

LEGAL SERVICES CORPORATION
REAUTHORIZATION COMMITTEE ~~MEETING~~ HEARING

OPEN SESSION

April 19, 1991

9:40 a.m.

Chicago Marriott Downtown
540 North Michigan Street
Chicago, Illinois 60611

Board Members Present:

Basile J. Uddo, Chairman
Howard H. Dana, Jr.
J. Blakeley Hall
William L. Kirk, Jr.
Jo Betts Love
Penny Pullen
George W. Wittgraf
Jeanine E. Wolbeck

Staff Present:

David Martin, President
Patricia Batie
Ken Boehm
Emilia DiSanto
Christopher Dowe
Maureen Gawler

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P R O C E E D I N G S

1
2 CHAIRMAN UDDO: We have a quorum of the committee
3 here, and I know Mr. Kirk is going to be down in a minute.
4 Can you hear me okay?

5 This is the second meeting of Legal Services
6 Corporation Committee on Reauthorization. My name is Basile
7 Uddo. I am the chairman of the committee. With us today are
8 Howard Dana, who is a member of the committee, to my right;
9 Mr. George Wittgraf who was here a second ago, who is the
10 chairman of the board and also a member of the committee.
11 Now, where did George disappear to? Did I lose my quorum?
12 Mr. Bud Kirk I know is also in town; he's a member of the
13 committee. And Ms. Penny Pullen is on her way. She's going
14 to get here around noontime as I understand it. And that will
15 give us our full committee when she gets here.

16 To my far left, Ms. Jeanine Wolbeck is a member of
17 the board. And next to her, Ms. Jo Betts Love is also a
18 member of the board. And, and course, our president to my
19 immediate left, Mr. David Martin.

20 We welcome you all here this morning. We are in the
21 process of continuing what we started in San Francisco. This
22 is Mr. Kirk walking in here. We started in San Francisco

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1 taking testimony from all interested parties on the question
2 of Legal Services Corporation reauthorization. We heard close
3 to 30 people, I believe, in San Francisco and had a good deal
4 of interesting and provocative testimony there, and we hope to
5 continue that today.

6 This committee will also meet tomorrow to
7 deliberate. We will not be taking any additional testimony
8 tomorrow, and the committee will deliberate tomorrow about
9 recommendations that it might make to the board for its board
10 meeting on Monday, April 29th.

11 Before we get into taking testimony -- can someone
12 get Ken Boehm here, please? We have several statements that
13 have been submitted in writing, and there will not be any
14 speakers to go along with them, so I want to make sure these
15 all get introduced into the record early on. I just want to
16 make sure I've got all of the written statements here, and you
17 just follow through.

18 MR. BOEHM: There should be a total of four.

19 CHAIRMAN UDDO: The first one we have is Mr.
20 Stenholm has submitted a written statement to the committee
21 with his comments about reauthorization. I'd like to put that
22 into the record this morning.

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1 We have a statement from the National Right to Life
2 Committee, signed by Mr. Douglas Johnson, a legislative
3 director, which will also be put into the record.

4 We have a statement by Clark Forsythe, vice
5 president and general counsel of the Americans United for
6 Life, based here in Chicago, which is also a statement on
7 reauthorization which will be placed into the record.

8 And we have a this is actually not a statement, this
9 is a previous study done by the ABA on the San Antonio Voucher
10 Project which we are going to talk about later today.
11 Professor Cox who conducted that study is going to be here to
12 testify about his study and the results of his study. This
13 report which has been presented to us this morning by Mr.
14 Lonnie Powers with the ABA is a report that was previously
15 done with respect to that study. So it's not a statement
16 specifically about reauthorization. But because we have
17 Professor Cox here today and Professor Meeker, and the
18 question of competition and the variety of studies that have
19 been done in the past is on the agenda today, Mr. Powers has
20 submitted this report, ABA report, for the record.

21 So I think that covers it. We've got four reports
22 that have been submitted in writing and are being distributed,

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1 or have been distributed to the members of the committee and
2 the board.

3 I would ask, we're trying to accommodate folks who
4 have to get in and out early this morning. To the extent that
5 we can, we'll do that. In an effort to complete our agenda,
6 keeping in mind that this afternoon we do have a couple of
7 presentations that may take more time than the usual
8 presentation, we are trying to ask you to be as concise as you
9 can. If you have a written statement, please submit it to us
10 before you begin your statement. It gives us a chance to
11 maybe look through it and develop some questions if we have
12 them.

13 We would like for you to stay within a reasonable
14 time limit. Judging from what I see on the schedule, I'm
15 going to try to keep you to somewhere around 15 minutes, which
16 will I think get us through our agenda just fine. We would
17 also like to have time to ask questions, so if you would,
18 please be prepared for that and be patient with us as we try
19 to get through the committee and the board members who might
20 have questions.

21 Again, if I do rush you a bit, please don't take
22 offense. It's no reflection on the importance of your

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1 appearance or your statement, but we do want to give everyone
2 a full and fair chance, and this is the last day of hearings
3 that we expect to have before we make some recommendations to
4 the board, so I don't want anyone to get dropped off of this
5 list for lack of time.

6 With that in mind, are there any comments from any
7 members of the committee, or suggestions, or procedural
8 matters that we need to deal with?

9 (No response.)

10 CHAIRMAN UDDO: Okay. We will have a lunch break.
11 We're scheduled for a lunch break at 12:30. The committee and
12 board members will be eating here in the room, and we'll try
13 to be very brief with that lunch break. But if you have plans
14 that you want to make and you see that you're getting close to
15 12:30, and you haven't come up here yet, there's going to be a
16 brief break around 12:30 so that you can sort of plan your
17 schedule around that.

18 In San Francisco, we only took about 30 minutes for
19 lunch, so you can pretty much figure that we'll get started
20 again within 30 minutes of breaking for lunch. At least
21 that's my plan.

22 If we could, we'll start our first speaker this

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1 morning is Ms. Laura Bellows, who is the First Vice President
2 of the Chicago Bar Association, and we welcome Ms. Bellows to
3 the hearing.

4 PRESENTATIONS OF LAURA BELLOWS,
5 FIRST VICE PRESIDENT, CHICAGO BAR ASSOCIATION;

6 AND

7 MICHAEL O'CONNOR, CHAIRMAN,
8 LEGAL AID COMMITTEE, CHICAGO BAR ASSOCIATION

9 MS. BELLOWS: Thank you, Mr. Uddo. I have with me
10 today Michael O'Connor, who is Chairman of the Chicago Bar
11 Association's Legal Aid Committee as well. And I bring with
12 me the regrets of Ruth Ann Schmidt, who is Director of the
13 Illinois Lawyers Trust Fund, who is in the midst of closely
14 scheduled site visits, and so she will not attend a meeting.
15 But a little of my message relates to her thoughts as well
16 today.

17 I speak to you on behalf of the Chicago Bar
18 Association, and you should know that the Chicago Bar
19 Association has 22,000 members. We consider ourselves to be
20 one of the most active metropolitan bar associations in the
21 country.

22 And good morning, I'm sorry, Mr. Chairman, Mr.

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1 President, Members of the Board and the Committee. In an
2 effort to run through my lengthy scribbled notes, I forgot it.

3 The Chicago Bar Association has been active and
4 committed to the delivery of legal services in the larger
5 Chicago Metropolitan Area for many years. We have a direct
6 support to the Cook County Legal Assistance, and LAF, and
7 Chicago Volunteer Legal Services. We have been involved in
8 the recruitment of volunteers for Chicago Volunteer Legal
9 Services since its inception in 1964, and this is the oldest
10 and longest standing and largest volunteer program in the
11 country.

12 The Chicago Bar Association founded the Legal Clinic
13 for the Disabled, Neighborhood Justice Center, which is
14 operating under a new name now, and is presently addressing
15 the needs in our forcible entry and detainer courtrooms which
16 see 150,000 eviction cases every year. We are beginning a
17 program now to resolve the backlog of 11,000 children who find
18 themselves without permanency planning right now in our
19 juvenile court system.

20 The Chicago Bar Association runs legal assistance
21 programs for the homeless, for immigrants, for community
22 organizations undertaking economic development, jail projects,

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1 battered women's projects, call-a-lawyer radio programs, many
2 others. We have a rich fabric of legal services in our
3 community, but my message today to you is we are doing
4 everything that we think we possibly can to address the
5 tremendous need, and it is not enough.

6 Despite all our efforts and all the efforts of the
7 legal services providers in Illinois, the Legal Needs Study,
8 of which I co-chaired the Advisory Committee, so I come to you
9 with serious knowledge of the problems we have not only in the
10 Chicago area but in our state, we find that eight out of 10
11 people in Illinois below the poverty level, with a civil legal
12 need, are on their own. That's not a new message to you, I
13 understand.

