All district offices with responsibilities under the Enforcement Plans should conduct outreach and educational activities and obtain on a regular basis input from stakeholders and interested groups on the effectiveness of the implementation of the National and Local Enforcement Plans. These offices should also conduct regular assessments of the communities they serve to identify any special needs or employment discrimination issues that may otherwise not be addressed.

I. The Commission recognizes that it may not be able to litigate every case that fails conciliation, including cases which fall within the National and Local Enforcement Plans. Thus, the Commission encourages the General Counsel, District Directors, and Regional Attorneys to work closely with the private bar, which continues to play a critical role in civil rights enforcement.

J. All components of all offices in headquarters and the field will work together cooperatively to efficiently and effectively accomplish the mission of the agency.

IX. Reporting

The General Counsel and the Director of the Office of Program Operations shall report quarterly to the Commission on the effectiveness of their efforts under the Enforcement Plans. These reports will include recommendations for amendments to the National Plan or Local Plans where appropriate for the Commission's consideration and, with respect to the General Counsel, the matters set forth in Section V, pages 8-9.

REQUEST FOR CARRYOVER AUTHORITY

Mr. ROGERS. Thank you. You are requesting new authority to carry over funds into the next fiscal year. Why do you need that authority?

Mr. CASELLAS. I'm not sure what the specific request was, sir.

Ms. BILLINGSLEY. If I may, Mr. Chairman.

Mr. ROGERS. Sure.

Ms. BILLINGSLEY. We requested the authority consistent with some of the other agencies. Given that we are a one-year appropriation, this would allow us to carry over any monies. It also would avoid at the end of the year trying to see what we could expend properly.

Mr. ROGERS. Tell the Reporter your name.

Ms. BILLINGSLEY. I'm so sorry. My name is Kassie Billingsley. I'm the Director of Financial and Resource Management Services.

Mr. ROGERS. What level of your 1997 request do you expect will be carried over into 1998?

Mr. CASELLAS. I'm unaware of even a carryover request.

Ms. BILLINGSLEY. Through language which OMB has supported, we have requested that we be able to carry over resources.

Mr. ROGERS. What I'm asking you is, in your 1997 request, how much do you expect will be carried over into 1998?

Ms. BILLINGSLEY. Probably a very small amount of several hundred thousand dollars, sir.

Mr. CASELLAS. Mr. Chairman, let me just give you the context. Each year the agency finds itself in the last two to three weeks trying to juggle what its obligations for that current year will be. Last year we ended with the thinnest of margins, some \$300,000, if I'm not mistaken.

In past years, it was as much as \$1.5 million to \$2 million. This isn't a large amount of money in terms of obligations. But whether it is because of contractors or litigation obligations, we just cannot project with that kind of precision. I think it is pretty precise now, considering the amount.

IMPLEMENTATION OF ALTERNATIVE DISPUTE RESOLUTION

Mr. ROGERS. Last year, you told us that you would be implementing a new Alternative Dispute Resolution System to process your workload more efficiently and that we could expect to see an impact in the workload.

We acknowledged our support for that program in our report. We ask you to continue looking for ways to streamline case processing. I don't think you've implemented that system, is that correct?

Mr. CASELLAS. No, sir, we've not.

Mr. ROGERS. Why is that?

Mr. CASELLAS. For two reasons: one is statutory and one is budgetary. As we envision implementing alternatives to dispute resolution, and principally mediation, we want to leverage the support that we've gotten from the business community, and from the private bar which is willing to provide us with well-trained mediators on a voluntary basis. With the lapsing of the Alternative Dispute Resolution Act, last September of 1995, we are unable to do that.

Mr. ROGERS. If that Act passes, do you plan to implement it then?

Mr. CASELLAS. We plan to implement it in selected districts. We've now received proposals and plans from all but a couple of our district offices. Each one will design it slightly differently, but generally they will be voluntary. They will be mediation-based. The extent to which we use our own staff support varies from office to office depending on their available resources.

Mr. ROGERS. What kind of a workload reduction would we see if you implemented that system?

Mr. CASELLAS. Quite honestly, Mr. Chairman, I'm not sure that it is going to be the panacea that everyone else thinks it is.

Mr. ROGERS. Why not?

Mr. CASELLAS. Number one, you have to assume that our workload is going to stay the same. Number two, you've got to assume that the individuals who go through that process, who have a right after that process to go into court anyway, won't go into court. All it does is on an incremental basis take a certain percentage of our cases and put them through this system and deal with them on a faster track.

Mr. ROGERS. It does free up the time of your employees to do other work, though, doesn't it?

Mr. CASELLAS. That's the point. Yes, that's why we would do it. When you are handling 120 cases each, even if a third of our case-load went to ADR, you are still talking about people handling twice as many cases as they handled five years ago. I always caution, when I come up to the Hill for oversight and appropriations, lower expectations. This is not going to cure the backlog on any short-term basis.

REFORM OF FEDERAL APPEALS PROCESSES

Mr. ROGERS. Now, yesterday the Treasury Postal Subcommittee held a hearing on reforming the Federal Grievance Process. Like this Subcommittee, they are trying to find savings by streamlining the manner in which work is done and looking at areas of duplication.

There was a consensus that the current process for review of grievances and discrimination of Federal employees is inefficient, complex and expensive. What are your thoughts on reforming the current system of review of discrimination cases of Federal employees? Could the process be streamlined to eliminate duplication and still protect employees' rights?

Mr. CASELLAS. I believe it can. That is why it is set forth in my written statement that was submitted, and as I alluded to in my oral statement, I am examining now ways of streamlining our Federal sector process. I have convened and met with numerous representatives within the Federal sector, both the EEO departments, as well as individuals who represent those who come as charging parties in that process.

I know that there are other issues with regard to the whole question of Federal employees and personnel systems. I previously testified in November with regard to some of those additional issues such as the question of the mixed case review between the EEOC

and the MSPB. I testified that those cases don't exceed 200 a year. It is just a very small part of our workload.

Mr. ROGERS. Well, the way it is working out, Federal employees are allowed many levels of review that are not provided in the private sector; about \$20 million of your budget is just for hearings and appeals of about 20,000 Federal cases. Some of your cohorts have said they are burdened by cases that are not legitimate discrimination complaints.

GAO was also told that some employees filed complaints as a way of getting third-party assistance to merely solve a work place dispute. Because of the levels of review and appeal under the current system, there is a great deal of duplication; people reviewing the same case over and over.

For example, mixed case appeals. The Merit Systems Protection Board has jurisdiction over all "adverse personnel actions" such as firings, demotions, and suspensions of Federal employees. You have jurisdiction over all cases of discrimination. Mixed cases of course fall under both jurisdictions. They are reviewed by both.

In 1994, the Merit Systems Protection Board ruled on 2,000 mixed cases and 200 of those employees asked that the EEOC review the case. You disagreed with MSPB on only three of those cases. Why should Federal employees therefore be given more levels of review than private sector employees get for cases in discrimination?

Mr. CASELLAS. I'm not sure that they are getting more levels of review. Certainly, with regard to the EEOC's internal process, that's one of the things I'm looking at to streamline from our standpoint, those processes. I think we need to look at the top of this funnel.

The top of this funnel begins with a multiple number of counseling contacts in the agencies. Those then get whittled down to the 20,000 that end up on our door. We've got to compare similar numbers. Those figures which I testified to last December don't compare apples to apples.

Mr. ROGERS. What reduction in workload could be realized if those so-called mixed cases could be somehow eliminated from your review system?

Mr. CASELLAS. From our standpoint, it wouldn't have any effect. They are such a small percentage. As you point out, they are fewer than 200 of these out of the 20,000. They really don't have an effect.

CLASS ACTION LITIGATION

Mr. ROGERS. What is the EEOC's policy on initiating class action litigation?

Mr. CASELLAS. It is the same policy that has always been in place which is, a class action where appropriate will be instituted. There has been no change in the statute—there has been no change with regard to statutory authority. So, I'm not sure I understand the question.

Mr. ROGERS. Well, you are requesting resources to establish a special litigation unit at headquarters. In 1994, there were 59 class action suits, in 1995 there were 77. I understand you are planning to increase the number in 1996. Is that right?

Mr. CASELLAS. What that involves is a different issue. Number one, my intent is to consolidate two separate systemic units into one unit. Number two, those units that handle those kinds of cases have never been adequately funded to even handle the cases that they now have.

What this is designed to do is to get them the resources since those cases require far more expenditure of funds in order to adequately handle those kinds of cases.

Mr. ROGERS. Well, is there a backlog of pending cases or do you plan to increase your class action efforts?

Mr. CASELLAS. I'm not sure I—

Mr. ROGERS. Well, you're asking for more money.

Mr. CASELLAS. Yes.

Mr. ROGERS. You are asking for more money for—

Mr. CASELLAS. Yes. I'm asking more money to have a greater impact on discrimination in the work place, yes.

Mr. ROGERS. You're asking for more money for a litigation unit to pursue class action cases.

Mr. CASELLAS. That's correct.

Mr. ROGERS. Why are you doing that. What's the reason for that?

Mr. CASELLAS. Because that is an effective way and one of a number of tools to fulfill our mission.

Mr. ROGERS. In your budget request at page 10 you in essence state that you approved the National Enforcement Plan in February of 1996, which will require the Office of General Counsel and the District's legal units to increase strategic litigation, which I gather are class action suits.

Mr. CASELLAS. Not exclusively, sir. That's been one of the misconceptions.

Mr. ROGERS. Well, let me finish then.

Mr. CASELLAS. Right.

Mr. ROGERS. In order to free the Commission to focus on policy issues. Implementation of the local enforcement plans will require headquarters and field legal units to identify and litigate more class pattern and practice cases.

What does that mean?

Mr. CASELLAS. Exactly what it says. More means more than we have in the past. What we've done in the past has not been a significantly large number. It is one of a number of tools. I think that I'd like to view all of these things as a part of the general context of changing the charge processing system, making that more efficient, adding ADR, strengthening litigation support and at the bottom of this funnel, litigation.

Mr. ROGERS. Are any of those lawsuits ever initiated by EEOC without an individual employee filing the initial complaint?

Mr. CASELLAS. They are all initiated, at least my understanding, many of the ones that are pending were initiated by Commissioners who are no longer in the Commission.

Mr. ROGERS. You didn't answer my question.

Mr. CASELLAS. What I'm trying to get at is the ones that we have initiated and I have initiated are all based on anecdotal information and sworn statements from individuals. They are not always employees who are affected. They can be employees who witness incidents of discrimination.

For example, a personnel officer may come to us and say I witnessed the following the acts. Applications were being coded and if you were African American you wouldn't get an interview. That then leads us to initiate an investigation.

That individual is not an aggrieved party, but that individual was presumably a witness and that can lead to an investigation. That's why I had difficulty with your question. I'm not trying to avoid your question.

A lot of people don't understand what the EEOC does. I've said it many times that I don't sit at a computer and look at somebody's job profile, work place profile and initiate a lawsuit. I've got a lot more things to do than that.

Mr. ROGERS. Well, I think what I'm driving at is that you're not seeking out further work. You've got enough to do as it is. Is that not right?

Mr. CASELLAS. That's right. That's exactly right.

Mr. ROGERS. You don't initiate these class action efforts without some individual grievance being filed or some witness to an alleged allegation.

Mr. CASELLAS. There is what we call anecdotal information or evidence. So, for example, in the case of an individual grievance when an individual comes to us, we may detect a pattern and that will lead to an investigation in that same work place or with regard to that same employer. All of this is geared toward shifting some of our resources from individual cases to pattern and practice cases. That's a more effective use of these limited resources.

I mean, unless we're going to get the funds to handle every single one-on-one case—which we're not, and I know that—we've got to have a more effective way of fulfilling this mission of fighting discrimination in the work place.

Mr. ROGERS. Mr. Mollohan.

Mr. MOLLOHAN. Thank you, Mr. Chairman.

Mr. Casellas, I'd like to join the Chairman in welcoming you here today.

Mr. ROGERS. Thank you.

Mr. MOLLOHAN. To tell you the truth, when the Chairman asked you that question, when he started asking you the question about if you had changed your approach and in any way does that involve a change with regard to class action suits and you responded sort of in a confused way and said, I don't now what you mean. I don't think the statute has changed.

Mr. CASELLAS. Right.

Mr. MOLLOHAN. Obviously, that wasn't what he was asking you. I really didn't think that was very forthcoming to be honest with you. Then later on as you began answering those questions when you got into greater detail, you talked about shifting resources from individual to pattern cases, isn't that exactly what he was asking at the beginning? Wouldn't it have been better to get to that point right up instead of saying that the statute hadn't changed and you didn't know what he was asking?

Mr. CASELLAS. No, sir. I apologize for appearing that way.

Mr. MOLLOHAN. I want you to elaborate on that. I think it would be better to talk about that and just be forthcoming instead of making it difficult for him to get to that issue.

Mr. CASELLAS. Right, and I didn't mean to do that. I apologize. Everyone talks about class action in the context of civil litigation. EEOC doesn't do class action in the civil context.

When I said shifting to more strategic litigation from the individual cases to the more strategic, systemic and pattern practice cases, I was drawing that distinction. I apologize for being a little obtuse on that. That's what I'm getting at and that's why I tried to elaborate at the end of the answer.

Mr. MOLLOHAN. Yes. You've got scarce resources and you have a big mission. Presumably, if you are a prudent man with your resources, you're looking at ways of trying to maximize those resources to achieve the desired result.

Mr. CASELLAS. Right.

Mr. MOLLOHAN. So, just to follow-up a little bit on that; is it a part of your strategic thinking and is it a bit of a change in your strategic thinking to begin trying to apply your resources in these ways to target these resources toward class action suits?

Mr. CASELLAS. Absolutely, and that's what the National Enforcement Plan which has been adopted, which is in writing and which we all voted for unanimously said, yes.

Mr. MOLLOHAN. Could you talk about that? To what extent do you develop this strategy? Do you think it is working or not working? What are the pitfalls? What are the benefits?

Mr. CASELLAS. Whether it is working or not is too soon to tell. As you can imagine, cases start at one level and go through the pipeline. We have even in the last couple of weeks, for example, begun litigation that is indicative of the kind of litigation, and I'm speaking principally of the case against Mitsubishi.

That is the kind of case. That case was in our system earlier before we arrived, but that's the kind of case that goes to a pattern of practice. It will affect a number of individuals. Similarly, there are cases that involve, for example, work place policies with regard to pregnancy; women who are pregnant and how they are treated.

That allows us to have an impact on work place policies and to affect a change to policies that we believe violate the law. In those cases, if the court agrees, if it gets to that point, work place behavior will change as a result of that; so yes, absolutely.

Now, that doesn't mean—and a part of my caution on this issue is—that it doesn't mean that the individual who comes in the door who has an egregious case won't be taken care of. The balance that we tried to strike in this National Enforcement Plan is setting out some general guidelines that say, we are not going to pick particular statutes. So, Title VII isn't going to trump ADA and vice versa. If you have an individual egregious case, we're not going to turn you away.

We recognize that there is going to be a whole mass of these individual cases that we just can't handle anymore. Some of those we're going to put in ADR which I think is unprecedented for a law enforcement agency to do something like ADR. It represents a really monumental change in the EEOC's approach to this.

It has got to be viewed in context. There is this whole system that we put in place. If you say well, you're doing more class actions over here, then that suggests that somehow individuals are

being ignored. It suggests that we haven't made changes at the intake level.

Mr. MOLLOHAN. Given that monumental change in direction and sort of approach, given the reality of your resources, it just seemed a bit surprising to me that it wouldn't be an opportunity for you to come forward and explain the whole strategy.

What are some of the pitfalls here that you see and how are you addressing them?

Mr. CASELLAS. With regard to all of the changes?

Mr. MOLLOHAN. No; with regard to the class action suits. There is a lot of publicity about the *Mitsubishi* case.

Mr. CASELLAS. Right.

Mr. MOLLOHAN. So, what's good about that? What's bad about it? If you could describe it from your perspective.

Mr. CASELLAS. Well, I am hard pressed to find what's bad about it. What is one of the difficulties or the challenges is that those cases take more of our resources, clearly. But the impact is greater in terms of, as I said, our job is to try to effect fulfillment of these laws.

Mr. MOLLOHAN. So, you think the good parts about it are that you are targeting real discrimination or improper conduct in a way that gives it considerable visibility which has a message affect. So, that's one of the good parts about it.

Mr. CASELLAS. I think yes, although I'm less concerned about the message as much as effecting changes in practices industry-wide.

Mr. MOLLOHAN. I don't know how you can separate that from the message unless you misunderstand what I mean by message. I mean I think that's one of the most powerful things about it quite frankly. I mean, obviously everybody in the country knows about that case. That sends out a very powerful message. So, if you're not concerned about the message, I don't know what you are concerned about.

Mr. CASELLAS. Well, I am.

Mr. MOLLOHAN. You're trying to change conduct; are you not?

Mr. CASELLAS. That's exactly right.

Mr. MOLLOHAN. How do you do that without conveying a message?

Mr. CASELLAS. I agree with that.

Mr. MOLLOHAN. Then what did you mean when you said that you weren't concerned about the message?

Mr. CASELLAS. Well, it's more than a public relations thing. My concern is that—

Mr. MOLLOHAN. I wouldn't suggest that it's not a real case. That wouldn't send a message. Is that what you mean?