14 But in addition to us, I bring you the message that
15 the working poor, the near poor, the people that we consider
16 poor because they can't eat and they don't have shelter, but
17 simply don't meet the federal guidelines, these people are
18 under tremendous duress that the Chicago Bar Association and
19 the active and caring lawyers of our community are also being
20 asked to address. And so I understand, of course, that your
21 funding doesn't address these needs, but our resources are
22 stretched to the limit and these are the things that I would

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1 like to have you take into consideration in your
2 deliberations.

3 Great care was taken in the developing of the
4 methodology of the Illinois Legal Needs Study. I have brought
5 a copy today, and I'll be pleased to introduce it into the
6 record and leave it for you. But I expect that you all have
7 seen and heard our message.

8 Great effort was taken to formulate the questions
9 which would assure that the legal problems addressed by this
10 survey were in fact legal problems. The survey was formulated
11 by the Advisory Committee of which I was co-chair, the private
12 bar providers, every provider in the State of Illinois. And
13 it was not formulated by our survey consultants, and that is
14 something I think you should understand.

15 The language in this Legal Needs Study is our
16 language so far as the survey is concerned, and it differs
17 from the studies done by the other states. Our study preceded
18 the study in New York. Although the results are similar, I
19 think it is not so much a coincidence as a demonstration of
20 the need nationwide.

21 The results are indisputable. Existing resources
22 are stretched beyond the limits. Our poor clearly do not have

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1 equal access to our courts. And, importantly, the problem is
2 so enormous that the burden of solving the need cannot be laid
3 solely at the door of the lawyers of our nation.

4 We are here in opposition to the McCollum-Stenholm
5 bill. We have taken at the Chicago Bar Association a formal
6 position in opposition to the bill and its reforms. It seeks
7 to dismantle the legal services delivery system which, with
8 proven effectiveness, has served the legal needs of America's
9 poor citizens for 25 years.

10 The Chicago Bar Association commends the Legal
11 Assistance and the Cook County Legal Assistance Foundation and
12 the Chicago Volunteer Legal Services which operate efficient,
13 well-respected programs in the Chicago area under the most
14 difficult of circumstances. They have continued the fight to
15 represent our poor in the face of substantial funding
16 cutbacks, exacerbated by a rapidly increasing need for their
17 services.

18 And because of the Chicago Bar Association's
19 involvement in the Illinois Legal Needs Study and my personal
20 involvement, I can confirm to you that the commitment and
21 experience of legal service providers in Chicago is equaled by
22 the tremendous accomplishment of the providers throughout the

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1 State of Illinois.

2 The problems faced by programs throughout Illinois
3 certainly involve funding, but they involve concerns which
4 face programs such as Prairie State which served 29 counties
5 in Illinois, good-sized urban populations and sparsely
6 populated rural areas; and Land of Lincoln, which serves 65
7 counties in Illinois, including East St. Louis, one of the
8 poorest urban areas of our country, at the same time they must
9 meet the need of the poorest corners of rural Illinois.

10 There is no legal service problem, I think, anywhere
11 in the country that we have not encountered in Illinois
12 because of the tremendous rural situation and the industrial
13 problems that we are experiencing. A major downturn
14 economically finds out state with one of the highest rates of
15 unemployment in the country and truly low public aid in
16 comparison.

17 IOLTA, Illinois Lawyers Trust Fund, will give \$3
18 million in grants this year, and those grants will just put a
19 finger in the dike. They will only make sure that the legal
20 services programs are not being cut back, that staff is not
21 being cut and programs are cut back. Very few of these IOLTA
22 grant dollars will be able to go to new programs or new staff

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1 members.

2 In short, Illinois legal services programs have
3 their plates overloaded and do a superior job under these
4 circumstances.

5 Some specific provisions. Although the Chicago Bar
6 Association opposes the entire bill, we could speak to section
7 5, the procedural safeguards for litigation, which in our
8 opinion is without justification, imposing special burdens
9 upon the poor.

10 We in general support the entire package of the ABA
11 report that you have introduced into the record so far as the
12 comments in relation to the McCollum-Stenholm bill, and so we
13 might not need to go into great detail. It is your choice.
14 But section 5 provides confidentiality for problems with
15 regard to the work product that it requires us to share with
16 Legal Services Corporation, and I think you must take that
17 seriously and into consideration.

18 Another specific provision is section 6, lobbying,
19 which prohibits all legislative administrative advocacy, and
20 the Chicago Bar Association and myself find this very, very
21 difficult to reconcile with the attempt to find alternative
22 means to handle legal services problems.

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1 Alternative means to me includes addressing self-
2 help, self-help pamphlets, addressing legislatively law
3 reform, changes to our system which will cut through the
4 bureaucracy and allow individuals who might have legal
5 services problems to help themselves. We feel very strongly
6 about this situation; that without being able to lobby, to
7 legislate, to cut through the bureaucracy, we will never in
8 the face of diminishing funds attack the problem of the poor
9 in our state or anywhere in the country.

10 Section 9, the regulation of nonpublic sources. I
11 have spoken about IOLTA in particular. Illinois Lawyers Trust
12 Fund is the child of the Chicago Bar Association and the
13 Illinois State Bar Association. Together we appoint two-
14 thirds of their board. One-third of their board is appointed
15 by the Illinois Supreme Court. On the IOLTA board sits a
16 justice of the Illinois Supreme Court. There is no question
17 that IOLTA is very, very careful about complying with federal
18 regulations and assuring that to those it issues grants comply
19 with federal regulations.

20 It works hard to respect the restrictions, and the
21 legislation proposed attempts to direct IOLTA funding. It is
22 at best unsettling, overreaching, and I suggest insulting to

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1 those who are respected members of the community. The Chicago
2 Bar Association is a respected member of the community. So is
3 the Illinois State Bar Association, and we appoint members
4 with great care to that board. And to direct those funds is
5 of great concern to us. That is particularly true when those
6 funds, the non-LSC funds, as you are well aware, are the only
7 funds available to handle problems that are borderline
8 criminal in the child support area, to handle issues that LSC
9 has not judged their funds should be applied to. But to
10 determine the application of other funds seems to put the poor
11 a lot deeper into the hole and make certain that we have
12 generations of poor who have no chance of recovering and being
13 viable citizens of our country.

14 Section 11, implementation of competition, I know
15 will be spoken to by a number of providers. I understand also
16 that you are considering a demonstration project, but I
17 indicate that we are strongly opposed.

18 Equal access to justice and to our courts, members
19 of the committee, is the foundation of our country. It
20 distresses me that we are attacking the funding and the
21 programs which give the people who are most vulnerable their
22 only chance in our system.

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1 At the moment, we look at legal services for the
2 poor as an unattainable dream because we have so far to go.
3 But I suggest that what the reforms propose would make this
4 present system, which is operating efficiently but in crying
5 need of funds, would make this present system a nightmare.

6 The Board of Managers of the Chicago Bar Association
7 therefore strongly opposes the Stenholm legislation. The
8 Board of the Illinois Lawyers Trust Fund has likewise taken
9 that position. And the Chicago Bar Association stands
10 strongly in support of the extensive comments made by the
11 American Bar Association which you have in the record.

12 There is grass roots support throughout Illinois for
13 the Legal Services Corporation. The system is not in need of
14 these reforms, but the system is of course desperately in need
15 of funds.

16 I was pleased to speak with President Martin at the
17 American Bar Association in Seattle. He may recall that along
18 with other bar leaders, I expressed dismay at the need that
19 might be felt to start from scratch to reconfirm the existence
20 of the extraordinary level of need for legal services in our
21 country.

22 As co-chair of the Advisory Committee of the

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1 Illinois Legal Needs Study, and also under my hat with the
2 Chicago Bar Association, I certainly offer you any assistance
3 necessary to confirm the tremendous problems which face the
4 poor people in need of legal services in the metropolitan
5 areas of Chicago and throughout Illinois.

6 We believe this is a problem that is a social
7 problem. It is a problem where evictions may be the legal
8 symptom, but the disease is poverty and lack of decent housing
9 and homelessness that results from that specific need stands
10 at everybody's door. Matrimonial issues unresolved result in
11 nonpayment of child support, and then we're talking about
12 children without food and shelter. These are the basic needs
13 of our people, and I thank you for your time.

14 CHAIRMAN UDDO: Thank you very much, Ms. Bellows.
15 Before I ask for questions from the committee or the board,
16 let me just ask you a question, I guess a procedural question.

17 How does the Chicago Bar Association make a
18 determination about a position on something like this? Is
19 this done by a committee or the board? Just procedurally, how
20 is that done?

21 MS. BELLOWS: What we do is, we refer any
22 legislation that we are reviewing to the committees who are

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1 involved. And in this case, of course, it would be the Legal
2 Aid Committee, but it would be any committee, such as our
3 Matrimonial Law Committee which consists of 300 active
4 members, but any of the other committees who have any opinion
5 on any portion of the legislation. We also have a very active
6 Legislative Committee which is reviewing the legislation
7 technically at the same time.

8 Those committees individually submit reports to the
9 Board of Managers and make appearances before the Board of
10 Managers, and the Board of Managers then deliberates and
11 votes.