Mr. CASELLAS. No, but I have been questioned over the last week about the *Mitsubishi* case and in the context of PR as opposed to trying to actually change what is going on in that particular work place.

Mr. MOLLOHAN. Well, I'd stand right up to that. I mean, if you sit down around the table and say, how are we going to impact conduct across the nation, well, there are a lot of ways. Let's do it case-by-case in a very private environment and you're going to be a very frustrated person at the end of your term because you're not going to change very much conduct.

Mr. CASELLAS. That's exactly right.

Mr. MOLLOHAN. So, maybe it is a good strategy in terms of message.

Mr. CASELLAS. Right.

Mr. MOLLOHAN. So, if you've been questioned about it, I would think that you would stand up and say, yes, it is conscious, if it is, if it is a conscious strategy, then we want to send the message out there.

Mr. CASELLAS. That's correct. I apologize again for being confusing on this.

Mr. MOLLOHAN. No, no, don't apologize. I'm just trying to give you an opportunity to get out there and explain what you're doing from your perspective.

Mr. CASELLAS. That's exactly right.

Mr. MOLLOHAN. If you think you're doing it right, then say you're doing it right and get on with it.

Mr. CASELLAS. Oh, absolutely. I think we have performed miracles at this place in a year and a half. I really do and I'm very proud of it. I don't back down at all from what we have done and what we have accomplished.

Considering that I inherited what Eleanor Holmes Norton inherited 20 years ago, which is a 100,000 case backlog, antiquated technology, a terrible employee to management relationship. The difference is that every year she got a 15-, to 20-, to 25- to 30-percent budget increase. Ours stayed the same. So, I think we've done miracles.

Mr. MOLLOHAN. You've got to be thinking about this in new terms in some way.

Mr. CASELLAS. That's exactly right.

Mr. MOLLOHAN. What do you think the results are going to be? Do you have a way of measuring them and talking to the committee about how that impacts your budget?

Mr. CASELLAS. I think we have come up with some measures. I think that our new charge processing system has resulted in a 12-percent decrease of the backlog to the extent that people are concerned about that. I'm concerned about it, not because of the absolute number, but because that means that it takes longer to handle cases.

The quality of the investigation suffers the longer it takes. I think our effectiveness can be measured in the fact that we have issued a number of policy guidances that help people comply with the law voluntarily on a number of fronts where there had been no policy guidance or the previous policy guidance hadn't been well-accepted.

On that point, I think we have been very successful. I think we have been equally successful with regard to getting a message out as commissioners. We have been meeting with and talking with everybody who is affected by this in a way that's unprecedented. Not only civil rights organizations and advocacy groups, but employers and employer groups and labor unions.

They have taken part in helping us design a system that makes sense and that works. What we have designed in this very short period of time is the most effective system that can handle what

we have to handle and do our mission, given the hand that we were dealt.

Mr. MOLLOHAN. Your budget.

Mr. CASELLAS. Our budget.

Mr. MOLLOHAN. That's called getting the message out, I guess, at this point getting people's attention.

Thank you, Mr. Chairman.

FEDERAL SECTOR APPEALS AND WORKLOAD

Mr. ROGERS. Thank you, Mr. Mollohan.

Let me quickly try to close here. I wanted to mention, to pursue it a little bit more, the GAO's review of the Federal Employee Redress System which they said in testimony yesterday before the Treasury Postal Subcommittee, which they said in essence "Grossly exaggerates Federal employees' rights as opposed to private sector rights in discrimination cases."

I'm quoting from page 7 of the testimony of Timothy P. Bolling, the Associate Director, Federal Management and Work Force Issues, General Government Division of GAO. He says, "For example, workers who claim discrimination before EEOC, Federal workers, unlike those appealing a firing, lengthy suspension or downgrade to the Merit System Protection Board, can file a claim even though no particular administrative action has been taken against them.

Further, those who claim discrimination are entitled, at no cost, to an investigation of the matter by their agencies. The results of which are made a part of the record. Further still, if they are unsatisfied, they appeal to EEOC. After EEOC has heard their case and any subsequent appeal, they can then go to the U.S. District Court for a de novo trial, erasing all that has been done before, which means that the outcome of the entire administrative redress process is set aside and the case is tried all over again."

He goes on to say, "Federal employees file work place discrimination complaints at more than five times the per capita rate of private sector workers. While some 47-percent of discrimination complaints in the private sector involve the most serious adverse action, termination, only 18-percent of discrimination complaints from Federal workers are related to firings."

If he is anywhere near the truth, this is one of the big reasons why you've got a big caseload, workload. Is that generally correct?

Mr. CASELLAS. Oh, no. On the Federal sector side, the Federal sector is very different from the private sector. We're talking about 20,000 in the Federal sector side. That is not to say that we don't have enough work there. I addressed this in my testimony in November before that subcommittee.

I can't remember the specifics, but I can tell you that there are two principal problems. The fundamental one is should Federal workers give up rights that private sector workers have by virtue of joining the Federal work force? In the private sector, you have State and local agencies that they can go to. You have the EEOC that they can go to. Some of them have unions that they can go to. They come to the EEOC. Even after we investigate and even if we issue a no cause letter, they still have a right to go to Federal court.

So, there really is, in terms of this question of duplication or having more rights than other workers, that's a little bit of an overstatement. I went through very specifically in terms of numbers in my statement of how I took issue with that.

I'm looking at where we have control. I'm looking at our own internal Federal sector process to see if there is a way to collapse that and to streamline that. That's what we're doing right now.

Mr. ROGERS. Well, obviously that's what we want you to do from this point.

We appreciate your testimony. I have told everybody from the Chief Justice to the Secretary of State that this isn't going to be much better of a year budget-wise.

Mr. CASELLAS. Well, I'm glad I'm in that company in any event.

Mr. ROGERS. It is not necessarily what we want. It is the deck of cards we're being dealt. So, we want you to continue to look for ways to streamline and cut costs and end duplication. I know you are trying to do that. You've given testimony to that affect. We want you to double those efforts because you will have to. You will need to be thinking more and more about how to better target the limited funds that we can give to you. I know you are swamped with cases and you've got a heavy workload.

We will do our best to work with you to try to get through tight budgetary problems that continue here.

Mr. CASELLAS. Thank you very much.

Mr. ROGERS. Thank you.

The hearing is adjourned.



THURSDAY, MAY 9, 1996.

SECURITIES AND EXCHANGE COMMISSION

WITNESSES

ARTHUR LEVITT, CHAIRMAN

JAMES McCONNELL, EXECUTIVE DIRECTOR

MICHAEL SCHLEIN, CHIEF OF STAFF

HENRY HOFFMAN, ACTING COMPTROLLER, OFFICE OF THE COMPTROLLER

KAYE WILLIAMS, DIRECTOR, OFFICE OF LEGISLATIVE AFFAIRS

LORI RICHARDS, DIRECTOR, OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS

RICHARD WALKER, GENERAL COUNSEL, OFFICE OF GENERAL COUNSEL

BRIAN LANE, DIRECTOR, DIVISION OF CORPORATION FINANCE

Mr. ROGERS. The committee will come to order.

To conclude our hearings for this week, we're pleased to welcome to the subcommittee Arthur Levitt, the Chairman of the U.S. Securities and Exchange Commission.

Before we begin, Mr. Chairman, I want to take a moment to express the committee's sadness at the loss last year of a very valued public servant, Larry Haynes. Mr. Haynes, who passed away last June, spent 32 years in public service, 17 of which he served as the comptroller of the SEC. He was a valuable resource not only to the Commission, but to this committee as well, and he is missed.

The Securities and Exchange Commission is one of the most important agencies in this subcommittee's jurisdiction, given its responsibility to protect the over 50 million U.S. investors who have over \$10 trillion invested in the U.S. securities market. To fulfill its responsibilities, the Fiscal Year 1997 budget request for the SEC totals \$308 million, to be funded fully by fees.

Unfortunately, SEC's funding has been problematic over the last few years because of disagreements over how it should be funded, but we did well in Fiscal Year 1996. Hopefully, we can continue to make progress on this issue, so that we can ensure that you have the necessary resources to protect and oversee the U.S. securities market.

At this point, Mr. Chairman, your statement will be made a part of the record, and we'd be pleased to hear an oral summary of your written statement, if you'd like to, and you're free to proceed.

OPENING STATEMENT

Mr. LEVITT. Thank you very much, Mr. Chairman, and thank you for your characteristically kind and sensitive remarks about Larry. I appreciate the opportunity to testify on the Commission's 1997 Fiscal Year appropriation. We're asking, as you know, for \$308 mil-

(203)

lion and 2,797 FTEs, a \$10.8 million increase in funding, but no increase in staffing.

I want to thank you, Chairman Rogers, for your work with Chairmen Bliley, Fields, and Archer to try to bring some order and rationality to our funding structure. Instead of our current reliance on increasing fees, your joint approach would move the agency toward full appropriation status, and we're very hopeful that this approach will be enacted into legislation.

INDUSTRY AND REGULATORY ENVIRONMENTS

Mr. Chairman, every day trillions of dollars change hands on little more than the word of investors and traders given over the phone. This kind of confidence in the system doesn't happen in a vacuum. You can't have quality markets without a quality regulator.

At the same time we're witnessing an historic change in the way Americans plan for the future. Today, small investors are taking Wall Street by storm. For the first time in history, mutual fund assets have surpassed commercial bank deposits. In 1980, 1 out of 16 U.S. households owned a mutual fund; today the figure is 1 in 3. And our newest milestone as of 1994 is that Americans have more household wealth invested in stocks than in real estate. Our markets have never been busier, and neither has the Commission.

With so many new investors, there's been no lack of scams and schemes. In response, we've placed a strong emphasis on law enforcement and investor protection. We've brought cases like Towers Financial Corporation, First Jersey, Bankers Trust, New Era Philanthropy, and Prudential Securities. In the Prudential case alone, \$913 million has been already paid to 110,000 defrauded investors.

Through conservative management, prudent allocation of resources, and an emphasis on self-regulation, we've been able to supervise huge markets with modest resources. But, today those resources are severely stretched.

Between 1980 and 1995, the value of public offerings grew 1,224 percent, from \$58 to \$768 billion. The assets managed by investment advisers rose 2,309 percent, and derivatives came onto the scene and blossomed into a multi-trillion dollar marketplace.

By and large, the Commission has met these vastly increased responsibilities. I understand that government must live within its means. There's little inclination to expand programs. I began my tenure by closing a regional office and we're constantly searching for ways to improve productivity. We're more than willing to do our share, but I think it's important to point out that the Commission is already extended while the challenges that we face continue to grow. In the next year, we are going to be asked to address issues posed by the growing number of Americans who invest their retirement savings in mutual funds, including proposals to privatize social security.

We will be asked to combat the resurgence of insider trading in the equity markets, which is greater today than it was in 1987. We will be asked to deal with the continuing repercussions of the investment debacle in Orange County and to respond to the special concerns raised by the proliferation of derivatives and other complex financial products.

We also will be asked to enhance our services to small businesses, to examine the new opportunities, the new potential for abuses posed by the revolution in technology, such as the sale of securities on the Internet. And, finally, we will be challenged to further reduce the cost of capital formation in the United States.

Mr. Chairman, I know that we share a common desire to ensure the effectiveness of the Commission and the viability of our markets. I look forward to continuing to work with you to achieve these goals.

[The statement of Mr. Levitt follows:]



TESTIMONY OF

**ARTHUR LEVITT, CHAIRMAN
U.S. SECURITIES AND EXCHANGE COMMISSION**

CONCERNING APPROPRIATIONS FOR FISCAL YEAR 1997

**BEFORE THE SUBCOMMITTEE ON
COMMERCE, JUSTICE, AND STATE,
THE JUDICIARY, AND RELATED AGENCIES
OF THE HOUSE COMMITTEE ON APPROPRIATIONS**

U.S. HOUSE OF REPRESENTATIVES

MAY 9, 1996

**U. S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549**

**TESTIMONY OF
ARTHUR LEVITT, CHAIRMAN,
U.S. SECURITIES AND EXCHANGE COMMISSION**

CONCERNING APPROPRIATIONS FOR FISCAL YEAR 1997

**BEFORE THE SUBCOMMITTEE ON
COMMERCE, JUSTICE, AND STATE,
THE JUDICIARY, AND RELATED AGENCIES
OF THE HOUSE COMMITTEE ON APPROPRIATIONS**

May 9, 1996

Chairman Rogers and Members of the Subcommittee:

I appreciate this opportunity to testify in support of the Securities and Exchange Commission's (SEC or Commission) fiscal 1997 budget.

The President's request for the SEC includes \$308.2 million in fiscal year 1997. This request would put the Commission on a "no-growth" budget: it would allow for an increase of only \$10.8 million above the funding appropriated to the Commission in fiscal year 1996. Most of that increase would go to fund mandatory increases in pay and related personnel benefits. The proposed appropriation would thus permit the SEC to maintain staffing at the 1996 level of 2,797 "full-time equivalents" (FTEs), but would also require the agency to stretch its resources to the maximum in order to adequately fulfill its responsibilities to investors in the rapidly expanding U.S. securities markets. Mindful that we are operating in an era of fiscal restraint, the Commission is willing to take on that challenge. (Indeed, the agency has already begun to reallocate existing resources to focus on certain critical tasks. For example, we are centralizing certain regional office disclosure functions in order to devote more personnel to the understaffed investment adviser examination program without increasing overall staff size.)

Before discussing in greater detail the SEC's activities and projected budget needs, I would like to take this opportunity to thank Chairman Rogers, who, together with Chairmen Bliley, Archer, and Fields, worked hard to develop a workable, long-term funding structure for the SEC. Your approach, incorporated into H.R. 2972, the House-passed SEC authorization bill, would reduce SEC filing fees over five years while at the same time providing the agency with a stable funding mechanism. The Commission appreciates your efforts and believes that the approach embodied in H.R. 2972 would put SEC funding on a firm footing as we enter the 21st century.

Role of the SEC

The SEC performs an essential function: overseeing the fast-moving U.S. capital markets, worth trillions of dollars, that fuel the U.S. economy. Our country's securities markets are widely regarded as the deepest, most liquid, and fairest markets in the world. They serve the needs of almost 13,000 public corporations,¹ raising capital to support new industries, finance operations, create jobs, fund research and development, and support growth for the future. In 1995 alone, some \$900 billion worth of securities were sold in our markets. Capital was raised directly from both institutional investors (including mutual funds and pension funds) and private individuals. One in three American households participates in the U.S. securities markets, directly or through mutual funds; indeed, mutual fund assets now outstrip commercial bank deposits, and Americans have more household wealth invested in stocks than in real estate. Thus, the U.S. securities markets serve not only as a powerful engine for capital formation but also as an important vehicle for savings and investments by U.S. citizens.

The Commission plays a vital role in preserving the strength and integrity of these markets. Since its creation in 1934, the Commission has been charged with protecting investors and maintaining fair and orderly markets. It is first and foremost a law enforcement agency. It fulfills its statutory mandate by policing fraud in the securities markets as a whole, requiring full disclosure by issuers of securities, overseeing the regulation of the nation's securities markets, and directly regulating the investment company and investment adviser industries. By protecting market integrity and fairness, the SEC's enforcement and regulatory programs foster the continued success of the U.S. capital markets.

The SEC handles its broad mandate with a small staff of 2,797 FTEs. The agency is able to accomplish this objective by regulating, to a large extent, through a public-private partnership. The Commission takes responsibility for the "big picture" areas (e.g., fraud, financial responsibility of securities firms, and market structure) while much of the direct, day-to-day regulation of securities market participants is done by firms themselves and by industry self-regulatory organizations (SROs), under SEC oversight. This system of shared regulation between the SEC and industry is markedly different from the approach taken by other federal regulators, and allows an agency as small as the SEC to oversee markets that have grown to be worth more than \$10 trillion.

Market Growth

To put the SEC's proposed appropriation in perspective, it has to be viewed against the backdrop of the dramatic growth and rapid change our markets have experienced over the past 15 years. Between 1980 and 1995, for example, the value of public offerings (including debt

and equity, but not investment company securities) increased more than ten-fold, from \$58 billion to \$768 billion. Between 1990 and 1995, the dollar volume of equity securities traded on U.S. securities exchanges and NASDAQ grew 182%, with over \$5.94 trillion traded in 1995. Volume continues to explode. December 15, 1995, was the heaviest trading day in the history of the New York Stock Exchange, with over 636 million shares trading hands. On NASDAQ, record daily volume was set on April 24, 1996, with volume exceeding 728 million shares. Over the last few months, there have been several instances in which daily share volume on all U.S. markets combined has exceeded one billion shares.

Dramatic growth also has occurred with respect to assets under management by investment advisers. Between 1980 and 1995, assets managed by investment advisers (excluding investment advisers to registered investment companies) rose from \$205 billion to \$7.6 trillion (an increase of 3,607%). Over the same period, assets of investment companies increased 1,203% from \$235 billion to \$3.062 trillion.

The numbers of securities firms and professionals registered with the Commission or with the SROs have also surged. Between 1980 and 1995, the number of registered advisers increased from 3,500 to 22,000 (an increase of 529%). The number of broker-dealers grew, over the same period, from around 5,200 to approximately 8,500 (an increase of 63%), and the number of registered representatives grew from 196,000 to over 505,000 (an increase of 158%).