12 CHAIRMAN UDDO: So the Board of Managers actually
13 had meetings to gather this information on the position of the
14 Chicago Bar Association with respect to this legislation?

15 MS. BELLOWS: The Board of Managers gathers that,
16 but it also takes under advisement the written reports of the
17 committees who were involved. And because in this case we're
18 also talking about not the Stenholm legislation alone, but the
19 compilation with that and the Legal Needs Study, there are
20 many committees of the Bar Association that are involved in
21 this issue.

22 CHAIRMAN UDDO: Do you know if the various

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1 committees also considered Congressman Franks' proposed
2 legislation?

3 MS. BELLOWS: I don't believe we have considered
4 that as yet.

5 CHAIRMAN UDDO: Any questions from members of the
6 committee?

7 MR. KIRK: I have one. My name is Bud Kirk. Have
8 you given any thought to getting around the difficulty of
9 monitoring the funds or setting up side-by-side programs like
10 there are in other areas of the country where the IOLTA funds
11 go through one organization and the LSC funds go through
12 another?

13 MS. BELLOWS: We have given some thought to it and
14 it's under consideration. And Mr. O'Connor can speak to that,
15 I think probably more directly. But it certainly isn't our
16 first choice to have any funds limited. I mean the side-by-
17 side program is a duplication in many instances in Chicago, a
18 duplication that we're trying actually to avoid.

19 But Mr. O'Connor might have a comment on that.

20 MR. O'CONNOR: I'm not sure I can add anything to
21 your comments.

22 MR. KIRK: You don't think there should be any

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1 restriction at all on any of the funds that the Federal
2 Government gives to the LSC --

3 MS. BELLOWS: Now are you talking about Legal
4 Services Corporation funds?

5 MR. KIRK: Yes.

6 MS. BELLOWS: I was speaking insofar as
7 restrictions. I do have an opinion on the kinds of
8 restrictions that you do presently -- I believe they are too
9 strenuous. I was directing my comments to restricting outside
10 funds, such as IOLTA or private funding, the proposed
11 restrictions.

12 MR. KIRK: Well, my point, if you had side-by-side
13 operations --

14 MS. BELLOWS: Well, what would happen, at least from
15 the --

16 MR. KIRK: Excuse me. If you don't mind me
17 finishing.

18 MS. BELLOWS: Oh, I'm so sorry, Mr. Kirk. You're
19 right.

20 MR. KIRK: If you had side-by-side operations, or
21 just maybe not side-by-side, but certainly a reasonable one
22 for IOLTA funds, to focus on the different areas that you

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1 think that those need to be directed to, you would be opposed
2 to that?

3 MS. BELLOWS: Here's the problem, one of the
4 problems that we would encounter in the Chicago area. We
5 already face the problem of our poor individuals coming to a
6 program, maybe not calling first, coming to a program and
7 being directed to one, two, three, four, five programs within
8 the Chicago area as it stands, before they find a home for
9 their problem.

10 It could be that some of those programs don't handle
11 the specific need. It could be that they are overloaded and
12 aren't taking cases that week or that month. For many
13 reasons, it is not easy to find a home. And what you're
14 suggesting is that we perhaps consider adding one more layer
15 on that problem, so that it would put the onus on the
16 individual seeking legal services, who already don't have
17 enough information about where to find them, to put the onus
18 on them to determine which program will handle their problem.

19 As it stands now, it seems to be working very well
20 in the Chicago area and throughout Illinois, where one program
21 perhaps with less bureaucracy and staff, you can enter that
22 program, tell them your problem, and there's somebody there

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1 who can assist you. They might be directing you to somebody
2 else, but you're in one place. You've dragged your three
3 children down on the bus, and you don't have to travel.

4 I'm not being facetious, but I think that in the
5 Chicago Metropolitan Area, that's one of the main answers to
6 your question is our concern of the increase in bureaucracy
7 and duplication of staff and support services.

8 MR. KIRK: I am not a supporter of some of the
9 current restrictions on funding. I want you to know that I am
10 not. I'm not trying to take food out of the mouths of
11 children --

12 MS. BELLOWS: No, I understand.

13 MR. KIRK: -- or worry about the mother with three
14 children has to drag -- I'm really not dealing with that. I'm
15 trying to deal with the issue of a way to get to the bottom of
16 this and perhaps make the programs more attractive to the
17 funders, the people that are giving the money, so they'd be
18 more willing to give money and yet accomplish the same
19 purposes.

20 It's a convenience factor, I presume, from what you
21 have --

22 MS. BELLOWS: Well, I think it's a dollar factor, is

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1 what I guess my message is, as well as not simply convenience,
2 and I wasn't attempting to bring the towel, in a sense,
3 because I know that you do not support all these reforms. But
4 it is a problem where, if you have one secretary or one
5 receptionist, they are presently handling all the requests for
6 services at that particular location.

7 Perhaps they are handling it well under difficulty,
8 but they are handling it. What is being suggested, although
9 any increase in services is wonderful and any lack of
10 restriction in funding is wonderful, but what is being
11 suggested is side by side we develop a separate program. Some
12 of those services, the support services, the paralegals, they
13 may not have had to be duplicated. The computer expense--
14 for instance, Illinois Lawyers Trust Fund spent quite a
15 portion of last year's granting in trying to give word
16 processing and computer equipment to the legal providers in
17 Illinois. That was their goal.

18 Here we are talking about, by setting up side-by-
19 side programs, a duplication of computer services and large
20 expenses, which at the moment we don't see the need for is all
21 I can say. It's not that I meet head on an attempt to
22 compromise. It's just simply that at least seeing in the

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1 Chicago area what would occur, we would be spending more money
2 on administrative expenses than on direct services.

3 CHAIRMAN UDDO: Is that it, Mr. Kirk?

4 MR. KIRK: Yes.

5 CHAIRMAN UDDO: Any other questions from members of
6 the committee? Members of the board?

7 (No response.)

8 MS. BELLOWS: Thank you for your time.

9 CHAIRMAN UDDO: Wait, wait. Mr. Wittgraf, in his
10 typical style, does not tell me he has questions until after I
11 move on, but that's okay.

12 MS. BELLOWS: Catch me on the run, right?

13 MR. WITTGRAF: You've indicated the Chicago Bar
14 Association's opposition to the reforms or the restrictions
15 included in H.R. 1345. Let me take you to the other
16 direction, if I could, in terms of thinking. And if this is
17 unfair, you tell me. But other than money, are there some
18 things that ought to be included in federal statutes that
19 would allow for the better, more efficient, more economical,
20 broader provision of similar legal services for the poor? Are
21 there some things that the so-called Frank subcommittee and,
22 in turn, the House Judiciary Committee in the House ought to

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1 be looking at beyond what the law now provides and beyond
2 those reforms or restrictions?

3 MS. BELLOWS: I'll tell you what I'm thinking, and
4 then perhaps Mr. O'Connor would like to add something to that.
5 And I suspect that that question also needs to be directed to
6 the providers who can really give a better answer.

7 But we are in an area funding crunch in the state,
8 in the city, in the Federal Government, and we understand
9 that. And I think that federal legislation which could act to
10 shortcut some of the bureaucracies, attention to some law
11 reform in the area of the paths that the poor and anyone has
12 to travel through the public aid morass or through getting
13 Social Security benefits, requirements that these offices
14 provide a little bit more of plaintiff-oriented assistance at
15 an early stage, self-help pamphlets, these are all things,
16 requirements perhaps, that the funds are directed to self-help
17 pamphlets and quick advice and referral at early stages within
18 the bureaucracy and the phone system.

19 I mean that's all things that can be considered,
20 because we recognize that there will never be enough funds to
21 handle the problem.

22 Mr. O'Connor?

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1 MR. O'CONNOR: I'm sure that the LSC-funded
2 providers who will be presenting testimony will have extensive
3 comments on this. I would just like to echo Laura Bellows'
4 observation concerning policy issues that affect legal
5 services clients.

6 I was director of the Illinois State Support Center
7 for eight years, and we have an office in Springfield, and a
8 substantial part of the resources are expended in monitoring
9 and evaluating developments in state government that affect
10 low-income persons.

11 The restrictions imposed by the Legal Services
12 Corporation have significantly limited the capacity of legal
13 services staff to effectively represent their clients in
14 administrative agencies and in legislative bodies. And there
15 are tremendous benefits to be obtained for legal services
16 clients in those forums. I would urge that the board ease
17 those restrictions and permit legal services programs to
18 effectively represent their clients in the same manner that
19 private attorneys are able to represent paying clients.

20 MR. WITTGRAF: I appreciate that comment. I'd make
21 one comment in response, in addition to saying that that's a
22 comment that was made to us by a number of people who visited

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1 with us in San Francisco, and I think is one that has been
2 brought to me by people involved with individual Legal
3 Services grantees.

4 Often times in these discussions, the Legal Services
5 Corporation and its boards of the 1980s, of course, are
6 painted as wearing the black hats. We understand that. I
7 think the restrictions to which you refer, however, are
8 statutory, and beyond that, I think that you'll find that be
9 it H.R. 1345, the so-called McCollum-Stenholm proposal, or
10 perhaps even more significantly the present proposal being
11 circulated by Congressman Frank and to be considered probably
12 next week by his subcommittee, essentially retain most of
13 those restrictions.

14 So your comment is important. There was a
15 skepticism that I think evolved in the late 1970s and the
16 early 1980s, perhaps to which Mr. Dana can speak better than
17 I, but that skepticism from apparent abuses has been put into
18 statutory limitations and it appears that if we have
19 reauthorization, which presumably will be for a five-year
20 period of time, that those restrictions will remain. But it
21 is important for you to make those comments and for others to
22 make them today, too.

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1 That's a tough area, and I think -- and Mr. Dana can
2 expand if he wishes -- I think some of the concerns came from
3 lobbying that obviously had broad-scale results and effects.
4 You're presenting it, as others have, as helping one or a few
5 individuals who were aggrieved by a state agency or by a state
6 law, and it's a tough point of balance there. But I don't
7 think there is any question but what some of the effectiveness
8 that legal services attorneys in the '60s and '70s had to do
9 with legislative and administrative law forums rather than
10 just court forums.

11 I don't know, Howard, if you want to say anything by
12 way of background, though at this point it would appear that
13 that part of the law is not apt to be changed.

14 MR. DANA: I thought your question was to these
15 witnesses, what suggestions they would have to us, to urge on
16 Congress to improve the environment in which they endeavor to
17 serve the poor. And I heard them both say that they would
18 like current restrictions eased in a variety of areas,
19 including legislative advocacy.

20 I think you're right, in the sense that I think
21 there has been intense political pressure surrounding public
22 funding of public legislative advocacy. I do not know whether

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1 you are correct that there will be no change in that area.
2 And I think that people who feel that there should be a change
3 should appropriately come to us and Congress to urge that, and
4 this would be the time to do it.

5 MR. WITTGRAF: And I would just go one step farther
6 and say that with any of the speakers, beyond Mr. O'Connor and
7 Ms. Bellows today, who have thoughts are hopefully beyond
8 simply reacting to H.R. 1345, or even beyond reacting to any
9 of the Frank proposals, that we would, as Mr. Dana is
10 indicating, not only in the area of lobbying, but in any other
11 areas, want to be able to take suggestions for reauthorization
12 that perhaps fall beyond the present confines of the debate.

13 MS. BELLOWS: Mr. Wittgraf and Mr. Uddo, if I may,
14 there is one other -- it's a small area because it's a funding
15 problem also, but yet there might be some creative ways of
16 addressing it.

17 We find in the Chicago Metropolitan Area and
18 everywhere we go within the State of Illinois, that many of
19 the poor simply do not know that legal services exist. And
20 that, of course, goes to a federal public relations campaign
21 that our legal services providers cannot afford, and I don't
22 think we would want them at this juncture to spend their time

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1 and energy with that. So that you might consider assisting
2 them in that area.

3 MR. WITTGRAF: I think that's a very important point
4 and one, obviously, that's very important to Mr. Martin as
5 well as to us as members of the board. Some would say that
6 the Congress has created a national law firm for the poor but
7 that very few people, poor or otherwise, realize that that law
8 firm exists, and in this day of lawyer and law firm
9 advertising, that we perhaps need to do a better job of
10 advertising the existence of that law firm -- although I'm
11 sure some people in the audience might take exception to the
12 notion that this is then the executive committee for that law
13 firm. A good point. Thank you.

14 MS. BELLOWS: Thank you.

15 CHAIRMAN UDDO: Thank you both for your comments.

16 MS. BELLOWS: We appreciate your time.

17 MR. O'CONNOR: Yes, thank you.

18 CHAIRMAN UDDO: Before I go to the next speaker,
19 Pat, do you have a list of who's here? Could I just read it
20 off, just to make sure that everyone who is here is checked in
21 with you, so we know who's here?

22 MR. KIRK: Mr. Chairman?

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1 CHAIRMAN UDDO: Yes.

2 MR. KIRK: Could I make a personal request for some
3 information for the speakers?

4 CHAIRMAN UDDO: Sure. Speakers generally or those
5 last speakers?

6 MR. KIRK: Speakers generally. And I do not speak
7 for the entire committee, but I can tell you the things that I
8 would be interested in hearing as I sit here on the committee.

9 Those of us that are serving on this board are doing
10 so because we have a concern for delivery of legal services to
11 the poor. And we have heard one day of comments and are going
12 to hear another day today. We are well aware of the need for
13 legal services and I think that we're aware of what goes on in
14 the streets, and that there are people with needs that must be
15 met.

16 What we're here for, though, is to review
17 specifically some of the provisions for reform that are being
18 proposed. And to the extent that you can direct your comments
19 to a specific provision -- for example, lobbying, here's what
20 I have problems with, lobbying. If you want to, you can just
21 say I'm against McCollum-Stenholm's lobbying restrictions.
22 But, you know, an explanation of why those are important.

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1 If you think that there are some reforms that could
2 be lived with that would help on the sale to Congress, I'd be
3 interested in hearing that. Mr. Dana says if you want to come
4 here and just say I don't like any of this, I want more; you
5 can do that, too. But I particularly would be interested in
6 hearing where you think there might be some room, but
7 specifically addressing those issues.

8 It's kind of like the NRA. You know, if you hear
9 one of those debates, you know, the guy keeps saying it's the
10 right to bear arms. You say, but why do you need an attack
11 weapon in your house? And he says, it's the right to bear
12 arms.

13 I mean I'd like to get back from that into the
14 specifics to the extent that any of you could. And I also
15 think if you allow room for questioning at the end, because as
16 the day goes on, I can tell you my experience is that you have
17 less and less time. I think that some of us may have
18 questions.

19 But again, I do not speak for the board or the
20 committee, I just speak for myself. Thank you.

21 CHAIRMAN UDDO: Okay. Kay Ostberg. Is Kay Ostberg
22 here? I'm going to ask you to come forward and wait just a

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1 minute. You can sit at the table.

2 We're not sure who's here. Not everyone has checked
3 in. So, if you would, Ms. Beatty standing in the door there
4 has a list of people who are scheduled to speak. If you
5 haven't spoken to her, if you would just let her know that
6 you're here, so that I know who to call next. So if you
7 haven't talked to Ms. Beatty, please let her know that you're
8 here, and that will give us a better chance to keep our
9 schedule here.

10 Ms. Ostberg, if you would, please identify yourself
11 for the record and whom you represent.

12 PRESENTATION OF KAY OSTBERG

13 ACTING DIRECTOR, HALT

14 MS. OSTBERG: My name is Kay Ostberg. I'm Acting
15 Director of HALT, an organization of Americans for legal
16 reform. And I'm not sure that I'm going to bring
17 overwhelmingly different opinions to this committee than those
18 that you have already heard, but I think I'm going to bring
19 them from a perspective that you have yet to hear.

20 HALT is an organization of 150,000 members. We're
21 national nonprofit. We're the only national nonprofit that I
22 know of that represents consumers of legal services. We are

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1 funded by approximately 95 percent membership dues of those
2 150,000 folks who have joined our organization because they
3 believe that there is not access to legal services for
4 Americans, affordable access.

5 We appreciate the opportunity to present the
6 consumers' viewpoint to this committee. I won't go into the
7 need issues because I feel that you have significant amounts
8 of studies that adequately document that, except I will add
9 that we are nonprofit, where people actually join us because
10 of that need. And I don't know of other organizations where
11 that happens, but we exist because of that need.

12 I'm just going to give you a few things that we work
13 on, so you'll have a little more sense of us if you haven't
14 already been introduced to us. We work on a variety of
15 options to provide increased legal services to the poor, and
16 we are very happy and proud that LSC grantees have often been
17 leaders in seeking innovative ways to stretch existing
18 resources.

19 So we would support alternatives such as arbitration
20 and mediation because of the cost-cutting aspects of that and
21 the fact that they shorten things or solve disputes quicker,
22 and often give people more power in resolving those disputes.

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2 I think we can look at the fact that legal services
3 lawyers were among the first to use those alternatives, which
4 we think is great. And we think similar innovations are
5 great, such as the use of paralegals to handle routine cases,
6 independent of attorneys, and freeing lawyers to handle the
7 more complicated or unusual cases. And again, I would think
8 the LSC has led the way often, first in their use of paralegal
9 support staff, and more recently in increased use of
10 nonlawyers to handle administrative disputes directly with the
11 clients.

12 We also encourage educating consumers, and in fact
13 publish a number of self-help materials of our own for folks.
14 We have a number of books out there that are available to
15 people, as well as shorter legal guides to provide people with
16 some written assistance. And we are very happy to see that
17 legal services offices are offering pro se assistance to may
18 clients, again expanding the number of disputes that can be
19 resolved.