Technological change and internationalization also have had a significant effect on the U.S. securities markets. New and more complex financial products are rapidly evolving as a result of the continuing globalization of commerce and financial markets, and major advances in information processing and telecommunications. Investors are increasingly using electronic

communications media to trade securities and obtain market information and advice. U.S. securities markets and firms have played a leading role in many of these changes.

The Commission's responsibilities have expanded with the securities markets. The overall growth of the Commission's staff, however, has fallen far short of the rate of market growth. For example, while the Commission's staff grew at an annual rate of 1.9% from 1980 to 1995, the assets under investment company management grew at an annual rate of 18.7% over the same period, and the assets managed by investment advisers increased at an annual rate of 23.6%.

Recent Commission Achievements and Ongoing Initiatives:
Selected Highlights

Today, the rapid growth of the U.S. securities markets (combined with increasing pressures on government resources) demands that the Commission function as efficiently as possible. It is not possible to describe all of the Commission's programs here; but the balance of this testimony will try to highlight some of the SEC's recent and ongoing achievements and its efforts to anticipate and respond to new market and regulatory challenges.

Making Agency Structure and Processes More Efficient

Over the past two years, the SEC has tried to streamline its own operations through such initiatives as:

- conducting a comprehensive review of the 60-year old statute (administered by the SEC) that governs public utility holding companies, and recommending legislative repeal of that Act;

- facilitating access to market information by providing increased public access to corporate filings on the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, and by reevaluating and updating EDGAR to take advantage of new technology;
- revising the SEC's rules governing adjudications and administrative proceedings, to streamline the adjudicative process and allow speedier, more efficient completion of administrative proceedings;
- eliminating the need for prior review of certain self-regulatory organization rule filings;
- realigning the regional/district office structure to improve program accountability and resource utilization;
- reallocating existing resources to establish a new Office of Compliance Inspections and Examinations to conduct and coordinate examinations of brokers, dealers, SROs, investment companies and advisers, and transfer agents; and
- reallocating existing resources to create a new Office of Municipal Securities to provide technical expertise, coordination, and assistance in rulemaking and enforcement efforts affecting the municipal securities market.

More recently, the Commission developed plans to centralize its small business disclosure function in SEC headquarters, phasing out its regional office disclosure function. This will allow the Commission to make better use of its scarce resources, permitting the Commission -- without an overall increase in staffing -- to add 38 new examiners to its investment adviser examination program. At the same time, the agency recognizes that the special needs of small businesses must be met. Accordingly, the Commission has developed plans to provide small business liaisons in each regional office, create a special small business review unit at headquarters, and add a small business area to the SEC's home page on the Internet.

Promoting Capital Formation

Today, companies need to raise more capital, and to do so more quickly, more easily, and more cost-efficiently than ever before. The SEC, accordingly, is taking concerted steps to streamline and promote the capital formation process without compromising investor protection.

For example, the Commission has:

- introduced a new integrated disclosure system for small businesses, that standardizes and simplifies disclosure and reduces financial statement requirements for qualifying businesses;
- eliminated a number of financial schedules for domestic companies, thereby reducing their reporting costs;
- extended the availability of short form and shelf registration to smaller and newer issuers;
- increased the thresholds that govern when a company must register and report under the Exchange Act, thereby affording more small entities the opportunity to grow before becoming subject to those requirements; and
- provided a new exemption from federal registration requirements for issuers that comply with an exemption from qualification under the laws of California.

The Commission's efforts in this area continue. Just two months ago, an internal SEC Task Force on Disclosure Simplification released a report proposing revisions to modernize and streamline the regulatory framework that governs corporate finance and accounting. The report is far-reaching: it recommends the elimination or modification of fully one quarter of the SEC rules, and one half of the forms and schedules, related to corporate finance. The Commission has already proposed one set of rule changes based on the Task Force report, and expects in coming months to propose eliminating or modifying dozens more rules and forms. Separately, the Commission's Advisory Committee on the Capital Formation and Regulatory Processes is also expected shortly to recommend further reforms of the registration and disclosure process -

- perhaps including a shift from a securities registration system to a company registration system.

Improving Disclosure

In order to reduce the costs, while retaining the benefits, of the disclosure-oriented federal securities regulatory scheme, the SEC in recent years has sought to improve the usefulness of the information received by investors (by encouraging, among other things, "plain English" disclosure) while at the same time minimizing the regulatory costs and burdens imposed on issuers. For example, in the investment company area, the SEC has worked with the investment company industry and state securities regulators to develop the concept of a "fund profile." The initial pilot "profiles" took the form of standardized, short-form summaries accompanying the full-length prospectuses; they were designed to enable mutual fund investors to better understand what they are buying. Pilot profiles of this sort have been available from eight fund groups since August 1, 1995, and have received very positive investor reaction.

The Commission also continues to take steps to bring the filing and dissemination of disclosure documents into the electronic era. Almost all issuer filings with the SEC are now submitted electronically through the Commission's EDGAR system. In September 1995, the Commission launched its own Internet Web site, following up on a National Science Foundation initiative funded by Congress. The SEC's "home page" contains SEC releases and announcements, investor information, and EDGAR filings, updated on a daily, 24-hour delayed basis. In addition, the Commission has approved the issuance of two interpretive releases designed to encourage the use of electronic media in providing prospectuses and other disclosure

documents to investors. In this rapidly developing area, the Commission and its staff will continue to support the development of various means of electronic delivery of information to investors and the market.

Promoting the International Competitiveness of U.S. Markets

The integrity as well as the depth of the U.S. securities markets have attracted increasing numbers of foreign issuers and investors and have made our markets preeminent in the world. This continuing internationalization is beneficial for U.S. markets and investors alike: it promotes the leading position of the U.S. markets and gives U.S. investors a broader array of investment choices within the strong disclosure and investor protection framework of the U.S. markets.

The Commission has sought to promote the international competitiveness of the U.S. markets (while safeguarding their transparency and fairness), through initiatives to streamline registration, reporting, and reconciliation requirements for foreign companies; permit, in cross-border offerings, the use of certain international accounting standards; and streamline financial statement disclosure requirements for both foreign and domestic issuers with respect to acquired foreign businesses. Due in part to these and related efforts, foreign issuers are increasingly turning to the U.S. markets to raise capital. As of March 29, 1996, 768 foreign reporting companies representing 46 countries were registered with the Commission. The Commission is also devoting considerable time and effort to working with the International Accounting Standards Committee to develop high quality international accounting standards that could be used in cross-border offerings and listings.

Law enforcement

The Commission continues to pursue its traditionally vigorous enforcement program in a time of increased caseloads and scarce resources. In the past two years, the Commission has brought almost 1,000 enforcement actions against approximately 2,200 defendants and respondents.² Recent notable cases have involved domestic and international insider trading, Ponzi schemes, government securities trading fraud, misleading disclosure, kickbacks or conflicts of interest relating to municipal securities offerings, broker-dealer sales practices abuses, prime bank notes, and unregistered securities offerings over the Internet. For example:

- *In the Matter of PaineWebber Incorporated.* In this case involving the sale of partnership interests, PaineWebber consented to a cease and desist order requiring it to comply with its representation that it had paid or would pay \$292.5 million to defrauded investors, and requiring payment of a \$5 million civil penalty.
- *Orange County Actions.* In the wake of the financial collapse of Orange County, California, the Commission brought enforcement proceedings against Orange County, its former treasurer, and others. In addition, the Commission issued a Report of Investigation concerning the conduct of individual members of the County Board of Supervisors.³ The proceedings concern the fraudulent offer and sale of over \$2.1 billion in municipal securities issued in 1993 and 1994.
- *SEC v. Qualified Pensions, Inc.* This enforcement action involves the misappropriation of approximately \$11.4 million that was to have been maintained in Individual Retirement Accounts and other retirement plans. More than 14,500 individuals allegedly were induced to transfer at least \$270 million of their retirement savings to be administered by QPI; much of that amount was put into unsuitable investments.
- *SEC v. Nicholas Rudi.* The Commission alleges that more than \$300,000 in kickbacks were paid to a financial adviser in connection with the offering of debt securities by New Jersey's Camden County Municipal Utilities Authority. Three individuals have consented to injunctions, and agreed to pay a total of \$347,000 in disgorgement and prejudgment interest. The case has been stayed as to another individual, pending the outcome of criminal proceedings, and is still pending as to an advisory firm under that person's control.

Examinations

Investment adviser inspections present a continuing challenge for the Commission. Today, investment advisers (excluding investment advisers to mutual funds) are responsible for managing almost \$7.6 trillion of investor assets, sixteen times the figure of ten years ago. Unfortunately, while investors have entrusted more and more of their savings to the care of investment advisers, the SEC's inspection resources have not increased commensurately. As a result, at present, the SEC inspects the 8,000 higher-risk investment advisers with custody of or discretionary management authority over client assets only once every 8-10 years, on average. The remaining 13,000 advisers are currently inspected only on a "for cause" basis or in geographic sweep examinations conducted with the state securities regulators; as a result, such advisers are inspected, on average, only once every 44 years.

In the current budgetary environment, the Commission has sought to develop alternative approaches to shortening the inspection cycles for investment advisers. One such approach -- currently embodied in S. 148, a bill introduced last year by Senator Gramm -- would be to change the existing regulatory scheme through legislative action. If Congress delegated responsibility for the regulation of smaller advisers to state regulators, the SEC could focus its efforts on larger investment advisers, i.e., those who have the most assets under management. These advisers tend to have business activities that cross many state lines and affect national markets. The states, in turn, could regulate and examine smaller advisers, who tend to have community-based business and, therefore, are best regulated at the state level.

Because this approach would require legislative action to implement, the SEC has also sought other ways to improve the efficiency of its examinations: shifting resources within the

agency (as discussed above, p. 6), and increasing the coordination of regulatory examinations with other federal, state, and foreign regulators. Through these efforts, the SEC expects to further reduce the inspection cycle for higher-risk advisers to once every five years.

Investor outreach

In 1995, approximately 17% of all agency enforcement investigations were initiated, at least in part, on the basis of investors' complaints to the SEC. Over 42,000 complaints and inquiries were handled by the SEC's investor education and assistance staff.

One of the best ways to prevent fraud, and minimize the need for enforcement actions, is to educate investors so they are better able to protect themselves. The Commission and its Office of Investor Education and Assistance have made concerted efforts to reach out to investors through "town meetings," seminars, its home page on the World-Wide Web, focus groups, and other innovative means. The SEC has launched an important initiative to promote the use of "plain English" throughout the agency and the securities industry. Working with the industry and many of its trade associations, the SEC has also prepared and distributed brochures that provide self-protection tips for investors about choosing investment professionals, information on mutual funds, and the settlement of securities trades. In other outreach efforts, the Commission has established an automated telephone information line that provides investors with basic information and the ability to order educational materials, and has sought to involve investors in SEC rulemaking by publicizing new rule proposals through the electronic media and other nontraditional channels.

Other Current Projects

The Commission continues to pursue a large number of additional projects related to its oversight of the capital markets, its full disclosure program, and its enforcement of the federal securities laws generally. For example, as part of its effort to enhance market transparency and fairness, the Commission recently proposed order handling rules that are intended to improve the execution of customer orders across all equity markets. The Commission also recently proposed amending its rules in order to streamline and simplify SEC anti-manipulation regulation of securities offerings, without compromising or diminishing important investor protections.

In another closely watched area, the Commission's staff in 1994 and 1995 reviewed derivatives-related disclosures by over 500 registrants and considered findings published by various public and private sector organizations to evaluate the effectiveness of existing disclosure requirements and practices with respect to derivatives activities and related market risks. Following up on that review, the Commission at the end of 1995 released for comment proposed amendments to its financial disclosure rules, designed to help investors better assess the market risks faced by public companies and how those risks are managed. The Commission also continues to receive reports from the members of the private-sector "Derivatives Policy Group" (a group which, with encouragement from the Commission, undertook to develop a framework for voluntary oversight of the over-the-counter derivatives activities of unregulated affiliates of securities firms). The Commission's staff is reviewing this information as part of the agency's financial responsibility and risk assessment program.

Funding Structure

The SEC is pleased with the support for the agency's mission evidenced in the President's 1997 budget request. However, the Commission is concerned that the request proposes to continue relying on increased fee collections.

As you know, the SEC has been a net contributor to the U.S. Treasury, collecting more in fees than was necessary to cover its budget in every year since 1983. In recent years, the bulk of the SEC's funding has been generated through "offsetting collections," which have been produced by increasing the rate of the fee the SEC collects when securities are registered (the so-called Section 6(b) fee). These offsetting fee increases have been imposed through the appropriations process, and therefore have been in effect for only one year at a time.

Over the past several years, both the SEC and members of Congress have expressed concern over the increasing rate of securities filing fees. Because the total fees collected by the SEC under the increased Section 6(b) filing rate so far outstrip the amounts appropriated to the agency, those fees could constitute a "tax" on capital formation. And because the fee increases are effective for only one year at a time, the SEC has lacked a stable and predictable, long-term source of funding. Controversy over these issues came to a head in the Fall of 1994 during the fiscal 1995 appropriations process. Indeed, the SEC came close to shutting down due to controversy over the appropriate funding mechanism for the agency. In the end, the Commission was funded in 1995 through yet another short-term funding solution.

The President's budget for fiscal 1997 would provide a somewhat more stable funding mechanism than currently exists: it would create a permanent special fund that would cover much of the SEC's current budget needs. On the other hand, this approach would also provide

for a permanent reliance on securities filing fees (and would impose a new fee on corporate bond transactions), as a means of funding the SEC and assuring a continuing flow of fees into the General Fund of the Treasury. Under this approach, projected fee collections for fiscal 1997 would exceed \$776 million; of this total, only \$308 million (or 40%) would go to fund SEC operations, and the other \$468 million would be paid into the General Fund.

Last summer, Chairman Rogers and his staff, together with Chairmen Bliley, Archer, and Fields, developed a new and different approach to the problem of SEC funding. This approach, embodied in H.R. 2972 as passed by the House, would reduce Section 6(b) fees over a five-year period and equalize the application of existing securities transaction fees. The SEC would also act to eliminate "user fees" that it now collects, pursuant to the Independent Offices Appropriations Act of 1952 (IOAA), in connection with the filing of certain types of applications, and reports such as 10-Ks. (IOAA fees currently account for only two percent of SEC revenue, but involve a disproportionately large effort and cost to administer.) Under H.R. 2972, the SEC would gradually move from reliance on increased offsetting fees towards full appropriation status. Earlier this year the Commission endorsed this approach; the agency continues to believe that it could provide a long-term solution to the SEC's funding problems.

Conclusion

The Commission recognizes that this is an era of fiscal restraint and low budgetary growth. The SEC has put a high priority on working within that context to achieve greater efficiencies: the agency has taken significant steps to streamline its own operations, to reallocate existing resources to the most essential functions, and to take advantage of new technologies.

In short, the Commission has tried hard to meet the challenge of operating as effectively and as frugally as possible, and will continue those efforts under the budget proposed for fiscal 1997.

But the Commission also urges Congress to recognize that the U.S. securities markets have been growing at an extraordinary pace -- and so, too, have the SEC's responsibilities. More individuals than ever before rely on the markets to generate the income they need for education and retirement; more firms are turning to the markets to finance their operations, create jobs, and support their future growth. The volatility of the markets, continuing technological change, the development of complex new financial products, and the globalization of the markets also place new demands on the SEC. And further out on the horizon loom vast future challenges -- for example, the proposed privatization of the Social Security system, which would bring huge new inflows of money and investors to the already dynamic U.S. markets.

In order to continue the Commission's excellent record of effective law enforcement, market oversight, and investor protection in 1997, the SEC will need funding at least at the level requested today -- as well as a long-term funding mechanism. The Commission looks forward to working with the Subcommittee in its continuing efforts to provide stable and sufficient funding for the SEC.

ENDNOTES

1. This figure does not include the roughly 5,000 registered investment companies (representing over 23,000 separate portfolios) that also raise capital in the U.S. markets.
2. It is not clear what impact the recently-enacted Private Securities Litigation Reform Act of 1995 (Pub. L. No. 104-67) will ultimately have on the Commission's law enforcement responsibilities. President Clinton has asked the Commission to report by year-end on how the Act affects the agency's programs. We are currently monitoring developments in this area, in addition to carrying out the Act's mandate to study protections for senior citizens and qualified retirement plans. Without knowing more about the Act's impact, and recognizing the need for fiscal restraint throughout government, we are not requesting additional resources in connection with the Litigation Reform Act at this time.
3. In the Matter of County of Orange, California, As It Relates to the Conduct of the Members of the Board of Supervisors, Exchange Act Release No. 36761 (Jan. 24, 1996).

FUNDING ISSUES

Mr. ROGERS. Thank you, Mr. Chairman.

Now last year the Administration didn't even bother to formerly submit its authorization language to the Congress to make the SEC self-funded. Yet, this year it's again proposing, as part of its 1997 budget, to make the SEC self-funded. Is there any indication the administration is taking its budget request any more seriously this year than it did last year?

Mr. LEVITT. I'm not sure, Mr. Chairman. I certainly went to the ramparts on the issue of self-funding when I came here, and I guess it was one of the early mistakes I made, not that I don't feel that self-funding is an important and useful objective, but I think it lacks political reality. And another thing I've learned since coming to Washington is you don't take on the kinds of issues that can divert you from your principal mission.

So while the Administration may have recommended self-funding, I think that the proposal that you and Chairman Archer and Chairman Bliley have worked on, which represents a kind of balance between appropriation and self-funding, is a likely and reasonable and rational approach to the issue, and one which I enthusiastically support.

Mr. ROGERS. If the House-passed authorization bill were enacted into law, what is your estimate of the amount in offsetting fees that will be raised in Fiscal Year 1997 with registration fees at one-thirty-third of 1 percent and transaction fees at one-eight-hundredth of a percent?

Mr. LEVITT. About \$154 million.

Mr. MCCONNELL. That's the estimate that was done at the time of the authorization. That estimate will grow.

Mr. LEVITT. That's going to grow. Our sense is that it will be close to \$193 million.

Mr. ROGERS. Now what would you carry over into Fiscal Year 1997?

Mr. LEVITT. We estimate that that will come pretty close to \$50 million.

SEC AUTHORIZATION

Mr. ROGERS. Can you tell us the status of the authorization bill in the Senate?

Mr. LEVITT. I understand that within the next week or so a bill may be introduced in the Senate which will deal with authorization, along with other securities matters.

Mr. ROGERS. Similar to the House bill?

Mr. LEVITT. I expect it will be similar.

Mr. ROGERS. Is it likely to be acted upon soon?

Mr. LEVITT. I can't begin to answer that question. [Laughter.]

But I'm going to do everything I possibly can to bring that about because it really would be a very happy change from the patterns of the past.

LITIGATION SUPPORT

Mr. ROGERS. Part of your requested \$10.8 million increase includes \$2 million for an increase for litigation support contracts. In

Fiscal Year 1996, you asked for \$4.5 million for that purpose. How much are you spending in Fiscal Year 1996 for litigation support contracts?

Mr. LEVITT. I think we will spend close to \$3 million in Fiscal Year 1996, and the reason for all of that, of course, is because the Commission has been active and the number of cases that were litigated has gone up almost exponentially. We believe that outsourcing some of the support level for this function, rather than adding new attorneys, which would be with us forever as a fixed cost, is a much more efficient way of handling it. I can't guarantee that the \$2 million is precisely the right number, but that's our best estimate at this point.

AUDITS

Mr. ROGERS. You carried out the audit the subcommittee requested on transaction and registration fee receipts. Can you tell us the findings of the audit and what actions you've taken in response to it?

Mr. LEVITT. With respect to the audit on registration fees, the audit revealed that there were internal controls at the time of filing, that the electronic fee system needed improvement, and that we accepted filings from time to time without fees. There was no suggestion of an impropriety, no suggestion that we were not eventually getting all of the fees that are called for.

Regarding our practice of accepting filings without fees, with the unprecedented number of filings that we're getting these days and its importance to the process of capital formation, we felt we had sufficient controls to pick up those fees subsequent to filing. And while we're putting pressure on filers to have their fees in at the time of filing, we simply didn't want to delay those filings by asking for the fees.

I think we have responded to most of these things, and I think one of the great protections we have here is that all of this is public. Everything that happens here is held open to the light of day. So it wasn't perfect by any means and there were problems that we're addressing, but I don't think they were the kind of systemic problems that would be cause for serious worry.

COLLECTION OF FINES

Mr. ROGERS. The other major finding of a review of the financial systems was that SEC needs to accurately monitor the payments of disgorgement, fines, and penalties imposed as a result of agency enforcement proceedings. What is the problem and what's being done to correct that?

Mr. LEVITT. The very nature of having to collect fees by an agency whose principal mission is not to be a bill collector creates certain problems in terms of priorities where the people that would be doing the collecting are busy bringing other cases and trying to protect American investors. We've thought a lot about that problem and considered a number of alternatives. We're presently working with the Treasury Department in the hope that will help us to do a better job of collecting those fees.

CENTRALIZING DISCLOSURE FUNCTIONS

Mr. ROGERS. Your request proposes moving the regional office disclosure function into headquarters. What is the impact of that move on small companies? And will you be accessible to help answer their questions on how to comply with SEC requirements?

Mr. LEVITT. I'm terribly sensitive to the needs of small businesses, having chaired the White House Conference on Small Business and working on these issues for most of my business career. And I have recently come back from addressing a group of small business people about this and other issues. I am satisfied that we will be responsive in the following way:

We are going to have liaison officers in every one of our regional offices. We are also going to build a substantial enhanced small business presence in our home office, which we can monitor and see to it that it rationalizes and makes uniform our policies and practices with respect to small businesses on a nationwide basis, rather than having separate fiefdoms all over the country.

Were I running a company with a similar mission, this is precisely what I would do. So I believe that the needs of small businesses by greatly enhanced home office presence, put together with the liaison officers in each of those divisions—in each of those regional offices—will be accommodated. Small businesses will be provided with much greater coverage, much greater opportunities than ever before.

EDGAR SYSTEM

Mr. ROGERS. Well, you've finally completed EDGAR, just in time to recompete the contract.

Mr. LEVITT. Here we go again.

Mr. ROGERS. Congratulations. What is the recompetition of the contract likely to mean in terms of changes to the system and the future costs?

Mr. LEVITT. I'm not sure at this point, except to say that we are taking a look at this issue from top to bottom, to see to it that a commitment which is not a short-term, but a long-term commitment really takes cognizance of the future rather than responds to the problems that all of us see today. And that means what system do we use? How is it presented? What are the graphics? Who can take advantage of it? Who can't? Can this be used more effectively for not only users, but for investors, for consumers, to protect the public? What kind of a tool can it be for small businesses?

On the Web site that we've recently implemented we're creating an interface for small businesses to ask questions and for filers to take advantage of that. So, I am hopeful that by working with certain committees of the Congress, by working with technicians of national repute in terms of electronics and the use of the Internet, we will come up with a system for the future rather than one that just deals with good old EDGAR the way it was. I hope that it will be substantially improved, different, and an EDGAR for the future.

And you'll notice that in our request for funds we're asking for approximately \$2 million as a transitional amount, which would take us about two months, assuming we take on a new and different system, which would run parallel with the existing system.

ONLINE SERVICES

Mr. ROGERS. Any thought of a small access fee to the online service?

Mr. LEVITT. We haven't suggested that. When we think about fees in this regard, we kind of think the American public has by their taxes paid for a system that we think we can provide them at relatively small cost. As far as the users are concerned, I don't think that—we have not considered ourselves a fee.

PRIVATIZING EDGAR

Mr. ROGERS. What do you think of the reports that indicate that the filing system can be operated privately?

Mr. LEVITT. I think it's something we have to examine. We've examined almost everything that we've done in terms of whether it could be privatized. We certainly haven't—with respect to our Web site once again, when the government grant expired and NYU had to give it up and a number of proposals came in to do it privately, it was our feeling at the time that we could do a better job with very little money without burdening the public with the cost that privatizing would involve for them. None of the commercial organizations offering to make the data available were able to provide that service with a guarantee that there wouldn't be a charge for it. So we undertook it. I have to look at privatization of the EDGAR function in the same way. I certainly don't reject it, but I think we have to consider it in terms of overall costs and overall benefits.

HEADQUARTERS LOCATION

Mr. ROGERS. Now you're going to stay in your old building?

Mr. LEVITT. Yes, sir.

Mr. ROGERS. Current headquarters; is that right?

Mr. LEVITT. Yes. We have recently negotiated an extension of our lease for five years. We did that because we thought that the changes taking place in our government and in our city were such that it would be unwise to make a long-term commitment at rates that were being asked for at the time we entered into discussions on our lease. We were successfully able, with the help of officials in the Congress and in the local government and in the private sector, in renegotiating that lease at a cost saving to the government of over \$20 million during the five-year term of renewal. So, we will be here for at least five more years.

SECURITIES LITIGATION REFORM

Mr. ROGERS. Now what will be the effect of the securities litigation reform legislation passed over the President's veto on the workload of the SEC?

Mr. LEVITT. There are some that would say the effect would be draconian, that we would be so inundated with cases that would ordinarily be handled by private rights of action that we could not possibly assume that responsibility with our present resources. There are others that say, no, this litigation reform was a useful and constructive streamlining of a process that had gotten out of hand.

I think that if I were to make a judgment at this point, I'd say that probably the accurate response lies somewhere between those judgments, and certainly in the meantime we are prepared to use existing resources and see how it goes and see what develops. Nobody can say with total certainty. So that's why we presented to you a budget which keeps our people power at precisely the same level as it was a year ago.

MARKET ISSUES

Mr. ROGERS. Now you're in the process of trying to reform NASDAQ, particularly the large spread between buy and sell. What problems are you focusing on and what are you proposing?

Mr. LEVITT. One of the most important and most difficult responsibilities of the Commission is the responsibility of dealing with market structural issues. The markets are made up of regional markets, of dealers, and of auction markets such as the New York and the American and the Pacific Stock Exchanges. The mixture of dealer and auction markets has created the most wonderful market system in the history of the world.

The responsibility of the Commission, as I see it, is—continues to be—to keep competition among those various entities fair. And the Congress has given to us the responsibility for encouraging the growth of the national market system. I view that growth as an evolutionary process. That means fine-tuning. That means re-examining things. That means to fulfill the mandate of this Commission, the protection of the public investor, because I think there's a dollar-and-cents value to markets that are considered to be fair markets and honest markets.

The pressure that we bring to bear on the NASD or the New York Stock Exchange is pressure to see to it that the public investor knows what he's buying, knows what he's paying, and gets a deal that's as good as the deal offered by any dealer. That's a continuing process. It's not something peculiar to this Commission, and what you're reading about and seeing is merely a continuation of adhering to the mandate of the Congress when they came to us in 1975 on improving the national market system.

DERIVATIVES

Mr. ROGERS. And, similarly, what changes have you proposed relating to disclosure of holdings of derivatives?

Mr. LEVITT. We have, as a Commission, proposed to corporate America a system giving them a choice of three methods of accounting for—of disclosing the derivatives that they hold. That proposal is out there now, and we are hearing comments about it, and we will enact it in time, I expect, so that the filing of annual reports for next year will be able to make use of these rules with respect to derivative disclosure.

Mr. ROGERS. Mr. Chairman, I have a number of other questions which we can submit for the record and save your time.

CLOSING STATEMENTS

Mr. ROGERS. We appreciate your testimony here today. Is there anything further you'd care to add to your testimony?

Mr. LEVITT. No, sir, except that I really am very grateful for your support with respect to our funding, and I earnestly hope that we realize a common objective.

Mr. ROGERS. Well, you're doing a great job in your post there, you and your staff. We appreciate the diligence with which you do it and the obvious integrity. And we find you and your staff easy to work with and work for. We want to be all the help that we can.

Mr. LEVITT. Thank you very much, sir.

Mr. ROGERS. Thank you.

The Committee stands adjourned.

[The following questions were responded to for the record by the SEC. Subsequent to the hearings other agencies provided materials for the record.]

Questions Submitted from Chairman Rogers**Initial Public Offerings**

QUESTION: Does the SEC have the necessary resources to review the prospectuses of the booming market for initial public offerings?

ANSWER: Under the Commission's Selective Review System, all initial public offering registration statements (including the prospectuses filed therewith) are subject to review by the staff. For Fiscal 1995 and the seven months ended April 30, 1996, the staff reviewed approximately 950 and 700 IPO filings, respectively. When the initial public offering market is active, staff resources may be reallocated from reviews of repeat issuers and Exchange Act reports to concentrate on reviews of IPO filings. Accordingly, an active IPO market may impact staff review of filings other than IPOs but has not yet had any measurable adverse impact on IPO reviews.

QUESTION: How do you ensure that these documents contain all pertinent information, including the disciplinary histories of the underwriters?

ANSWER: Standardized, comprehensive disclosure requirements for 1933 Act and 1934 Act filings are set forth in Regulations S-K and S-X. The staff reviews registration statements for compliance with these requirements, including specific requirements for disclosures in connection with initial public offerings.

Although Item 401 of Regulation S-K requires registration statement disclosure of legal proceedings involving directors, nominees for director or executive officers of an issuer, there is no specific requirement relating to disclosure of disciplinary actions taken against principal underwriters. The staff has, however, required disclosure of material actions brought against broker-dealer firms underwriting a public offering where the actions have a bearing on the ability of the firm to complete the offering in a lawful manner and to carry out other obligations it has undertaken. The basis for this disclosure is provided through the application of the more general disclosure requirements of Rule 408 under the Securities Act of 1933. Rule 408 provides that "In addition to the information expressly required to be included in a registration statement, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading."

In this regard, registration statements, including IPOs filed by issuers whose securities were being underwritten by firms such as Stratton Oakmont, Inc., and Biltmore Securities, Inc. have contained extensive disclosures about major Commission enforcement proceedings involving such firms. The disclosures indicated in both cases that the Commission had entered Administrative Orders against the firms for willful violations of the securities laws, including fraudulent sales practices, unauthorized trading, market manipulation, improper price predictions and misrepresentations regarding the firms experience in the securities industry.

International Activities

QUESTION: The Commission appears to devote substantial staff time and travel to participating in international organizations. What tangible benefits do you receive that would justify such expenditures of resources?

ANSWER: Participation in meetings of international securities organizations enhances cooperation and understanding among regulators and permits the SEC to advance its international enforcement and regulatory interests for the benefit of U.S. markets and investors. We strive to encourage the international regulatory community to move towards higher standards and more transparent markets. The SEC already has received substantial benefits in the area of international enforcement cooperation as a result of its involvement in international organizations and we anticipate that progress will continue to be made in that area. As another example of benefits resulting from the SEC's involvement in international organizations, the SEC's participation in the International Organization of Securities Commissions (IOSCO) is having a substantial impact on the development of internationally acceptable accounting standards. By actively participating in the process, the SEC will be able to ensure that the resulting standards will meet the needs of companies and protect U.S. investors.

QUESTION: What international organizations does the Commission participate in? What are the costs associated with that participation?

ANSWER: The Commission plays a leadership role in the International Organization of Securities Commissions (IOSCO), which is an international forum created to promote cooperation and consultation among regulators overseeing the world's securities markets. With over 100 members, most of the world's securities markets are represented. The SEC has been actively involved in many aspects of IOSCO's work, particularly work relating to: identifying accounting and auditing standards that would be used in cross-border offerings; regulating the secondary market and market participants; fostering the international enforcement of securities laws; and promoting international cooperation in connection with cross-border investment funds. One recent development for IOSCO is its agreement with the International Accounting Standards Committee (IASC) on a work plan that, when successfully completed, would result in a comprehensive core set of international accounting standards.

The SEC also participates in the work of the Council of Securities Regulators of the Americas (COSRA), a forum for cooperation and communication to enhance the efforts of each country in the Americas and the Caribbean to develop and foster the growth of sound securities markets that are fair to all investors. Through the development of principles on transaction transparency, audit trails, clearance and settlement, cross-border surveillance of investment advisors, fundamental elements of a sound disclosure system and enforcement cooperation, COSRA has contributed to development of high regulatory standards in the Americas. At its annual meeting in 1995, COSRA adopted principles of effective market oversight and development of a self-regulatory system, and also agreed on an agenda to cover implementation of the Summit of the Americas' anti-corruption initiatives.

In addition, the SEC participates in relevant work projects of the Organization of Economic Cooperation and Development (OECD). For example, the SEC is working with the Departments of State, Justice and Commerce in the OECD's efforts to implement an initiative intended to combat bribery of foreign public officials by OECD member nationals.

The SEC also participates in the Wilton Park Group, which is an annual program sponsored by Her Majesty's Treasury of the United Kingdom. The Group meets annually and discusses enforcement-related topics.

The SEC also participates in the Enlarged Contact Group on the Supervision of Collective Investment Funds (ECG). The ECG is a group of securities regulators that meets on an annual basis to exchange ideas and information on international developments and current issues affecting the regulation of pooled investment vehicles.

As to cost, the Commission pays annual dues to IOSCO of \$5,000 as well as registration costs for IOSCO's Annual Conference. There are no dues for the other organizations. The Commission incurs travel expenses in participating in these organizations.

QUESTION: What language would be required to replace the language included in annual appropriations bills with respect to international activities?

ANSWER: There are two provisions in the Securities and Exchange Commission's annual appropriations bills that affect international activities. The first provides that not to exceed \$10,000 of the annual appropriation may be used toward funding a permanent secretariat for the International Organization of Securities Commissions. The second provides that not to exceed \$100,000 is available for expenses for consultations and meetings hosted by the Commission with foreign governmental and other regulatory officials. Adjoining language defines the types of consultations, meetings and expenses that apply.

While it does not appear that any substitute language can replace these provisions, their being enacted as permanent provisions in the Commission's authorizing statute could result in their being removed from the annual appropriations bills. However, the timing of such a "transfer" of these provisions would need to be carefully planned to ensure their continued effectiveness. Given the current status of the Commission's authorization process, it does not appear feasible that the transfer can occur in the fiscal 1997 timeframe.

Political Influence in the Industry

QUESTION: Has the Commission made any progress in regulating political contributions by underwriters to local government officials to influence the awarding of municipal securities business?

ANSWER: Yes. The Commission approved Municipal Securities Rulemaking Board rule G-37, limiting political contributions by municipal securities dealers to municipal officials who award municipal securities business on April 7, 1994, and rule G-38 on January 17,

1996, requiring disclosure of consultants retained to obtain municipal securities business. Both rules currently are in effect.