20 We also applaud the work done by the volunteer
21 attorneys. We think it's wonderful, and we're glad that they
22 are out there doing that, and also that LSC is doing a lot to

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1 encourage pro bono services.

2 We recognize the resources made available through
3 the non-federal funds from IOLTA programs, private
4 contributions, and other sources, and we oppose any
5 restrictions on the use of those funds. We think that Legal
6 Services' program provides an efficient way to use those funds
7 to meet the needs in their communities without wasteful
8 duplication efforts. So I would second the previous speaker
9 on that issue.

10 We also support other efforts to increase the amount
11 of legal help available to the poor, or decrease the demand
12 for those services, such as putting together alternative
13 compensation systems like choice, no fault alternative; de-
14 lawyering certain procedures, increasing the types of cases
15 heard in small claims court by increasing the limits and that
16 sort of thing.

17 If all those reforms were implemented, possibly the
18 need for government-subsidized legal services would be
19 reduced. We don't think it would ever be eliminated, and in
20 fact we think there will always be a need for Legal Services
21 Corporation and the activities it funds, so we support, we
22 actually support the NLADA \$475 million recommendation for

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1 funding. We would probably support more, but recognize that
2 that's probably already a tough thing to reach.

3 In the time of tight federal budgets, I think even
4 the most optimistic supporters of LSC can't expect that there
5 will be enough funding to meet the needs of the poor, and
6 there are obviously hard decisions that have to be made about
7 who will get help and who won't. Obviously there have been a
8 number of restrictions proposed on whole classes of cases and,
9 worse in our view, the criteria that have been used to limit
10 these cases is obviously, in many instances, clearly motivated
11 by political agendas the economic interests instead of
12 concerns of the needs of the poor.

13 We would be more inclined to maybe look at some of
14 those proposals if we didn't feel like they were just
15 clustered around those politically sensitive areas and did not
16 come from the origin of looking at the needs issue.

17 MR. KIRK: Excuse me. I didn't understand what you
18 meant by that. Can you explain that?

19 MS. OSTBERG: For example, one of the proposals that
20 we would support is that the local boards be dominated by a
21 majority of clients. So that right now I guess there is a
22 one-third requirement; we would move that to a majority. As a

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1 consumer-based organization, we feel that it should be in the
2 consumer's interest. It is the consumer's or the client's
3 interest to prioritize what the need is and how the money
4 should be spent, rather than coming from a restriction that
5 comes around a politically sensitive agenda.

6 I mean basically the issue there is foreclosing poor
7 people's access to certain types of services and thereby
8 basically giving an unequal amount of access to wealthier
9 citizens than poor citizens. So that would be our concern.

10 That's why we would oppose any across-the-board
11 restrictions of LSC funds for an entire class of cases. In
12 fact, we would go further and urge language in the
13 reauthorization bill that specifically prohibits LSC board or
14 the boards of local programs from passing such restrictions.
15 We think by doing that, it would reinvigorate the ideal behind
16 the creation of LSC.

17 Obviously still priorities must be set, and again I
18 think there we would say that the people who ought to set
19 those priorities are the clients whose needs are to be met by
20 the program. We believe again that a majority of the local
21 boards should be consumers or clients. That way they can set
22 the priorities.

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1 Under HALT's proposal, the only limitation on the
2 client-controlled local boards would be income eligibility
3 restrictions and our proposed provision against the complete
4 prohibition of an entire class of cases. Perhaps boards will
5 decide to set a maximum number of class action suits brought
6 in a year. They might decide to devote a large percentage of
7 their resources to landlord-tenant problems or family matters,
8 and we feel that just as middle- or upper-income people choose
9 which of their rights they can afford to exercise, low-income
10 people could select the best way to solve their most pressing
11 legal problems.

12 So we urge speedy reauthorization of the Legal
13 Services Corporation, with increased funding. We oppose
14 statutory or LSC board-imposed limits on services LSC grantees
15 can provide, and support language in the act to prohibit such
16 restrictions on either the federal or local level. We urge
17 client control of boards, permitting them to decide
18 priorities.

19 On behalf of the consumers of legal services, HALT
20 asks your support of these positions to ensure greater access
21 for the poor.

22 CHAIRMAN UDDO: Thank you very much, Ms. Ostberg.

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1 Any questions from members of the committee? Mr. Kirk.

2 MR. KIRK: Do you think that when you have only
3 client-eligible people on the boards, that you are liable to
4 under-represent, say, the migrants who wouldn't be there to
5 make sure that they were represented, or it might be subject
6 to PAC-ing, let's say; a certain group that was concerned with
7 a housing project might attempt to PAC it and put a
8 disproportionate amount of money into their own pet programs?

9 MS. OSTBERG: I think that those concerns could be
10 no matter where you're getting your members on the committees,
11 those concerns could be the same. I think for us the essence
12 is that the clients or the consumers need to be in charge and
13 need to set those priorities, and I think that the same kind
14 of safeguards that you might put to ensure that there is some
15 sort of diversity of representation, you could do in order to
16 ensure that that happens and you don't have those things.

17 MR. KIRK: Who determines the guidelines for
18 diversity of representation?

19 MS. OSTBERG: Right. Well, I think those are, you
20 know I don't have a package that I can give you about how to
21 do that, but I think the real message that I'm putting forward
22 is that clients need to be in charge and that they are going

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1 to be the ones that are going to be able to best determine the
2 priorities for their area.

3 CHAIRMAN UDDO: Any other questions from members of
4 the committee?

5 MR. WITTGRAF: I'm curious if you have a sense of
6 what reason or reasons, aside from a general antipathy toward
7 lawyers and the legal system, caused most of the 150,000
8 members of HALT to become members of HALT and to pay their
9 dues or their membership fees.

10 MS. OSTBERG: You know, there's obviously a good
11 majority of our members who have tried to wend their way
12 through the legal system, typically with a lawyer, and found
13 the process to be horrendous from a number of aspects,
14 primarily that their expectations about cost and outcome were
15 not met.

16 And I don't mean that this means that people are
17 sore losers. In fact, that's not what we find. But I think
18 that the reason they joined is they really believe that there
19 needs to be access to justice, that if you don't have access
20 to legal services, you don't have access to exercising your
21 legal rights which they consider a basic right of all
22 Americans, and they're looking for an organization who they

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1 feel is going to work on that from the consumer perspective.

2 MR. WITTGRAF: Is there any particular issue or
3 problem area that would be foremost in the minds of the
4 members of HALT?

5 MS. OSTBERG: I think what's foremost in the mind is
6 issues around affordability. So, for example, prime on our
7 agenda would be some of the things that I listed, namely,
8 trying to de-lawyer certain area of the law so people can do
9 it on their own, trying to get self-help information out
10 there. I mean it's only recently that we've seen a more
11 widespread acceptance of those kind of alternatives.

12 Also, obviously, non-lawyer providers is a very big
13 thing on our agenda. We feel extremely strongly that many
14 matters are routine, they can be de-lawyered, or they can be
15 handled by nonlawyers, and in fact are handled by nonlawyers.

16 MR. WITTGRAF: Thank you.

17 CHAIRMAN UDDO: Mr. Kirk.

18 MR. KIRK: You really represent more than just the
19 poor. You represent across the spectrum. Tell me about the
20 unmet legal needs for the lower middle class and the middle
21 middle class. It seems to me that that's just tremendous.

22 MS. OSTBERG: It is tremendous and it's growing.

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1 And I think what you're seeing is, you're seeing that the
2 poor, the gap was always there, and now that gap is creeping
3 up as we're dealing with recession and lawyers' costs going up
4 and all sorts of things.

5 There aren't good studies documenting the need for
6 middle income. We know about it because we exist, and we hope
7 to see some studies coming out in that. There are some
8 things, but not a lot of good things. So a lot of our
9 perspective on it comes from having these members who kind of
10 tell us. And what we're seeing is that it's just an
11 increasing number of people who just are not proceeding with a
12 legal case because they don't have the options or the avenues,
13 which is why we've come up with numbers of alternatives to try
14 and meet those needs.

15 MR. KIRK: Well, I've heard of 80 percent of the
16 poor needs not being met, and those are crucial because
17 they're dealing with probably the basic necessities of life.

18 MS. OSTBERG: Most basic, survival; right.

19 MR. KIRK: But --

20 MS. OSTBERG: What kind of needs are you talking
21 about?

22 MR. KIRK: It seems that even with middle class,

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1 there may be 50 percent or something like that, that are not
2 being met.

3 MS. OSTBERG: That's right. Well, you look at
4 something like we look at the fact that the number of
5 Americans that don't have a will, well, a lot of people don't
6 have a will because they don't want to deal with dying, but
7 then there are tons of people who don't have a will because
8 the thought of going out and trying to afford and spend money
9 on a lawyer and not be sure what they're going to get really,
10 really stops a lot of people. And so you see a lot of things
11 in, you know, estate planning, I mean just all the basic
12 everyday divorce cases or custody cases. It's a lot of the
13 same things that you'll see in the population that you're
14 considering, many of the same things.

15 And then I think some different, and some not so
16 much. Obviously we're not going to see as much concern about
17 bankruptcy or whatever among middle income. Lots of small
18 business issues. Small businesses are often confronted with
19 buying legal services that will put them under if they buy
20 them, or going without, and what does that expose them to.

21 So that would be the sort of thing. Just every day,
22 kind of all the things you see, and maybe some more.

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1 MR. WITTGRAF: Just one follow-up.

2 CHAIRMAN UDDO: Mr. Wittgraf.

3 MR. WITTGRAF: Has HALT prepared a number of self-
4 help materials then?

5 MS. OSTBERG: Yes. We actually have five books that
6 are currently published by Random House that are out on the
7 market. You can go out and buy them in bookstores. We also
8 have shorter legal guides, what we call the everyday law
9 series. We have about 125 of those on just about every topic.
10 And what they do is attempt to give a reader a basic
11 orientation to the area, in very plain language, and then will
12 refer them to other resources should they want to attempt to
13 handle things themselves.

14 We believe that people ought to be able to try and
15 handle things themselves if they want to, of course with
16 appropriate disclaimers as the thing gets more complicated.
17 On the other hand, if they aren't going to handle it
18 themselves, we think it's great to have a consumer education
19 about how to work with your attorney, if you're hiring an
20 attorney, so you can be a knowledgeable client.

21 CHAIRMAN UDDO: Mr. Dana.

22 MR. DANA: My understanding of your organization is

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1 that you are trying to improve access to legal solutions for
2 all Americans and not the poor, not the middle class.

3 MS. OSTBERG: That's correct.

4 MR. DANA: So that you're not espousing a form of
5 second class justice for the poor.

6 MS. OSTBERG: That's correct.

7 MR. DANA: And I take it you would also agree with
8 the point that Ms. Bellows made earlier, that a prohibition on
9 lobbying by Legal Services Corporation would tend to halt--
10 no pun intended -- the effort to move in that direction.

11 MS. OSTBERG: Very much so. I mean if you look at
12 innovations, for me it's very odd to think of self-help as an
13 innovation. It seems like it should be such a given. But in
14 fact, if you look at the evolution of how that has come about,
15 what you'll see is resistance from all kinds of quarters to
16 expanding that, and if it were not for various lobbying
17 efforts, et cetera, we would not be where we are today with
18 the level of self-help that people do have access to.

19 Similarly, nonlawyer providers or de-lawyering
20 certain areas of law. I mean I can sit here and envision
21 being able to go up to an administrative agency to do your
22 bankruptcy. I don't get why you can't do that. I don't get

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1 why it can't be de-lawyered, and a number of other areas
2 likewise.

3 I think, in fact, one of the things is for the more
4 indigent client, there is probably going to be a greater need
5 for lawyers because there are probably more literacy gaps,
6 language gaps, and other gaps. So that although we
7 occasionally, every so often, are called an anti-lawyer
8 organization, I think here is an instance where we would see
9 that there is a big need for lawyers.

10 We also think that a lot of stuff can and actually
11 is being handled by nonlawyers, and we encourage that
12 movement.

13 CHAIRMAN UDDO: Ms. Ostberg, did your organization
14 participate in the Legal Services Corporation self-help --

15 MS. OSTBERG: Study?

16 CHAIRMAN UDDO: -- program a couple of years ago?

17 MS. OSTBERG: You know, I'm afraid I don't know the
18 answer to that. We have provided information and worked with
19 lots and lots of entities. When Steven Cox was doing his
20 stuff with the ABA, we kept in touch with them. I'm sorry, I
21 don't know.

22 CHAIRMAN UDDO: I don't recall either. I was

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1 involved with it, but I don't recall whether your organization
2 was. And that is something that I think is still active on
3 the agenda of the Corporation and you could perhaps become
4 involved in.

5 MS. OSTBERG: We'd love to.

6 CHAIRMAN UDDO: Let me ask one other question. Your
7 suggestion about board control, excuse me, client control of
8 boards. If that were not likely to happen, do you have any
9 alternative suggestions for how local programs might be
10 encouraged to reflect more accurately, which I take is your
11 opinion, that they are not accurately reflecting what the
12 priorities of the clients in the area are -- is there some
13 alternative to client control of boards that you've thought
14 through?

15 MS. OSTBERG: Well, I haven't thought this out. I
16 don't have answer. I can just sort of give some off-the-cuff
17 things. Obviously, you can do some documenting of what kind
18 of inquiries you are getting in, and kind of see where at
19 least that's happening, although I think that the comments
20 made earlier about people just not being aware of even the
21 existence of the program skews that a bit.

22 But you can also obviously set up certain ways that

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1 you can bring people in and sit and figure it out from talking
2 to people. In other words, you can sort of create your own
3 client-dominated body as an advisory committee or whatever.
4 Doing things like that I think would help with that.

5 CHAIRMAN UDDO: Thank you very much. Any questions
6 from members of the board?

7 (No response.)

8 CHAIRMAN UDDO: Thank you, Ms. Ostberg.

9 MS. OSTBERG: I appreciate the opportunity to
10 discuss this with you.

11 CHAIRMAN UDDO: Mr. Gerry Ortvals. I thought it was
12 the Missouri Bar. It says here St. Louis Bar.

13 MR. ORTBALS: That's correct.

14 CHAIRMAN UDDO: St. Louis Bar?

15 MR. ORTBALS: The Bar Association of Metropolitan
16 St. Louis.

17 CHAIRMAN UDDO: Welcome to our hearing.

18 PRESENTATION OF GERRY ORTBALS,
19 BAR ASSOCIATION OF METROPOLITAN ST. LOUIS

20 MR. ORTBALS: Thank you, Mr. Chairman, Mr.
21 President, and Members of the Committee. I come to, somewhat
22 familiar with the protracted and exhaustive debate on the

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1 issue of so-called reform of the Legal Services Corporation's
2 delivery system. That alone gave me pause to consider the
3 knowledgeable and articulate leaders of the American Bar
4 Association, including our own Bill McCalpin, and the state
5 and local bar leaders who have already addressed this
6 committee on these very issues.

7 And that in turn engendered a certain apprehension
8 on my part about requesting an opportunity to address you this
9 morning. I know it would be presumptuous of me to think that
10 I have anything novel or particularly useful to contribute to
11 this deliberation in the abstract or the theoretical sense.

12 But perhaps I do have something unique in the way of
13 perspective because for the past several years, before I
14 became a bar leader and right up to the present time, I was a
15 member of our local volunteer lawyer program, conducted a
16 legal clinic for the indigent on the near north side of our
17 city. Consequently, more than 60 times in the last five
18 years, I have left my firm's well-appointed suite of offices
19 overlooking the Old Courthouse and the Gateway Arch, and
20 traveled approximately 15 blocks north to the St. Patrick
21 Center, which is a community outreach facility operated by
22 Catholic Charities of St. Louis.

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1 And there for about three hours in each of these
2 sessions, I interview a sometimes seemingly endless procession
3 of mendicant homeless people, and I try to identify and find
4 the resources to address their legal problems. It was this
5 stark contrast in circumstances that prompted me to reflect on
6 what my professional life would be like if, as Gerry Ortballs,
7 private practitioner, I had to abide by some of the
8 restrictions that are part of the McCollum-Stenholm proposals
9 that are before you now.

10 And so I'll ask you to indulge me if you will in
11 three comparisons or concrete examples of exactly how I think
12 this would operate.

13 First of all, let's talk about administrative
14 rulemaking. I happen to represent and have represented for
15 some time in my capacity as a private attorney the Missouri
16 Alarm Association in matters or utility regulation, more
17 particularly, telecommunication rate cases filed by our local
18 Baby Bell. We appear before the Public Service Commission,
19 and of course these cases are for the most part presented to
20 the Public Service Commission and resolved there.

21 I reflected on what it would be like if I could not
22 participate before the Public Service Commission on behalf of

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1 this client in the rulemaking process that so often determines
2 the outcome of these cases; or, perhaps going beyond that, if
3 I could not go to the legislature as a lobbyist and impart to
4 the legislators who were considering new restrictions and
5 regulations with regard with telecommunications, the benefit
6 of my experience as someone who participates in rate
7 proceedings. Example No. 1

8 Example No. 2. I have the good fortune to represent
9 a rather large oil company, one that happens to have a
10 substantial building here several blocks away, in the St.
11 Louis area in matters of zoning. From time to time, it's
12 quite important to them in making their decision about whether
13 to litigate a zoning matter, to determine whether or not there
14 is the prospect of recovering attorneys' fees under 42 USC
15 1983. Indeed, I often point out to them that if we prevail,
16 we will be able to recover those fees. But, of course, we
17 know that under the proposals here, there would be substantial
18 restrictions on that option.