Rule G-37 prohibits any broker, dealer, or municipal securities dealer from engaging in municipal securities business with a municipal securities issuer if it, any municipal finance professional associated with it, or any political action committee controlled by it or by any of its municipal finance professionals contributes to an official of such issuer. The prohibition extends for two years after the triggering event. However, the rule permits the municipal finance professionals of a broker, dealer, or municipal securities dealer to donate up to \$250 per official per election if they were entitled to vote for that official. The rule prohibits a broker, dealer, or municipal securities dealer and its municipal finance professionals from soliciting persons or political action committees to contribute to officials of an issuer with whom the broker, dealer, or municipal securities dealer is engaging or seeks to engage in municipal securities business. The rule also prohibits the coordination of such contributions.

Rule G-37 was challenged on constitutional grounds, and unanimously upheld by the United States Court of Appeals for the District of Columbia Circuit in *Blount v. Securities Exchange Commission*, on August 4, 1995. A petition for rehearing filed by the appellant was denied by the Court of Appeals for the District of Columbia Circuit on October 4, 1995. The Supreme Court denied the appellant's petition for certiorari seeking review of the District of Columbia Circuit's opinion.

Rule G-38 requires municipal securities firms: (i) to have written agreements with certain individuals, consultants, who are used by them directly or indirectly, to obtain or retain municipal securities business; and (ii) to disclose the details of such consulting arrangements directly to issuers and to the public through disclosure to the MSRB.

Sexual Harassment

QUESTION: What actions is the SEC taking to ensure that there are no further sexual harassment problems like those found in the case that was decided last November?

ANSWER: The SEC takes these matters very seriously. Through mandatory training of all agency staff and other awareness campaigns, the number of allegations of sexual harassment the agency's Office of Equal Employment Opportunity receives each year is very small. In 1995, the number of allegations of sexual harassment represented fewer than 2% of all allegations of discrimination.

In those few instances when an allegation of sexual harassment is brought to our attention, we quickly and effectively take the appropriate steps. All allegations of sexual harassment are investigated and, when suitable, administrative action is initiated.

Questions Submitted from Congressman Forbes**Increased Bankruptcy Cases**

QUESTION: During other testimony the committee learned of the large increases in bankruptcy cases coming into the court system. Has this increase impacted your work at the SEC at all?

ANSWER: No. The large increase in bankruptcy cases is not expected to have any impact on the Commission work load because we understand that the increase in filings are those of individual debtors not publicly-held corporations.

QUESTION: Have you seen a similar increase?

ANSWER: No. The number of public companies filing for reorganization under Chapter 11 of the Bankruptcy Code has been relatively constant with 83 cases filed in FY 1995 and 43 filed for the first six months of FY 1996.

QUESTION: How many of these cases is the SEC involved in ?

ANSWER: The number of Chapter 11 cases where the Commission has filed a notice of appearance also has remained constant with 13 appearance cases in FY 1995 and 7 appearance cases for the first six months of FY 1996. However, the Commission has seen an increase in the number of cases where it has reviewed and commented on disclosure statements for publicly held debtors. In FY 1995, the Commission reviewed 92 disclosure statements and commented on 75 of them. In the first six months of FY 96, the Commission reviewed 61 disclosure statements and commented on 58 of them. The increase in SEC review of corporate disclosure statements, however, is not related to the increase in personal bankruptcies.

Securities Litigation Reform

QUESTION: The Private Securities Litigation Reform Act of 1995, that recently became law, will alter the way in which private actions are conducted under the securities laws, the consequences of liability in those actions, and standards for such liability. Could you outline for the committee how this piece of law will impact your work at the SEC?

ANSWER: In the short term, the Act should have little effect on the enforcement program. The only part of the Act that *directly* affects enforcement is the provision enacted in response to *Central Bank* that expressly authorizes the Commission to sue persons for knowingly aiding and abetting violations of the Exchange Act. Even before *Central Bank*, the Commission did not often rely on an aiding and abetting theory of liability in proceeding against wrongdoers, and I would not expect express statutory authorization to change that.

In the longer term, the *indirect* effects of the Litigation Reform Act on the enforcement program could be very substantial, but only time will tell. The legislation makes it harder, and potentially more costly, for plaintiffs and lawyers to litigate private claims under the securities laws. Whether these new challenges inhibit the bringing of meritorious private actions remains to be seen. If they do, the Commission will no doubt feel pressure to stretch its limited resources to fill the void.

QUESTION: In this legislation (Private Securities Litigation Reform Act of 1995) you were asked to determine whether senior citizens and qualified retirement plans require greater protection against securities fraud than is available under the Act and if so to submit to Congress a report with recommendations as to the protection of such investors. What have you uncovered so far? Have you been able to make any preliminary determinations as to whether this Act adequately covers senior citizens? If no, then what do you see as the solution?

ANSWER: The Private Securities Litigation Reform Act of 1995 directs the Commission to determine whether investors that are senior citizens or qualified retirement plans require greater protection against securities fraud than is currently provided under the federal securities laws; and whether investors that are senior citizens or qualified retirement plans have been adversely impacted by abusive or unnecessary securities fraud litigation, and whether the current provisions of the federal securities laws are sufficient to protect them from such litigation. If the Commission determines that greater protections are necessary, it must submit a report to the Congress by June 19, 1996. In order to make its determination, the Commission has solicited comment from the public on these questions and on the more general question of the role of senior citizens and qualified retirement plans in our securities markets. Commission staff are now collecting and evaluating the responses received to date from the public. When the review of the comments and other materials has been completed, the Commission intends to report its findings to the Congress, together with whatever recommendations it determines to be appropriate.

**UNITED STATES COMMISSION FOR THE PRESERVATION
OF AMERICA'S HERITAGE ABROAD**

STATEMENT OF CHAIRMAN

before

THE HOUSE COMMITTEE ON APPROPRIATIONS

April 1996

Dear Chairman Livingston and Subcommittee Chairman Rogers;

My name is Michael Lewan, Chairman of the United States Commission for the Preservation of America's Heritage Abroad. Thank you for the opportunity to submit our FY 1997 budget request and to report to you on our progress.

The Commission for the Preservation of America's Heritage Abroad received its first funding in FY 1990, but did not have a Chair appointed until mid-1991. In this short time, the Commission has made substantial progress toward its mission as envisioned by Congress.

I will do my utmost to continue in fulfilling our mandate which is to encourage the preservation of the historic cultural sites in Eastern and Central Europe which are of importance to Americans. This is being accomplished, primarily, through the negotiation of Agreements with Eastern and Central European Governments that provide for joint cooperation to identify, protect, and restore sites of historical importance to both Americans and the citizens of those countries.

The first formal Agreement for joint cooperation in the preservation of cultural sites important to citizens of both countries was signed at the Department of State on March 17, 1992 by the Deputy Secretary of State and Ambassador Rita Klimova for the Czech and Slovak Federal Republic. Both, the newly created Czech Republic and the Slovak Republic, are committed to honoring the Agreement through separate Joint Cultural Heritage Commissions.

Following this breakthrough, Agreements have been negotiated at a pace consistent with the resources of the Commission and its ability to implement them in a responsible and economic manner.

In addition to the Czech and Slovak Republics, Agreements are currently in force with Romania and Ukraine. In 1996 we concluded agreements with Poland and Slovenia.

Also, the Commission continues its negotiations and discussions with Austria, Belarus, Bulgaria, Estonia, Germany, Hungary, Latvia, Lithuania, Russia and the former republics of the Soviet Union of Moldova, Georgia, and Azerbaijan.

Another key legislative mandate of the Commission is to

"identify and publish a list of those monuments, historic buildings and cemeteries located abroad which are associated with the foreign heritage of United States citizens from Eastern and Central Europe, particularly those in danger of deterioration or destruction".

The commission instituted the first-ever survey of Eastern and Central European cultural sites, a project close to the hearts and heritage of many United States citizens. This is the first step in creating a comprehensive clearinghouse of such information which will include data on the location, condition, ownership and use of the sites, relevant preservation laws and a list of organizations involved with documentation and preservation. This work has been carried out in the Czech Republic, Hungary, Poland, and the Slovak Republic and is currently underway in Ukraine.

Information which has been gathered is already helping government authorities in these countries, local communities, and United States citizens with cultural roots in these areas to plan and undertake preservation activities and projects. I would like to note that the Commission's funding only partially supports this important work. Since our funding supports mainly the administrative costs of the Commission, funds for the surveys of cultural sites and preservation and restoration work of the Commission must, properly, be raised from the private sector.

So far in FY 1996 the Commission has raised private cash donations for preservation and memorialization projects of \$22,000 and has pledges and grants in process of another \$24,000 which are earmarked for the erection, on behalf of the United States, of a memorial at the Buchenwald Concentration Camp, a model cemetery preservation project in Poland, emergency repairs to the historic Remu Synagogue at Cracow, the survey of cultural sites in Ukraine, and the restoration of an historic church in the Slovak republic.

Increasingly, we have been confronted with requests from the American public and Members of Congress to intervene on behalf of the protection and preservation of cultural sites and former concentration camps which are being vandalized or marked for inappropriate commercial exploitation.

Not only has the Commission been called upon to protect cultural sites, but also Americans who have been faced with endangerment while exercising their rights to visit important religious sites in certain countries. When such cases have

arisen, the Commission has obtained assurances of protection and free access to these sites from the host governments.

The Commission was appropriated \$200,000 in FY 1993 and again in FY 1994, and received an inflation adjustment and \$206,00 in FY 1995. The budget request of OMB for the Commission's FY 1996 operations is for \$212,000 or a 3 percent increase to partially cover anticipated price increases and the increased responsibilities in carrying out Commission activities. This request for FY 1997, as mandated by OMB, reduces the Commission's requested support to \$206,000.

I would note that the pace of active negotiations and demand from the public for our services has grown at an accelerating rate. The dynamic changes in the political structure of the region have been formidable and the Commission is now negotiating and working with significantly more countries due to the independence of the former Soviet Republics and the split of the former Czech and Slovak Federal Republic. Americans whose family roots are in these countries have increasingly come to the Commission for assistance in rediscovering and protecting their cultural heritage.

The Commissioners wish to note, with gratitude, the cooperation and support we have received from the White House, the United States Congress, the U.S. Department of State, and the individual citizens and private organizations who have contributed time and funds to our work.

Thank you for your consideration of the budget request for FY 1997 of the United States Commission for the Preservation of America's Heritage Abroad.

Respectfully submitted,

Michael Lewan

COMMISSION FOR THE PRESERVATION OF AMERICA'S HERITAGE ABROAD

1. The Committee is aware that as of the beginning of last year the Commission was considering broadening its scope of activities. What is the status of that effort?

- o In what areas is the Commission cutting back its budget to accommodate the increase in workload, although the funding level has remained at a freeze?

ANSWER

The decision to broaden the scope of the Commission has been made by the President and Congress through the reconstitution of the ethnic and religious composition of the Commissioners and Chairman. The new Commissioners consist of 7 persons selected by the President, and 7 nominated by the Senate. The House of Representatives is in the process of selecting 7 additional new Commissioners which are likely to follow the same pattern. Formerly, the Commissioners and Chairperson were ethnically connected with cultural sites abroad related to the Holocaust; and the Commission's activities reflected this composition. With the new Commissioners, the scope of the Commission's activities has been broadened by the President and Congress through the appointment of a majority of Commissioners and a Chairman who trace their religious and ethnic heritage to a broader and more representative cross section of the cultural fabric of America. The intent of the President and Congress is clear that the Commission must broaden its scope of activities, and it has already begun this effort.

In addition, the scope of the Commission's activities has been increased by the dissolution of the Soviet Union and the emergence of independent countries which meet the criteria of the Commission's mandate for diplomatic initiatives. This has increased the number of countries from 3 which with it began negotiations in 1990 to 24 eligible countries at this time.

As the Committee's question notes, the funding freeze since the inception of the Commission has made it necessary to cut back on categories of the budget in order to address the increased work stemming from the broadening in scope of the Commission's activities as well as to absorb the lack of inflation adjustments to the budget.

In response to the question as to what areas the Commission is cutting back its budget to accommodate the increase in workload, the answer is that this process has been going on since the first year of operations. There has been several steps

that have been taken to keep administrative costs to an absolute minimum in order to maintain and increase the level of accomplishments noted in our budget presentation for FY 1997.

The first area is personnel. The legislation provides for an Executive Director federal employee to handle the administrative management and day-to-day affairs of the Commission. This has never been possible under the current budget as the level of employee provided by the legislation with pension and health benefits would consume one-half of the entire budget. Therefore, the Commission, with OMB's concurrence, gave up its salary line item which was combined with the "Other" category of our budget presentation. This allows the Commission to contract for necessary personnel services for an executive director without paying any overhead costs or fringe benefits, e.g. health insurance, vacations, etc. associated with a federal employee. Also, since 1990 the Commission has cut back on part time clerical support from 20 hours per week in 1990 to 16 hours per week in 1995 to 4 hours per week currently.

Another area that the Commission has cut back is in its offices. In order absorb rental increases since 1990, the Commission moved from a 3-office suite with a conference room to a two-office suite without a conference room, with the Chairman giving up his office in the process.

In addition, in FY 1995 the Commission stopped using the services of the GSA Capitol Region in order to save \$10,000. This is because the GSA charges for administrative services inflated from \$7,000 in FY 1990 to \$17,000 for FY 1995. Therefore, the Commission no longer has access to GSA legal services, personnel management services, imprest fund, and budget preparation services.

Another cut back is in publications. The Commission has not been able to publish all of its highly sought after reports on the condition of cultural sites abroad of importance to Americans because of lack of adequate printing funds. The legislatively mandated surveys of such sites have been completed in Poland, The Czech Republic, The Slovak Republic, and Hungary. However, the Commission has not been able to prepare and publish the reports of the surveys of the Slovak Republic and Hungary. Also, in regard to its printing budget, The Commission has not, as yet, been able to hire editorial assistance or to print its annual report for 1995.

In the area of diplomacy, the Commission has cut back on contacts with the countries with which it has signed agreements of cooperation, and on initiatives with any the other 18 nations of Eastern and Central Europe with which it is called upon by its legislation to undertake cooperation for protection and preservation of monuments, cemeteries, archival

materials, and historic religious buildings.

Another area where cut backs have been necessitated is in responsiveness to citizens requesting assistance for their personal efforts to gain access to cultural sites abroad, to spend their personal funds to protect and preserve these sites, and to obtain cooperation from local and national officials to stop acts of vandalism at these places. While the actual amount of services to such individuals has been increasing steadily, particularly since the fall of communist governments has opened borders to visitors from the United States, the promptness in responding and taking necessary actions has been hindered by the lack of enough professional staff and clerical support.

Finally, inflation in travel costs combined with the increase in the number of countries with which the Commission has agreements has made it necessary to cut back on travel to negotiate additional agreements and to represent the interests of the United States regarding protection and preservation of cultural sites. The travel budget has also become insufficient to hold the quarterly meetings specified by the legislation. Only two full Commission meetings will be possible in FY 1996.

2. There were pending negotiations of Agreement for cooperation in protection and preservation of historical sites with Poland, Belarus, Slovenia, and Estonia noted in last year's record. What is the current status of these respective negotiations?
o Are there new negotiations of agreement pending and with what countries?

ANSWER

In FY 1996, Agreements were concluded with Poland and Slovenia. The latter was signed by Vice President Gore and the Prime Minister of the Republic of Slovenia on May 8, 1996 at the White House. At that signing, Vice President Gore and Chairman Ben Gilman of the House Committee on International Relations spoke of the value of the Agreements to the good relations between the United States and its partners in these Agreements.

Regarding the question on new and pending negotiations, the Commission has been negotiating an agreement with Hungary and it is expected to be signed in the near future. However, there is not resources sufficient to both continue negotiating and implementing additional agreements and properly cooperate with the seven countries with which Agreements will have been concluded with the signing with Hungary.

3. What surveys and restorations are currently being conducted and what surveys and restorations have been completed this year?
o Are there new surveys and restorations expected to begin in FY

1997? Where are these projects located and what is the cost of each of the restorations and surveys?

- o Which of these projects are fully funded by the Commission and which are receiving partial or full private funding and from where is the private funding being provided?

ANSWER

The Commission is currently surveying former Jewish communal property in Ukraine. Hundreds of previously undocumented massacre sites of Ukrainians by the Nazis are also being surveyed. In addition to promoting protection and preservation, this work will provide a basis for negotiations for restitution of communal property by the Government of Ukraine. The work was begun with \$9,000 of FY 1995 Commission funds, \$10,000 of private donations from the Jewish community of Ukraine, and matching grants of \$33,000 from three private U.S. foundations. These funds were partial for the first 18 months of a required three years of field work and report preparation. The Commission is currently under consideration by one of the foundations for an \$18,000 additional grant to complete the balance of the project. The Commission has pledged \$9,000 matching funds in each of FY 1996 and FY 1997 as a condition for the gift.

As part of the new Agreement with the Republic of Slovenia, the Commission has agreed to jointly fund a survey of cultural sites of importance to Americans and Slovenians in both countries. This work will begin in September 1996 and the approximate \$9,000 costs will be shared by the Commission and the Ministry of Culture of the Republic of Slovenia.

In FY 1997, the Commission hopes to complete the reports on the surveys of the Slovak Republic and Hungary. This will depend on the Commission's FY 1997 appropriation and its ability to obtain matching grants from foundations. The total costs to complete both reports will be about \$20,000. The Commission also will undertake the survey of Romania in FY 1997 pending a probable award of a grant from a private U.S. Foundation which is currently being negotiated. Some matching funds from the Commission will likely be required for the expected total cost of \$20,000.