19 With respect to the Code of Professional
20 Responsibility, I think we all know, especially lawyers in the
21 private sector, that we are ever more mindful of the need for
22 a marketing strategy. We're all talking about how to identify

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1 clients and how to identify the needs that we seek to serve.
2 And yet as I understand these proposals, they would severely
3 hamstring the right to identify the client, identify the
4 client's need, and to serve that need.

5 So I hope that this comparison is helpful. On
6 balance, as far as I'm concerned, it's manifest that the
7 McCollum-Stenholm restrictions would lead ineluctably to an
8 even grater disparity and inequality in a situation that puts
9 the poor at a decided disadvantage in their encounters with
10 our system of justice.

11 And finally, I'd like to offer another personal
12 observation. As the president of our local bar association in
13 St. Louis for the past year, I've become quite familiar with
14 the views of our 6,600 members on our own Legal Services
15 Corporation, Legal Services of Eastern Missouri organization,
16 and Rick Titleman, its executive director. I would venture to
17 say that the St. Louis legal community is a fairly
18 conservative mainstream legal community. And yet I have not
19 heard a single complaint uttered against our local Legal
20 Services Corporation, nor have I heard any reservations
21 expressed about abuses or otherwise. In fact, in the past two
22 years we have undertaken a campaign that is designed to

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1 attract a greater number of private practitioners from our
2 legal community to our volunteer lawyer program, which
3 augments the efforts of our Legal Services Corporation.

4 That campaign resulted in 22 of our 25 largest firms
5 in St. Louis signing up to participate in the volunteer lawyer
6 program, and we are currently conducting a similar campaign
7 with the American Corporate Counsel Association's local
8 chapter involving our Fortune 500 corporations in St. Louis.

9 I submit to you that there is no possibility that
10 this campaign could have achieved this degree of success if
11 there were substantial abuses in our Legal Services
12 Corporation. So I submit to you that I think I can safely
13 invoke the old saw, at least insofar as ours is concerned,
14 that if it ain't broke, don't fix it. Ours operates fine, and
15 I think it should be left to operate as it has in the past and
16 as it continues to do.

17 Thank you for letting me have some time this
18 morning.

19 CHAIRMAN UDDO: Mr. Ortballs, thank you very much.
20 Any questions from members of the committee? Mr. Dana?

21 MR. DANA: Just a couple. I thought your analogies
22 were very helpful and brought some of the points home. I

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1 think it is also important, and it wasn't clear from your
2 second example as to whether or not you were reading the
3 McCollum-Stenholm limit on attorneys' fees section correctly.
4 I don't think it would deny your oil company client attorneys'
5 fees; only a poor person would be denied, and only a poor
6 person represented by a legal services entity would be denied
7 attorneys' fees.

8 MR. ORTBALS: Yes, I truly understand that. I guess
9 perhaps I made my point inartfully. I would hate to accept
10 the same restrictions in representing that oil company that I
11 would have to accept as a person going over to the St. Patrick
12 Center and becoming subject to the provisions of this act.

13 MR. DANA: I thought that's what you meant. I just
14 wanted to make sure.

15 MR. ORTBALS: The contrast seems stark to me. I
16 tried to picture myself representing these clients in the
17 private sector and yet abiding by the same restrictions that
18 I'd be subject to if indeed I were a poverty lawyer and had to
19 abide by the proposals that are before this committee.

20 MR. DANA: I just would observe that it seems to me
21 that St. Louis is in good hands with you and Bill McCalpin.

22 MR. ORTBALS: I'm proud to be mentioned in the same

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1 sentence. He's one of our best.

2 MR. DANA: And if you know of an Annie Slaughter who
3 also comes from your town, I wish to be remembered to her.

4 CHAIRMAN UDDO: Mr. Kirk.

5 MR. KIRK: On the issue of attorneys' fees, the
6 complaint posed to me is, you know, it's a hell of a note to
7 be sitting here with the government with unlimited funds. We
8 know that really isn't true, but pushing me and my client, and
9 if I lose, you know, I'm a private attorney, I have to pay not
10 only whatever the nominal damages are or substantial damages,
11 but my own attorneys' fees plus the attorneys' fees of the
12 government attorney. I'm using the buzz words that come to
13 us.

14 Yet if I win, I still pay my own attorneys' fees,
15 and no one is there to compensate me for my attorneys' fees.
16 In either your private practice or in your work with legal
17 services, have you noticed a disparity, any type of injustice
18 for the guy that's on the other end of the Legal Services
19 Corporation attorney that has 50 unnamed clients that he's
20 suing someone?

21 MR. ORTBALS: Well, I have a couple of observations
22 in response. First of all, as I see it, Legal Services and

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1 the lawyers who represent their clients are anything but
2 advocates who enjoy the use of unlimited funds. In fact, the
3 funds they have have been substantially reduced in the past
4 eight or nine years.

5 MR. KIRK: I tried to put that in quotes. I didn't
6 want to debate that.

7 MR. ORTBALS: I can't accept that characterization.
8 I think they operate for the most part with very limited
9 resources, and consequently I think giving them the same
10 opportunity that the rest of us have to recover attorneys'
11 fees in various cases, depending on the particular law or the
12 particular statute involved, is nothing more than providing a
13 level playing field. But, more importantly, Legal Services
14 and their lawyers may have greater need of these incentives to
15 find ways to represent their clients, who are not always as
16 well motivated and as ready to litigate as perhaps people in
17 the private sector are.

18 MR. KIRK: My point is, is it fair to the -- you
19 know, you talk about the level playing field, I've heard it a
20 lot, but just to use it for the private person that's being
21 sued, who really has no chance of collecting attorneys' fees
22 in the event of an improper suit, because the plaintiffs are

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1 in fact insolvent, isn't that a one-way playing field?

2 We heard a guy say last time that, you know, the
3 reason he got a settlement was because the other side knew
4 that he was going to have to pay his attorneys' fees, win or
5 lose, and if he lost he'd have to pay the Legal Services
6 Corporation.

7 MR. ORTBALS: Well, I think that for the most part,
8 and I think this is the case, for the most part the
9 circumstances in which an indigent plaintiff can recover
10 attorneys' fees from the other party are very restricted, very
11 limited, and usually involve circumstances that manifest some
12 aggravated conduct or some activity that, as a matter of
13 public policy, is such that the courts find recovery of
14 attorneys' fees is warranted.

15 And so I don't think we are going to have some
16 sweeping or some general set of circumstances under which it's
17 always a case where they can recover but they aren't going to
18 be responsible. I just don't think it's going to arise that
19 often.

20 MR. KIRK: Well, I have to assure that federal
21 statutes and state statutes do not always require egregious
22 behavior in order to recover attorneys' fees.

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1 MR. ORTBALS: No, but we've entrusted that to the
2 sound discretion of the courts for the most part, and I see no
3 reason why this should be different. For the most part, the
4 matter of recovery of attorneys' fees under federal statutes
5 and in other circumstances is a matter in which the judge is
6 allowed to exercise his or her discretion with respect to the
7 award of those fees.

8 I have found, at least in our local situation, very
9 few circumstances in which the courts have looked for a reason
10 to warrant attorneys' fees. For the most part, they are very
11 conservative about that. They want to control to some extent
12 their own dockets and the crush of litigation that they
13 perceive as burdening their system, so that they are very
14 careful about not giving undue encouragement to people with
15 regard to attorney fee awards. They do it only in those
16 circumstances in which they feel they are carrying out the
17 clear purposes of the legislature or affecting some public
18 policy that's been established for the award of attorneys'
19 fees in that particular case.

20 MR. KIRK: I don't think we're on the same level, so
21 I'll pass. Thank you.

22 CHAIRMAN UDDO: Any other questions from the

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1 committee? From members of the board?

2 (No response.)

3 CHAIRMAN UDDO: Thank you, Mr. Ortvals.

4 MR. ORTBALS: Thank you very much.

5 CHAIRMAN UDDO: We're going to take, literally, a
6 five-minute break because I see we're drifting around a bit,
7 so we'll take a five-minute break and get back to this.

8 (A brief recess was taken.)

9 CHAIRMAN UDDO: The committee members are back to
10 the table, and we'll go ahead and start. Board members can
11 come in after, I'm sure, without any difficulty.

12 Next we have two people who are from the Legal Aid
13 Foundation of Chicago, Leon Edelman and Rosy Lee, who will
14 speak to us.

15 Good morning. Welcome to the committee. Appreciate
16 your taking time to come here today. And if you would, just
17 introduce yourselves for the record, and your affiliation.

18 PRESENTATIONS OF LEON EDELMAN AND ROSY LEE,

19 LEGAL ASSISTANCE FOUNDATION OF CHICAGO

20 MR. EDELMAN: Mr. Chairman, Mr. President, ladies
21 and gentleman, my name is Leon Edelman and I am an attorney
22 member of the Board of the Legal Assistance Foundation of

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1 Chicago, appointed by the Chicago Bar Association. To my
2 right is Ms. Rosy Lee, a client-eligible member of the Board
3 of the Legal Assistance Foundation of Chicago.