Regarding restoration, preservation, and protection projects, the Commission is currently working on the model cemetery restoration and memorial at Wyszkow, Poland which is expected to be dedicated this September. The \$32,000 funds raised to date have come from donations of over 40 private U.S. citizens, and several individuals from other countries including Mexico, Costa Rica, and Israel. These funds were about equally raised for this Commission project by the Associates of the U.S. Commission for the Preservation of America's Heritage Abroad; and by individual Commissioners,

the Chairman, and Executive Director of the Commission.

Four other preservation, protection and restoration projects to which the Commission has contributed on behalf of the United States were made so far in FY 1996. All of the funds for these projects were donated to the Commission by private U.S. citizens and U.S. charitable foundations. One was for Repairs to an historic Methodist Church in the Czech Republic through the fund raising efforts of an Associate for which \$1,000 was raised and sent to the project via a grant to the American Methodist Global Ministries.

Another project completed in 1996 was emergency repairs to the historic Remu Synagogue of Krakow. The funds for this were donated to the Commission by two U.S. citizens and one private U.S. Foundation totalling \$15,000. This money was raised by a Commissioner. In addition, the Commission is co-sponsoring the restoration and preservation of the important Tarna Jewish cemetery in the Slovak Republic. This \$30,000 project is being funded one-half by the Town of Tarna and one-half by the Commission. The Commission share is totally from donations by five individual U.S. citizens.

The Commission is also sponsoring the erection of two Holocaust Memorials at the Buchenwald Concentration Camp for which the Associates have been raising funds on behalf of the Commission since 1995. This fundraising will continue into 1997. To date the Associates have collected \$24,000 in gifts from private U.S. citizens.

The fourth project funded in 1996 is the publication of a book documenting the destroyed Jewish Synagogues of Greece. This was made possible by grants totalling \$8,000 from two private U.S. foundations.

In 1997, the Buchenwald project will continue to raise funds from the private sector. Also, the Commission has agreed to a cooperative joint project with the Government of the Republic of Slovenia in two preservation and restoration projects. The first is the major restoration of one of one of the oldest synagogues known in Europe located at the Town of Maroborg. This building dates to the 12th century and was used as a church subsequently for over 500 years before falling to ruins.

The other part of the 1997 joint project with Slovenia is the preservation and designation as a registered historic site of the first Catholic church built by Slovenian immigrants in New York City at the turn of the century which still serves a congregation of 5,000 Americans of Slovenian decent. All of the funds for this project will come from the Town of Maroborg, the Government of Slovenia, and from private donations raised in the United States by a member of the Associates and Commissioners. The total cost of this work

being about \$500,000.

Two other projects are in the planning stage for 1997. One is the restoration of the ancient Jewish cemetery at Sarajevo which was devastated by the Bosnian war; and the other is a Holocaust Memorial in Tashkent, Uzbekistan where over 100,000 persons, mostly children fleeing the Holocaust, were granted asylum. The latter cooperative project with Uzbekistan has come about from the initiative of President Karimov. The fundraising for these projects will be lead by a newly appointed Commissioner nominated by the Senate, with joint funding from Bosnia and Tashkent sources.

4. What amount has been raised by the Commission's fundraising efforts this year?
 - o How much of this was raised by the Associates?
 - o As the Commission's focus has broadened has, the role of the Associates grown also?
 - o What contributions have been made this year besides those of a monetary nature?
 - o What amount does the Commission anticipate to receive in contributions over the rest of the year?
 - o Has the support from private organizations remained as strong as in past years and what organizations are assisting the Commission?
 - o Does the Commission foresee that it will be able to fully rely on private funding in the future? If so, approximately when would the Commission project the end of a need for Federal support?

ANSWER

The Commission has raised \$57,639 through May 15, 1997 of which one-half was raised by members of the Associates. The Commission expects awards from two U.S. foundations totalling \$38,000 before the end of the year which are earmarked for work on the surveys of Ukraine and Romania. There is every likelihood that additional gifts and donations will come in before the end of the year.

In FY 1996, the Commission has continued its trend of receiving more gifts for protection and preservation activities. The major change has been the acceptance of private foundations of the Commission and Associates as organizations with a track record which can be trusted to deliver on its promises.

The private foundations and organizations that have assisted the Commission so far in FY 1996 with gifts of \$1,000 or more include the United Methodist Church of Babylon New York, the Kitov Foundation, the Bender Foundation, the Lucius N. Littauer Foundation, and the Kress Foundation. A grant is expected shortly from the Richard and Rachel Goldman Foundation.

Major assistance has been provided by the Jewish Genealogy

Society of America which has provided hundred of hours of volunteer support for updating and maintaining the data base for the Commission's survey, by putting the data up on the world-wide web, and by checking the thousands of survey forms returned from the field for quality control.

Some of the other private organizations which have cooperated with the Commission during 1996 include the Polish American-Jewish American Council, The American Jewish Committee, the American Jewish Joint Distribution Committee, B'nai B'rith Office of International Affairs, and the American Methodist Church Board of Global Ministries.

Regarding the role of the Associates to mirror the broadening of the scope of the Commission, the Associates intend to recruit new members to broaden the representation to a cross section of American cultural diversity. As soon as the House of Representatives forwards its nominations to the President for 7 new Commissioners, which is expected shortly, the Commission will meet to reach a consensus of what distinguished Americans should be approached by Commissioners to join them in promoting the work of the Commission through their membership in the Associates.

The question is asked as to what contributions have been made to the Commission of a non-monetary nature. The answer is that the Commission could not function without such contributions. First and foremost, the Commissioners and Chairman and active Associates themselves are volunteers who receive no remuneration and who frequently absorb the expenses of travel and communications to represent the Commission and to raise the funds noted above.

Every survey and preservation project currently being undertaken has major inputs of volunteers working in those countries. For example, the director and architect managing the Commission's model cemetery project in Poland have put in hundreds of hours of hard work recovering tombstones, obtaining permits from the central and local government, drawing the architectural plans, etc., all at no cost to the Commission. Another example is the huge contribution of expert volunteer time from the Jewish Genealogy Society in maintaining and dissemination of the Commission's data bases on endangered cultural sites, which is described above. Also, the Commission currently has a volunteer who works three days a week assisting the Chairman and the Executive Director. As another example, the Commission receives scores of requests for assistance in locating archival material relating to their cultural roots abroad. The staff of Avotanu, the Bulletin of Jewish Genealogy has never turned down a referral from the Commission to give free assistance to these persons.

Regarding the reliance of the Commission fully on private funding in the future, the Commissioners do not see this as

possible. First of all, the Commission represents the United States in diplomatic matters under its legislation including permanent arrangements with the six countries with which it has agreements now, and the probable addition of Hungary before the end of the year. In the course of the Commission's mandated activities, sensitive issues are addressed including ownership of former communal property of persecuted religious and ethnic minorities, and restitution for such property. Also, the Commission must be selective in the preservation projects it chooses to support to represent, solely, the best interest of the United States. The Commission can not be put in the position any appearance of a conflict of interest which would could follow from the likely sources of gifts for its administrative and operational functions since these sources may have their own agendas in these matters which would be in conflict with other private organizations or with the interests of the United States.

Also, in practical terms, the Commission has never received any significant gifts that were not strictly for preservation and protection. The foundations which support the Commission must abide by the charters on which their qualifying tax exemptions are based. Gifts to the Commission, in every case, are based on qualifying cultural and educational activities, and not for support of administrative overhead. Further, the substantial grants which the Commission has received have all required some significant amount of matching funds.

As to the sense of Congress on this matter, OMB submitted a budget in 1992, requiring the Commission to raise \$150,000 of its \$200,000 budget. This was overridden by Congress which restored the Commission's appropriation to the \$200,000 level. In so doing, the Conference Report accompanying H.R. 2608 spoke to the issue of the administrative support of the Commission. The report states that "The Committee recommends \$200,000 for expenses of the Commission for the Preservation of America's Heritage Abroad. This amount is \$150,000 above the budget request, but is equal to the amount provided for the current fiscal year. The recommendation will allow the Commission to fund its administrative expenses through appropriated funds while relying on privately donated funds for the actual purchase and restoration of property...." Since this action by Congress, OMB has not submitted budgets reducing the Commission's appropriation, and included 3 percent inflation increases in its budget requests to Congress for FY 1995 and FY 1996.

5. The Department of State has been of assistance to the Commission since formation. What involvement did the State Department have over the last year?

ANSWER

The Commission can report that assistance from the Department

of State increased in concert with the additional countries with which the Commission has signed Agreements. In addition, the Embassies throughout Eastern and Central Europe and the desk officers at the Department of State have strongly supported the efforts of the Commission to stop cases of reported vandalism of cultural sites, and guaranteeing access to visit these sites by American citizens and others.

The efforts of the Department of State were superlative in that the American Embassy to Poland and the Counsel General in Krakow made the arrangements and participated as partners with the Chairman's special diplomatic mission to Poland Warsaw this past March to obtain the long-sought cooperation and formal Agreement with the Government of Poland. As a result of this cooperative effort, the Agreement was signed.

The Commission is also happy to report that more and more frequently it has been able to provide assistance to the Department of State, particularly in cases of vandalism and denial of access, and in cases where governments have asked the U.S. Embassies for assistance in restoring certain properties which have a relationship to the American heritage. An important area of cooperation instituted this year is one requested by Ambassador Stuart Eizenstat for the Commission's assistance in facilitating negotiations for restitution for communal properties seized from persecuted minorities by the Nazis and retained by subsequent communist governments. Ambassador Eizenstat is the United States representative to the World Jewish Restitution Organization.

**Statement of Lawrence H. Fuchs and Michael S. Teitelbaum
Vice Chairs, U.S. Commission on Immigration Reform**

before the

**Subcommittee on Appropriations for the Departments of Commerce,
Justice, and State, the Judiciary and Related Agencies**

**of the Committee on Appropriations
U.S. House of Representatives**

May 23, 1996

The Commission on Immigration Reform was created by the Immigration Act of 1990. We are a fully bipartisan body. We currently have eight members who were appointed by the majority and minority leadership in each house of Congress.

The Commission's mandate is to examine and make recommendations to this Congress on the implementation and impact of U.S. immigration policy. We are required to make interim reports as issues arise and a final report in September 1997. The Commission issued its first interim report in September 1994 on illegal immigration and its second interim report in June 1995 on legal immigration. Over the next year, we intend to issue two reports with interim recommendations, one on our nonimmigrant system, the other on refugees, asylees, and migration emergencies. In addition, we continue to pursue our long-term agenda to assess the economic, social, demographic and other impacts of immigration on the United States and to evaluate the organizational structure and management of the federal agencies responsible for immigration policy and its implementation.

We would like to describe briefly the recommendations the Commission has already made in the hopes that they will be useful to this committee in setting FY 1997 appropriations not only for the Commission but also for the other immigration-related agencies. We will then turn to our plans for this fiscal year and our request for next year's appropriations.

The Commission's 1994 report to Congress was entitled *U.S. Immigration Policy: Restoring Credibility*. The title is telling of our recommendations. The Commission believes it is essential to control illegal immigration if we are to have a credible immigration policy. We believe legal immigration is in the national interest, but see illegal immigration as a threat to both our long tradition of immigration and our commitment to the rule of law.

The Commission recommends a comprehensive, seven-point strategy to restore credibility. The strategy is neither cheap nor painless. There are no quick fixes to our immigration problems; there are no inexpensive solutions. For too long we have neglected immigration as a public policy issue and must now pay for the consequences.

Four points in our report call for special attention and resources. We are pleased that both the Senate and House have passed legislation supporting those reforms. We encourage this committee to provide the resources needed to implement these policies. First, we need improved border management. The Commission calls for a strategy of prevention of illegal entry and facilitation of legal ones in the national interest. The concept is simpler, of course, than its achievement. The Commission was highly impressed with the border operations in El Paso that aim to prevent illegal entry. It is far better to deter illegal immigration than to play the cat and mouse game that results from apprehensions followed by return followed by re-entry. To accomplish a true deterrence strategy will require additional personnel as well as a strategic use of technology and equipment. We will also require new measures of effectiveness because apprehensions alone cannot measure success in preventing illegal entries. Our goal should be zero

apprehensions—not because aliens get past the Border Patrol but because they are prevented entry in the first place.

While we tighten our control over illegal entry, we must also reduce the long waiting times at our ports of entry. It is ridiculous that people with legitimate border crossing cards feel it is more convenient to cross illegally than go through our ports of entry. But that is the case. Our own delegation waited for one and a half hours to cross from Juarez into El Paso—and this wasn't even at rush hour. In an age of NAFTA, we must do a better job of handling the legitimate border travel.

Our second set of recommendations would reduce the magnet that jobs currently present for illegal immigration. We have concluded that illegal immigrants come primarily for employment. The Commission believes that we need to enhance our enforcement of both employer sanctions and labor standards. But, to make employer sanctions work, we must improve the means by which employers verify the work authorization of new employees. The Commission believes the most promising option is a computerized system for determining if a social security number is valid and has been issued to someone authorized to work in the United States. We are pleased that Congress is in the final steps of legislating the development of pilot programs that will phase-in and test this new verification approach. We urge this committee to provide the funding needed to develop the computerized system and implement the pilot programs.

Third, the Commission urges greater consistency in our immigration and benefits policies. We believe that illegal aliens should be eligible for no public benefits other than those of an emergency nature, in the public health and safety interest, and constitutionally protected. On the other hand, we urge the Congress to retain for legal immigrants eligibility for our safety net programs. The United States screens legal immigrants to determine if they will become public charges, but unforeseen circumstances—deaths, illnesses—occur. The Commission does not want to see individuals whom we have invited to enter become vulnerable when such situations arise. On the other hand, the Commission strongly supports efforts to make our public charge provisions work. We do not want the U.S. taxpayer to bear a burden when there is a sponsor in this country who has pledged to provide support for an immigrant. The affidavits of support signed by sponsors should be legally binding, and the provisions for deportation of those who do become a public charge—for reasons known prior to entry—should be strengthened.

The Commission also made recommendations regarding impact aid for states and localities experiencing the fiscal effects of illegal immigration. We believe the federal government has a responsibility in this area. The first responsibility is to control illegal entries; the second is to help states and localities with their fiscal problems. However, we are skeptical of some of the data used to calculate these fiscal impacts. At present, the Commission believes that the data to support reimbursement of criminal justice costs are sound and we urge immediate reimbursement of these costs. We are not prepared to make such a recommendation regarding medical and education costs. We also urge that any impact aid provided require appropriate cooperation by states and localities in the enforcement of immigration policy.

Fourth, the Commission recommends an enhanced capacity to remove illegal aliens from the country after they are identified and apprehended. Highest priority must go to the removal of criminal aliens, but attention is needed to improved deportation capacity for failed asylum-seekers, visa overstayers and others who abuse our immigration system. Each year there are far more individuals who receive final, uncontested orders of deportation than are actually removed. The issue is largely one of resources, having the staff, detention facilities and monitoring capacity to keep track of deportable aliens and effect their removal from the United States.

The Commission's second interim report to Congress was entitled *Legal Immigration: Setting Priorities*. There we support the broad framework of legal immigration based on helping families reunify, employers to obtain skills not available in the U.S. labor force, and refugees to find protection in our land. But we concluded that more needs to be done to guarantee that the stated goals of our immigration policy are met.

In particular, our current system is not serving our highest priorities. Families wait for incredibly long periods of time before their spouses, children, and siblings are admitted as permanent residents. Employers wait for certification from the Labor Department that no U.S. worker is available for a position that the employer can't wait to fill. There are three and one-half million family members waiting in line right now. That simply doesn't make sense, so the Commission tried to find a way to create a new system able to admit immigrants in a timely fashion. Since the Commission did not find sufficient evidence indicating the need to increase or decrease current levels of immigration, we concluded that priorities should drive the numbers, not the other way around.

With respect to family immigration, the Commission proposed a system based on family priorities: the closest family members should be admitted first. Separating spouses or parents and children cannot be the basis of a rational immigration policy. The Commission would like to see a significant clearance of the 1.1 million backlog of spouses and minor children over the next few years. To do so means using numbers otherwise available to other family relationships.

As noted above, the Commission is currently at work on two reports while engaging in research needed to answer the longer-term questions in our legislative mandate. Nonimmigrants now constitute a larger group of arrivals into the United States than permanent residents and illegal aliens combined. Yet, they have received significantly less policy attention. The Commission is undertaking a comprehensive review of nonimmigrant categories and their utilization and will make recommendations to Congress regarding this system. We also continue our examination of policies related to refugee admissions, asylum, and handling of migration emergencies. In our FY 1995 report to Congress, the Commission strongly affirmed the U.S. interest in resettling refugees. We emphasized the need for a thorough assessment of the criteria used to admit refugees and the procedures for their admission, particularly in the context of post-Cold War developments.

In FY 1997, the Commission focuses on two longer-term issues: the absorption, integration and impact of newcomers into the U.S. society and economy; and the organizational roles and relationships of federal agencies responsible for implementation of immigration policy. Regarding absorption and integration, the Commission argued strongly in its FY 1995 report for the Americanization of new immigrants, that is the cultivation of a shared commitment to the American values of liberty, democracy, and equal opportunity. The Commission is examining policies and programs that may foster or retard such Americanization. The Commission also continues its assessment of the labor market, fiscal, social and demographic impacts of immigration, as required by our statutory mandate. We are now in the middle of two major, two-year research initiatives that will provide cutting edge information on these issues. One is an expert panel at the National Academy of Sciences to assess the literature on the demographic, labor market and fiscal effects of immigration, undertake new research to fill gaps in current understanding and report to the Commission on their conclusions regarding the short-term and long-term implications of immigration for U.S. society. The second is a binational study with Mexico that should provide new information on the scale, characteristics and impact of the largest single source of both legal and illegal immigration to this country. This binational study will permit data collection in both countries, providing answers to questions that cannot be adequately examined with data from the U.S. alone.

Regarding the second area, the Commission is examining systematically the roles and relationships of the federal agencies responsible for the management and implementation of immigration policy. Responsibilities are now dispersed across four principal Cabinet agencies: Departments of Justice, State, Labor and Health and Human Services. In addition, such agencies as the Customs Service play important roles working with INS in implementation of specific aspects of immigration policy. The Commission will report to Congress on the strengths and weaknesses of the current system as well as make recommendations to improve management of immigration-related activities. The Commission established five workgroups to support this assessment. They focus on legal admissions, border management, worksite enforcement, removal of illegal aliens, and refugee admissions and assistance. Each workgroup is mapping out the organizational roles and responsibilities in its area, the management issues that need to be addressed, and options for streamlining implementation and/or reducing duplication of efforts.

As the Commission moves into its final full fiscal year, our plate is full. The appropriations requested by the Commission will permit us to complete these tasks with the same attention and professionalism that have characterized our labors until now.

The attached budget justification presents details of this appropriation request. We thank you again for this opportunity to discuss the work and recommendations of the Commission on Immigration Reform. We also want to state for the record our commitment to work with this Committee as you address the very challenging issues arising in the appropriation of funds to improve implementation of immigration policy. We are the creation of Congress and offer ourselves as a resource to help you in your work

Questions for the Record to the Competitiveness Policy Council from Mr. Rogers

Question: Please provide a plan which outlines the time line and details of the Council shutdown.

Answer: The Council is currently involved in its last major undertaking -- a bipartisan working group comprised of representatives from business, labor, government and the public which will develop policy options to raise the long-term growth potential of the US economy. Work is already underway on the topic, the members are being selected and the group is expected to begin meeting next month. The subcouncil will report its recommendations to the President and Congress soon after the election. The Council expects to terminate its activities approximately two months after the report is issued.

Question: What steps has the Council taken to begin phasing down and what is the projected date for final shutdown?

Answer: The Council is already making plans for the orderly termination of its activities. First and foremost, the staff is working closely with private sector organizations to insure some continuation of its efforts. For example, the American Saving Education Council, which the Council helped establish, and the Commission for Saving and Investment in America are expected to pick up much of the Council's work on saving.

In terms of personnel, the Council is not replacing staff who voluntarily leave prior to the group's termination. As a result, the Council's full-time staff has already been reduced by 25 percent. Work is also already underway to archive the Council's files and reports.

Question: What changes have occurred to the programming schedule due to the pending closure. Please provide a list of projects the Council has completed and projects currently pending that will be completed in fiscal year 1996?

Answer: The Council released its fourth annual report to the President and Congress on September 14, 1995. In addition, the Council issued the following four reports (enclosed):

Lifting All Boats, the Report of the Capital Allocation Subcouncil;

Regulation and Its Impact on Competitiveness;

Saving and US Competitiveness; and

US Technology Policy: The Federal Government's Role.

The Council and its staff have presented these reports and its findings to private groups throughout the United States and abroad. The Council helped organize and participated in a conference of similar groups concerned with competitiveness issues sponsored by the Organization of Economic Cooperation and Development in Paris. Several countries have approached the Council seeking advise on setting up similar groups in Algeria, Hungary, Portugal and the United Kingdom.

This year the Council has continued its efforts aimed at increasing private saving. As part of these efforts, the Council developed a campaign aimed at encouraging people to save their tax refunds. In 1995, approximately 80 million Americans received tax refunds averaging \$1200 each. Together, these tax refunds were equal to almost half of personal saving. The Council's campaign, jointly undertaken with the private-sector Commission for Saving and Investment in America, focuses on local and regional newspapers and radio stations, and is aimed at encouraging people to save their tax refunds and at raising public awareness on the importance of saving to the US economy. (Attached is a sample of press articles which have appeared to date.) The Council is also working with the Treasury Department to provide taxpayers the option of having their refunds directly deposited into an IRA, or to receive part or all of their refunds in the form of a US saving bond. The Council's campaign received endorsements from the American Bankers Association and the Independent Bankers Association of America.

The Council took into account its eventual shut-down in setting this year's workplan, so no programmatic changes have been required.

Question: What is the General Services Administration estimation of costs for the shutdown? What is the Council's overall estimation of shutdown costs? Please provide a breakdown of the estimated costs of closing the Commission.

Answer: Cost estimates for the Council's orderly termination include: two months expenses to carry-out the shut down (\$150,000), monetized value of outstanding leave (\$50,000) and the transfer of government equipment and furniture (\$10,000).

Question: What is the total funding level the Council is operating under, including carryover balances?

Answer: Based on projections presented to the Subcommittee in March 1996, the Council expects to spend approximately \$1 million in FY 1996. The remaining amount will be devoted to costs associated with closing down the Council.

Question: What was the total amount of funds that carried over from fiscal year 1995?

Answer: The Council carried over \$1.5 million in previous year funds into FY 1996.

**PREPARED STATEMENT
of
ROBERT PITOFSKY
CHAIRMAN
FEDERAL TRADE COMMISSION**

Submitted to the
Subcommittee on Commerce, Justice, and State,
the Judiciary, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
May 3, 1996

Mr. Chairman and members of the Subcommittee, I am pleased to provide to you this testimony in support of the fiscal year 1997 budget request of the Federal Trade Commission. Having become Chairman of the Commission on April 11, 1995, I have not previously had the opportunity to present the Commission's programs and resource requirements to the Subcommittee. My job at the Commission has been made easier because of the outstanding work of the Commission under the leadership of my predecessor, Janet Steiger. I would also like to personally thank you, Mr. Chairman, and all the members of the Subcommittee for your strong and continued commitment to a healthy economy through antitrust and consumer protection efforts.

Congress has charged the Commission with protecting the American public from "unfair methods of competition" and "unfair or deceptive acts or practices" in the marketplace. The Commission implements a core function of government: to ensure that free markets work—that competition among producers and accurate information in the hands of consumers generate the best products at the lowest prices, spur efficiency and innovation, strengthen the economy, and produces benefits for consumers. With the resources requested, the Federal Trade Commission (FTC) will meet its critical responsibilities described in the President's Budget submission, and supported by the Commission's Budget Justification.

Fiscal Year 1997 Resource Request

For fiscal year 1997, the Commission seeks \$104,462,000 and 979 full-time equivalent (FTE) employees. Of the amount requested, some \$58,905,000, is funded by the Hart-Scott-Rodino (HSR) filing fee, an offsetting collection. The fiscal year 1997 increase in fee-based spending authority from \$48,262,000 to \$58,905,000 reflects a high projected number of filings, not an increase in the fee amount. Since fiscal year 1990, when the HSR filing fee was started, the Commission has gone from 20 to 67 percent self-funding. Data for fiscal year 1995 and the first half of fiscal year 1996 indicate that the total number of filings would support this higher level of fee reliance. In addition to this reliance on new fee collections, the request anticipates \$10,643,000 in carryover from fees collected in fiscal year 1996 in excess of \$48,262,000 and which first become available for obligation in fiscal year 1997. Finally, the request includes \$34,914,000 in direct appropriations. This is a current services budget with the authorized FTE level remaining at its fiscal year 1996 level of 979, about half the Commission's strength in 1980. In fiscal year 1997, the Maintaining

Competition Mission is requesting \$50.2 million and 470 FTE and the Consumer Protection Mission is requesting \$54.2 million and 509 FTE.

The Commission continues to support the Administration's proposed appropriation language, which continues the prohibition on spending authorized funds to implement certain provisions of the Federal Deposit Insurance Corporation Improvement Act (FDICIA) of 1991. FDICIA gives the Commission substantial responsibilities over certain depository institutions and their insurers. Because of specific jurisdictional exceptions in Section 5 of the FTC Act (Section 5), the FTC has no experience in regulation or enforcement concerning depository institutions. It could not perform these responsibilities without hiring or contracting for a substantial number of specialized personnel. The Commission continues to believe that this is in direct conflict with current Administration and Congressional goals of decreasing agency overlap, and that its responsibilities under the FDICIA would be more appropriately assigned to federal regulatory agencies with jurisdiction over financial institutions. To date, no resolution has been reached on enforcement responsibilities under FDICIA. The Commission, therefore, believes that a continued ban on the FTC's spending of authorized funds to implement § 151 of FDICIA is appropriate.

The Commission has been reexamining its mission, including: addressing the mission based on "customer" input; asking whether the mission could be accomplished as well or better without federal involvement; and looking for ways to cut costs or improve performance through competition and to cut red tape. Beginning in fiscal year 1996, the Commission committed itself to an extensive review of fundamental issues relating to antitrust, competition and consumer protection in light of increased global competition as well as the changing nature of competition in "high tech" industries. One critical goal is to ensure that the Commission, today and in the future, carries out its mandates as effectively and efficiently as possible. In fiscal year 1997, the Commission will review selected federal antitrust, competition and consumer protection policies in this light. We will keep the Subcommittee fully apprised of any findings as we continue in these efforts.

Federal, State and Local Cooperation

Protecting against unfair methods of competition or unfair acts or practices in interstate commerce is a federal, rather than state or private, responsibility, calling for national jurisdiction and policies. The FTC's missions are properly undertaken by a federal agency to assure that businesses are not subject to conflicting requirements in these areas. National advertising, for example, should be held to a uniform, consistent standard of what is unfair or deceptive, and federal antitrust enforcement is also appropriate to ensure application of consistent standards throughout the country. In addition, a national enforcement authority is needed to deal effectively with fraud artists who routinely try to escape local jurisdictions by moving their operations across state and, increasingly, national boundaries.

Despite their national nature, the Commission's law enforcement responsibilities are enhanced by cooperative efforts with state and local officials, and such efforts now characterize nearly every facet of the Commission's work. Specifically, information-sharing in law enforcement, joint investigations, and joint training occur on an ongoing basis.

To achieve the greatest impact with the fewest dollars in both the Maintaining Competition and Consumer Protection Missions, the Commission's staff have actively worked with the states.

Merger enforcement. State attorneys general and FTC staff have coordinated their efforts in numerous investigations; in October 1995, the FTC adopted a revised policy for information-sharing in merger investigations to permit FTC staff and the states to work even more closely on such matters.

Non-merger matters. FTC staff and state authorities have worked together on a variety of matters involving resale price maintenance, boycotts, and price fixing. The staffs have shared data and analyses, coordinated the relief sought, and referred matters outright to each other where appropriate.

Technical assistance, training, and coordination in competition matters. The FTC often is asked for and provides assistance to states either by assisting in specific antitrust cases or working together on training programs for state enforcement personnel. Along with the National Association of Attorneys General (NAAG) and the Department of Justice, the FTC participated in a series of four regional conferences with state attorneys general to address issues of common concern, such as health care and telecommunications.

Coordination of Federal, State and Local Resources. Coordination has been particularly critical in the fight against telemarketing fraud. With NAAG and the National Consumers League, the FTC set up a computer database of telemarketing complaints and investigations that is used by federal, state, and local law enforcers. In addition, the FTC held fifteen regional Telemarketing and Health Care Fraud Conferences to share information and expertise with state and local law enforcement officials. Most Regional Offices also are members of ongoing task forces or state and local working groups that deal with telemarketing fraud and/or other consumer protection issues.

The FTC recently promulgated a rule addressing telemarketing fraud. The new Telemarketing Sales Rule, which became effective December 31, 1995, is enforceable by the Commission and by state law enforcement officials. The FTC held six training workshops for state agencies on the new rule in major cities across the country.

Working closely with the states and other federal agencies, the Commission has focused its efforts on high visibility enforcement efforts that are likely to have the greatest deterrent effect on wrongdoers and will serve to inform the public about widespread problems such as telemarketing fraud. Recent joint efforts, described in the Consumer Protection section, have included: Project Telesweep (July 1995); Project Roadblock (January 1996); Operation Senior Sentinel (December 1995); and the Chattanooga Telemarketing Fraud Project (began February 1995).

The Commission has also worked closely with the states in areas other than telemarketing fraud. The Commission coordinated enforcement efforts involving credit repair schemes, diet pills and other weight-loss products, and deceptive health claims for

various other products. The Task Force of State Attorneys General (AGs) on Environmental Claims is participating in the three-year review of the FTC's Environmental Marketing Guides. Six states have already adopted the Guides as law. The Commission has recently conducted joint sweeps with the states to enforce the Funeral and Franchise Rules. The Commission coordinated with state officials in its survey of gasoline distributors to determine compliance with the Fuel Rating Rule and focused on states with no octane-testing program. Commission staff and the NAAG Telecommunications Subcommittee met with industry members to address the problem of abuse of international phone lines by certain information providers. In addition, the Commission has participated in many joint training efforts and consumer education projects with state agencies.

Although private actions may be brought to enforce the Sherman and Clayton Acts, Congress has not authorized private actions to enforce the FTC Act. Private consumer protection or competition actions, therefore, are not an alternative to FTC enforcement.

Maintaining Competition

The Maintaining Competition Mission protects consumers from anticompetitive-mergers and other business practices that interfere with the workings of free markets and it is the free market that brings the best products to consumers at the lowest prices and spurs efficiency, investment, and innovation. For fiscal year 1997, under the Maintaining Competition Mission the Commission seeks a total of 470 FTE and \$50,243,000, for an increase of \$1,710,000 over fiscal year 1996. In performing this mission, the Commission faces a number of challenges that are placing unusual demands on its resources.

The Commission and the Antitrust Division of the Department of Justice have differences and similarities that justify maintaining both as protectors of the competitive process. The two agencies do not duplicate each other's enforcement work. To ensure that there is no duplication of efforts, the agencies follow established clearance procedures, designed to avoid the investigation or prosecution of the same violations. In addition, the agencies apply the same analytical standards, as reflected in the increasing practice of issuing joint guidelines, such as those issued in recent years on horizontal mergers, health care, international antitrust, and intellectual property issues.

Under the Maintaining Competition Mission, the Commission has sought to eliminate unnecessary business burdens by exempting certain mergers and acquisitions from the HSR requirements for premerger notification and filing fees. As a result, the number of required filings could decline by as much as seven percent per year. In addition, some automatic "prior approval" requirements in merger consent orders have been eliminated.

Preserving Competition Amid One of the Largest Merger Waves in History. The United States is undergoing a merger wave of nearly unprecedented proportions, with over 2,800 merger filings in fiscal year 1995 alone. Mergers generally play an important role facilitating the efficient allocation of resources. Some mergers, however, may lessen competition and thereby deprive consumers of the lower prices, higher quality, and/or faster innovation that would otherwise prevail. The FTC's merger enforcement program applies

the best tools of investigative fact-finding and economic and legal analysis to separate a merger's likely beneficial effects from its likely harmful effects. The vast majority of mergers receive a quick scrutiny that reveals that no further inquiry is needed.

In the past year alone, the FTC took action in a wide range of industries—including health, defense, consumer wire fund transfers, computer software, natural gas transportation, cable television systems, chemicals, supermarkets, and funeral homes—to ensure that merger transactions would benefit rather than harm consumers. Actions taken included:

Hoechst/Merrell Dow - the FTC's consent order allowed the merger of two large drug companies and the realization of many procompetitive efficiencies, but required divestitures to prevent a loss of competition in four drugs, including treatments for tuberculosis and ulcerative colitis. In the largest market alone (once-a-day diltiazem for angina and hypertension sufferers), consumers may save up to \$30 million per year, based on the number of patients who use the competing drug and the expected savings per patient.

Questar/Kern River - the Commission voted to authorize its staff to seek a preliminary injunction that would have prevented Questar from reestablishing a monopoly over the transmission of natural gas to customers in the Salt Lake City area through a proposed 50 percent acquisition of its only competitor. The parties abandoned the transaction prior to the court's ruling on the Commission's preliminary injunction request.

Service Corporation International - the FTC obtained a consent order against the largest owner of funeral homes in North America, allowing most of a proposed acquisition to proceed but required divestitures to preserve competition in seven localized markets where competition would have been injured.

First Data/First Financial - the FTC acted to prevent a monopoly in the consumer money wire transfer business by requiring a divestiture. Absent competition, Western Union had been able to impose 5-8 percent annual price increases; the addition of a competitor to the market in 1989 had prevented such increases. The merger threatened to restore the monopoly. The FTC's order preventing the return to monopoly potentially saves consumers up to \$30 million per year.

Preserving Competition in Health Care. In rapidly evolving markets such as health care, the demands upon the Commission can be especially great, both because of the pace of merger and acquisition activity and because efforts to cut costs and increase efficiency can be unsettling to those already in the market, who may resist such change in anticompetitive ways. Among the more noteworthy Commission activities in fiscal years 1995 and 1996 to date are:

Upjohn Co./Pharmacia Akt. - a consent order allowed the potentially beneficial parts of this \$13.9 billion merger to proceed, but required divestitures to maintain competition in the market for new drugs for the treatment of colorectal cancer.

Boston Scientific/CVIS and SciMed - a consent order maintained competition in the market for intravascular ultrasound catheters. The potential savings to consumers may amount to \$15 million/year by the year 2000, based on the amount prices fell the last time a competing product entered this market.

Johnson & Johnson/Cordis Corp. - a consent order permitted most of this \$1.8 billion acquisition to go forward, but required a divestiture to maintain competition in the market for cranial shunts used in treatment of hydrocephalus, a potentially fatal condition affecting infants and children.

RxCare - a proposed consent order would eliminate contractual provisions that were used by pharmacists in control of Tennessee's dominant prescription drug provider network to keep prescription prices higher in Tennessee than in other states. Removal of these contractual provisions will allow market forces to bring down prices to Tennessee consumers.

Defense and High Technology: Preserving Competition To Promote Innovation and Save Tax Dollars in Cutting-Edge Industries. In *Lockheed/Martin Marietta*, an FTC consent order preserved competition in the supply of military aircraft, military satellites, and satellite launch vehicles; that competition directly benefitted the U.S. taxpayers in a subsequent \$22 billion Department of Defense procurement for a space-based early warning system. Other Commission actions included:

Alliant/Hercules - an FTC consent order remedied concerns that Alliant would be the only U.S. supplier of propellant for large-caliber ammunition and that the acquisition could reduce weapons research, innovation, and quality.

Dell Computers Corp. - the FTC's proposed consent order would remedy the anticompetitive effects of Dell's after-the-fact assertion of patent rights needed to implement an industry standard for a significant component of personal computers.

Antitrust Guidelines for the Licensing of Intellectual Property - jointly issued by Commission and the Antitrust Division of the Department of Justice, the Intellectual Property Guidelines promote innovation and procompetitive transactions by removing unnecessary fear of antitrust challenge.

Consumer Protection

Under its Consumer Protection Mission, the Commission pursues illegal practices that are, or could become, widespread and that involve a risk of significant personal or economic harm to consumers. One major focus of the Mission involves practices that create risks to consumers' health and safety, for example, unsubstantiated claims for weight loss products and services, health related claims in advertising for food and dietary supplements; deceptive claims involving safety devices and high risk products such as tobacco and alcohol; false claims regarding compliance with safety standards; and fraudulent claims for medical treatments. Another major focus involves illegal practices that are likely to create significant

economic losses to individual consumers, including investment frauds, deceptive marketing of business opportunities and franchises, and unlawful credit practices with respect to major purchases such as homes and automobiles. The Commission also pursues areas of strong national interest, such as lending discrimination under the Equal Credit Opportunity Act, where the focus is on discriminatory practices involving home mortgages, automobile financing, and secured loans.

Recent areas of focus for the Mission involve newly emerging practices in the marketplace that potentially pose risks of injury to consumers, including the dramatic expansion of leasing, as opposed to financing, in the automobile market, and the emergence of new health care delivery systems and medical treatments. The Mission also includes the active pursuit of illegal practices involving newer forms of marketing, such as infomercials, home shopping channels, and advertising and marketing on the Internet and online services. In addition, the Commission is reviewing the advertising of high technology products, such as computer hardware and software, which traditionally have been marketed to groups with technical expertise, but now are reaching more consumers.

The Consumer Protection Mission includes five law enforcement programs: Advertising Practices; Service Industry Practices; Marketing Practices; Credit Practices; and Enforcement. These are supported by the Economic and Consumer Policy Analysis program and the Office of Consumer and Business Education. The resources requested for the Consumer Protection Mission will be used to implement mission-wide strategic plans, including: (1) protecting consumers from fraud, deception, and unfair practices in three priority areas -- health, safety, and financial well-being; (2) identifying the impact on consumers of globalization and new technologies to build institutional expertise in these areas, and to adapt consumer protection principles to correct practices that harm consumers and undermine these new markets; and (3) assuring the Mission is operating efficiently and utilizing creative approaches that effectively protect consumers, but do not unduly burden business. As part of implementing these plans, the Mission is committed to educating consumers and businesses about their rights and responsibilities under Commission rules and regulations.

For fiscal year 1997, under the Consumer Protection Mission, the Commission seeks a total of 509 FTE and \$54,219,100, for an increase of \$1,843,000 over fiscal year 1996. Given the vast amount of commerce within the scope of our jurisdiction, the amount requested to combat unfair or deceptive acts or practices will require that the Commission continue to be an effective, low-cost law enforcement agency. Our recent significant accomplishments show just how effective we have been.

Regulatory Reform. In its effort to eliminate unnecessary burdens from the past, the Commission repealed 25 percent of its Trade Regulation Rules, many of which had become outdated. The Commission also repealed 25 percent of old Consumer Protection Guides, as well as several policy statements. A review of 20 additional Trade Regulation Rules and Guides is underway to determine whether they need to be revamped or repealed.

Telemarketing Fraud. Telemarketing fraud costs consumers up to \$40 billion a year. The Commission has made this vast problem one of its highest priorities. For example, a Commission-led multi-agency "sweep" of telemarketed business opportunity fraud estimated to cost consumers over \$100 million a year resulted in 100 court actions (Project Telesweep). Another major crackdown aimed at telemarketers who peddle fraudulent high-tech investments which cost consumers over \$250 million, culminated in 85 actions brought by the Commission and 20 state securities regulators (Project Roadblock). A third successful effort saw the Commission join with the FBI in an enormous effort that closed down sweepstakes, recovery room, and similar frauds that target older Americans (Operation Senior Sentinel). FTC attorneys, working as Special Assistant U.S. Attorneys, spearheaded a joint federal-state task force that led to restitution orders of more than \$2.7 million and sentences against individual fraudulent telemarketers totaling 531 months (Chattanooga Telemarketing Fraud Project). To help collect refunds owed to consumers by fraudulent telemarketers and others, the Commission became the first federal agency to refer uncollected debt to the U.S. Treasury's Debt Management Services Division.

The Commission's Telemarketing Sales Rule became effective on December 31, 1995, providing a new tool for dealing with Telemarketing fraud. The Rule covers most types of telemarketing calls to consumers, including calls to pitch goods, services, sweepstakes, and prize-promotion and investment opportunities. It allows consumers to choose whether telemarketers can continue to call them, and gives them information that is helpful in deciding whether an offer is legitimate. The Rule is enforceable by the FTC and the fifty state attorneys general, for the first time giving the AGs authority to go into federal courts and obtain nationwide orders against fraudulent telemarketers.

The Commission and the National Association of Attorneys General co-sponsored 15 regional conferences last year, which were attended by more than 1,000 federal, state, and local law enforcement officials. The conferences have led to many joint investigations, enforcement actions, and consumer education projects.

Health Care. The Commission has made consumer health and safety another of its priorities. For example, two of the nation's largest manufacturers of hearing aids paid a total of over \$3.5 million in civil penalties to settle charges they violated previous FTC orders involving false and unsubstantiated performance claims for several of their products (Dahlberg, Inc., Beltone Electronics Corp.). The Commission obtained agreements with three of the nation's leading food companies to stop false and misleading low-calorie and low-fat food claims (Eskimo Pie Corp., The Dannon Company, Mrs. Fields Cookies).

A company charged with making deceptive weight-loss, body-building, and disease-treatment claims for 26 nutrient supplements agreed to stop the practice and pay \$250,000 in consumer redress (Nature's Bounty). The Commission also obtained an agreement with a major marketer of indoor exercise equipment alleged to have made unsubstantiated weight loss and maintenance claims in advertising its cross country ski exercise machine (NordicTrack, Inc.). In addition, a cigarette company agreed to stop misusing the Commission's tar and nicotine ratings to represent that consumers would get less tar in smoking their advertised low-tar brand cigarette (American Tobacco).

In a case that is still in litigation, the Commission issued an administrative complaint against a home shopping network for making unsubstantiated claims for a stop-smoking spray and three vitamin sprays in television ads reaching 60 million households (Home Shopping Network).

Economic Injury. The Commission also focuses its enforcement efforts on unfair and deceptive practices that are widespread and have the potential for causing significant economic injury to consumers. For example, in its first action enforcing the FTC 900 Number Rule, the Commission obtained an agreement with a company charged with illegally using 800 telephone numbers for pay-per-call services and then billing customers for the calls. The company agreed to pay \$2 million in consumer redress and \$500 thousand in civil penalties and set up a free 800-number for customers to use to claim their refunds (American TelNet, Inc.). The Commission obtained an agreement with one of the largest credit bureaus in the nation, settling charges of violations of the Fair Credit Reporting Act by failing to assure the accuracy of credit reports and for improperly distributing credit reports (Equifax Credit Information Services, Inc.). One of the nation's largest debt collection agencies agreed to pay a \$500,000 civil penalty to settle charges it used abusive practices and false threats in violation of the Fair Debt Collection Practices Act (Payco American Corp.). A second company charged with deliberate violations of the same Act was ordered by a federal district court to pay a \$500,000 civil penalty (National Financial Services).

The Commission charged a nationally known company with violating a previous FTC order by making false and unsubstantiated claims for its motor oil additives. The company agreed to pay an \$888,000 civil penalty, one of the largest consumer protection penalties ever obtained (STP Corporation). A leading gasoline company agreed to stop making unsubstantiated claims that its gasoline delivers superior engine performance and environmental benefits (Amoco Oil Company). Consumers misled by promotions for toys will receive refunds as a result of an agreement obtained by the Commission; a toy manufacturer and its advertising agency were charged with misrepresenting the performance of a number of toys in both television ads and package labels (Azrak-Hamway).

Cooperative Efforts. To achieve the greatest impact, the Commission has joined forces with many other groups to combat fraud and deception. Efforts previously described such as the enforcement sweeps, regional conferences on fraud, and the debt collection efforts with Treasury are examples of cooperative efforts that have achieved results that one agency alone could not have achieved. In addition to these efforts, the Commission worked closely with Medical Information Bureau (MIB), which reached a voluntary agreement to notify consumers when a consumer credit report plays any part in an insurance company's decision to deny coverage or charge a higher rate. This agreement is particularly significant because MIB member companies account for 99 percent of the individual life insurance policies and 80 percent of all health and disability policies issued in the U.S. and Canada.

The Commission announced its support of a new funeral industry program to institute the Commission's first industry-monitored rule enforcement program. Under the Funeral Rule Offenders Program, the Commission permits some alleged Funeral Rule violators to

make a voluntary payment to the U.S. Treasury in lieu of civil penalty proceedings. Violators also undergo training and compliance review by the industry's trade association.

Through informal public workshops that bring together industry representatives, consumer groups, government agencies, academics, and other members of the public, the Commission has opened a dialogue with the public on a number of initiatives. For example, public workshops are held to help develop new rules, such as the Telemarketing Sales Rule; to review existing rules or guides, such as the Franchise Rule and the Environmental Marketing Guides; and to examine complex policy issues, such as the "Made in the USA" legal standard.

As part of its recent hearings on globalization and innovation, the Commission held four days of hearings on consumer protection in the emerging high-tech global marketplace. More than 80 business and consumer group representatives testified, as did many state enforcement officials, academic researchers, and other members of the legal and economic community. The hearings were well-received and successful in opening an important dialogue on the complex consumer protection issues that are on the horizon.

Many cooperative efforts that have significant impact stem from joint consumer and business education projects. For example, with the National Association of Attorneys General, the Commission produced "The Real Deal," a heralded activity book to educate pre-teens on how to be savvy consumers. More than 130,000 copies of this activity book were distributed nationwide. The Partnership for Consumer Education is a group of nearly 50 businesses and associations, including direct marketers, advertising agencies, telephone companies, consumer groups, and government agencies, working with the Commission in a major effort to combat telemarketing fraud. The FTC's ConsumerLine on the Internet allows the public to access all of the Commission's business and educational publications, as well as the opportunity to ask questions about a hot topic through a program called Consumer FAQs. ConsumerLine has received over 100,000 "hits" since its inception one year ago.

Technical Assistance Agreement

Under our reimbursable agreement with the Agency for International Development (AID), the Commission continues to provide technical assistance to foreign governments in restructuring their economies. The assistance, which is funded by AID, enables the Commission to provide advice on the policies, laws, and regulations relating to the development of a competitive market environment, and on "how-to" aspects of case development and presentation. The Commission currently has agreements with AID for Central and Eastern Europe, the former Soviet Union, and Venezuela.

Management Initiatives

During fiscal year 1997, the Commission will continue planned integration of budget, financial and program information systems as clients of the Department of the Interior's Denver Administrative Service Center (ASC). To this end, in the first quarter of fiscal year 1996, the Commission converted its payroll and personnel system activities to the ASC,

where we were also receiving accounting system payments services. This franchising arrangement and other changes have led to faster, more accurate financial information and to the reallocation of 15 FTE to the direct Missions for their priority needs.

The fiscal year 1997 request proposes to maintain Commission-wide information systems at the high quality made possible by Congressional and Executive Branch support over the past several years. This support has brought the Commission to a point where it generally has an excellent information systems infrastructure in place. In the future, investments will be required for support and maintenance; for expansion and further upgrading of capabilities as work requirements continue to grow and as technology continues its rapid rate of change in the marketplace; and for continuation of the Commission's ongoing process of integrating these improved information systems in its basic business processes.

* * * *

I appreciate your past support of the Federal Trade Commission. Our ultimate goal is to support competition and the economic well being of this nation through effective and resource-efficient enforcement programs.

WITNESSES

	Page
Casellas, G.F	141
Creel, H.J., Jr	93
Eakeley, D.S	17
Forger, A.D	17
Horberger, Albert	93
Hoffman, Henry	203
Lane, Brian	203
Levitt, Arthur	203
McConnell, James	203
Richards, Lori	203
Rogers, N.H	17
Schlein, Michael	203
Smith, Hon. C.H	1
Walker, Richard	203
Williams, Kaye	203



INDEX

Legal Services Corporation

	Page
Budget:	
Constraints	42
Fiscal Year 1997 Budget Request and Savings	59
Impact of 1996 Budget Reduction	47
Non-Federal Funding Sources	61
Biographical Sketches of Witnesses:	
Eakeley, Douglas S.—Chairman of the LSC Board	38
Forger, Alexander D.—LSC President	38
Rogers, Nancy Hardin—Vice-Chair of the LSC Board	38
Child-Related Cases	56
Class Action Suits	43
Competitive Grant Awards	66
Competition	71
Oversight of Grantees	67
Congressional Casework Compared to LSC Casework	68
Management Changes in the Corporation	42
Inspector General Report	51
Opening Statements:	
Eakeley, Douglas S.—Chairman of the LSC Board	17
Forger, Alexander D.—LSC President	40
Rogers, Harold—Chairman of House Subcommittee on Commerce, Justice, State, The Judiciary, and Related Agencies	17
Rogers, Nancy Hardin—Vice-Chair of the LSC Board	39
Written Statement Submitted by LSC	20
Private Attorney Involvement	69
Program Priorities	44
Restrictions	54
Responses to Questions Submitted by:	
Skaggs, David E	90
Rogers, Harold	77
Taylor, Charles H	79
Violence Against Women, Cases Related to	64

Maritime Administration and Federal Maritime Commission

Closing FMC Field Offices.....	117, 122
Funding Cuts (FMC)	121
FY 1996 Reductions	117
General Statement of the Chairman	93
Industry Letter of Support for FMC	109
Maritime National Security Program	123
Maritime Security Program	124, 127

	Page
Maritime Student Service Obligations	126
Naval Academy Preparatory School	127
Opening Statement of the Chairman of the Federal Maritime Commission	106
Opening Statement of the Maritime Administrator	93
Prepared Statement of the Chairman of the Federal Maritime Commission	111
Prepared Statement of the Maritime Administrator	96
Question for the Record from Congressman Taylor:	
Title XI Program	133
Ready Reserve Force Funding	123
Scrap Ship Sales:	
Status of Current Program	127
Value of Ships	129
Shipping Reform Act:	
FMC Position.....	118, 120
MARAD Position	120
State Maritime Schools Funding	125
Title XI Program	131
Training Ship Program	125
 Equal Employment Opportunity Commission	
Alternative Dispute Resolution	192
Carryover Authority	192
Casellas, Gilbert F.:	
Biography	141
Statement	141
Testimony	146
Class Action Litigation	194
Federal Sector Appeals:	
Reform of	193
Workload	200
Witness	141
 Securities and Exchange Commission	
Audits	225
Centralizing Disclosure Functions	226
Closing Statement	229
Collection of Fines	225
Derivatives	228
EDGAR System	226
Funding Issues	224
Headquarters Locations	227
Industry and Regulatory Environments	204
Litigation Support	224
Market Issues	228
On-Line Services	227
Opening Statement	203
Privatizing EDGAR	227
Questions Submitted for the Record	230-235
Increased Bankruptcy Cases	234
Initial Public Offerings	230
International Activities	231
Political Influence in the Industry	232
Securities Litigation Reform	234
Sexual Harassment	233

	Page
SEC Authorization	224
Securities Litigation Reform	227
Testimony of Arthur Levitt, Chairman	207
Conclusion	221
Funding Structure	220
Improving Disclosure	214
Investor Outreach	218
Law Enforcement	216
Making Agency Structure and Processes More Efficient	211
Market Growth	209
Other Current Projects	219
Promoting Capital Formation	213
Promoting the International Competitiveness of the Markets	215
Recent Commission Achievements and Ongoing Initiatives Selected High-lights	221-219
Role of the SEC	208
Witnesses	203