4 We are here to address the proposed section 14
5 amendment which would call for the governing body of Legal
6 Assistance recipients to expressly approve the filing of class
7 action lawsuits against federal, state or local governmental
8 entities. We're here to oppose that suggestion and to give
9 you our perspective as board members as to why we think that
10 that is not a good idea.

11 I should tell you that I've been serving as a board
12 member since 1986. I've chaired board committees on community
13 relations, EEO, and presently the rules and regulations of the
14 board. It seems to me that the proposed legislation sends
15 some very clear messages in intent. At least that's the way
16 it seems to me.

17 It sends the message that class action cases are
18 important cases, that they involve significant resources, and
19 that there should be appropriate oversight by the board
20 relative to these cases, and that we shouldn't let them get
21 away from us, that they shouldn't be entered into lightly,
22 precipitously, or frivolously.

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1 I'm here to tell you that those messages have been
2 heard loud and clear for years, and that in our view they've
3 been acted upon responsibly and are addressed responsibly with
4 the present level of board involvement and oversight.

5 Our board, like every board, is a policy-making
6 entity. And we already exercise oversight in the area of
7 class actions in several ways. As with all cases, we maintain
8 eligibility requirements for the clients we serve, and those
9 eligibility requirements are reviewed annually. As with all
10 cases, we maintain a case acceptance schedule which delineates
11 what cases the agency considers appropriate to address with
12 the limited resources we have.

13 That case acceptance schedule is reviewed regularly,
14 and annually, and then as part of the annual refunding
15 application, you are all very well aware, that the board
16 addresses each and every class action that has been
17 undertaken. It is brought to our attention with a description
18 of the nature of the class action that has been addressed.
19 That is in turn reported to Legal Services Corporation. And
20 the board is very well aware of the nature, extent, and scope
21 of class action activity that the agency addresses.

22 By now from my view, the class action vehicle I for

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1 one view as a cost-effective way to deliver legal services to
2 a large number of our clients whom we otherwise could not
3 reach if we had to go merely on a case-by-case basis.

4 I think that by doing the types of reviews that we
5 already do, the board addresses at the policy level the
6 appropriateness of the agency's involvement with class action
7 lawsuits and expressly approves its involvement in the
8 specific areas of litigation that we approve in our case
9 acceptance schedule and that we have been specifically made
10 familiar with at the time of the annual refunding application.

11 Now, the proposal suggests that a case-by-case
12 review is necessary as appropriate oversight. And as a board
13 member, I agree that a case-by-case consideration is
14 necessary, but not at the board level. That function is
15 currently addressed by the executive director, who reviews and
16 approves each class action.

17 And it would not be appropriate, in my view, for the
18 board to become involved in an individual case-by-case review.
19 It seems to me that, beyond the review by the executive
20 director and the attorneys who are directly involved in the
21 decision making process, the court itself exercises
22 considerable review in certifying class actions and in

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1 determining whether a class action is being appropriately
2 brought.

3 And if attorneys have to be held accountable in
4 their decision to bring a class action, as in the decision to
5 bring any lawsuit -- and they do -- Federal Rule 11, which
6 provides for sanctions for the bringing of frivolous or
7 groundless lawsuits certainly addresses a layer of appropriate
8 concern for attorneys that can have a much more effective
9 function than a board's review.

10 The simple fact of the matter is that when a board
11 is asked to review any type of litigation on a case-by-case
12 basis, it's taking on a different function than we've ever
13 been asked to take on before in any other type of case. We're
14 crossing the line, it seems to me at that point, from policy-
15 making and policy review to the actual participation in
16 litigation decisions to the actual participation in the day-
17 to-day operations of the agency.

18 The fact is that Legal Assistance Foundation of
19 Chicago is an urban agency. The class action issue is not
20 such an extraordinary event that it should be a show stopping
21 consideration requiring the special attention of the board.
22 In fact, it is a vehicle that's useful, but as you can see

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1 looking at our annual refunding application for the last
2 several years, there are a number of such cases that may be
3 brought. I don't have precise statistics with me today, but
4 I'm confident that in most of these cases Legal Assistance
5 Foundation of Chicago has obtained relief for its clients,
6 suggesting that the courts believe the cases are meritorious
7 and not brought frivolously.

8 The class action cases address complex issues. I'm
9 in private practice in a general civil litigation. The
10 expertise that I as an individual board member will be able to
11 bring to review of specific class action lawsuits in the
12 poverty law area, addressing Medicaid issues, addressing
13 present administration, addressing welfare issues, would be
14 nominal. In fact, if we were asked to pass, as the
15 legislation proposed legislation suggests we should, on each
16 of these cases individually, it's difficult for me to see what
17 we could bring to the table except a layer of confusion and
18 the necessity of explanation by the participants in the day-
19 to-day activities that would not be helpful to the process.

20 The simple fact is that if there was a problem with
21 the present structure of review of class actions, we would
22 have expected as a board to hear about it from someone in the

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1 nature of a complaint. Since 1986, the board has received no
2 complaints from any party concerning the conduct of class
3 actions taken on by Legal Assistance Foundation of Chicago,
4 and I think that is significant.

5 Ms. Lee has a somewhat different perspective as a
6 board member, of being a client eligible member of the board,
7 and at this point with your permission I'll turn it over to
8 Rosie Lee.

9 MS. LEE: My name is Rosy Lee, and I'm a board
10 member. I've been on the board of LAF for 12 years. I came
11 this morning to speak for the clients on the board of LAF.
12 The clients on the board of LAF fear that class action suits
13 shouldn't be handled by the Board of Directors because the
14 clients on the board don't know the letter of the law. Only
15 the lawyers know that.

16 We feel that the Executive Director should handle
17 that part of the LAF, the day-to-day operation of the function
18 of the LAF, and the class action suit should be handled by the
19 Executive Director of the LAF because the clients on the board
20 don't know the letter of the law, like I say.

21 I've been on the board 12 years, and we had no
22 complaints about the handling of the cases that LAF has

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1 handled in the 12 years that I've been on the board. And when
2 we first heard about it, we talked about it with some clients
3 around the state, and they basically feel the same way, that
4 the Executive Directors of the program should be handling
5 class action suits, not the Board of Directors. They don't
6 feel that's a part of the Board of Directors function, and I
7 don't believe it is a part of it either.

8 CHAIRMAN UDDO: Thank you, Ms. Lee. Do you have any
9 other comments? Mr. Edelman, any other comments?

10 MR. EDELMAN: No, other than in a sense it's similar
11 to the recent experience that we've had in the Middle East.
12 There was just a rather successful campaign, which President
13 Bush explained was partially the result of his decision not to
14 micromanage what happened in the field. It seems to me that
15 it's appropriate to leave the day-to-day work to the field
16 generals and for the board to serve a function as a board, a
17 policy-making organ, and it should not confuse its role with
18 the role of those who do the work as well as they do, and we
19 are very proud of the way in which our attorneys and our
20 management team does their job at LAFC.

21 CHAIRMAN UDDO: Thank you. Mr. Dana?

22 MR. DANA: Mr. Edelman, I want to make a point, but

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1 I need to ask you a couple questions first. You indicated you
2 had a civil litigation practice. How large a firm do you
3 have?

4 MR. EDELMAN: Two men.

5 MR. DANA: Two. So it's not going to be, you are
6 not the prototype that I wanted to ask this of.

7 MR. WITTGRAF: There's a lot to be said for two-
8 member law firms.

9 MR. DANA: I understand. Communication is much
10 improved in a two-person firm.

11 MR. WITTGRAF: Not always.

12 MR. KIRK: You can ask me if you want. Ask away.

13 MR. DANA: All right, I will ask Mr. Kirk. Mr.
14 Kirk, how large a firm do you have?

15 MR. KIRK: About 70.

16 MR. DANA: Seventy. And when you take a civil
17 matter, when you take a new civil matter on, do you have a
18 conflict questionnaire that has to be circulated among your
19 lawyers?

20 MR. KIRK: Yes.

21 MR. DANA: And does that take some time to clear
22 conflicts?

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1 MR. KIRK: Sometimes more than we wish, but
2 ordinarily a day or so.

3 MR. DANA: Mr. Edelman, how frequently does your
4 board meet?

5 MR. EDELMAN: Well, about every other month.

6 MR. DANA: So six times a year?

7 MR. EDELMAN: That's about right.

8 MR. DANA: And does your board, do all -- presumably
9 the Legal Aid Foundation of Chicago takes many thousands of
10 cases a year.

11 MR. EDELMAN: Correct.

12 MR. DANA: Do you, before taking on any of those
13 cases, do you feel the need to check conflicts personally,
14 with your partner?

15 MR. EDELMAN: In my law firm?

16 MR. DANA: Yes.

17 MR. EDELMAN: Oh, sure.

18 MR. DANA: No, that's --

19 MR. EDELMAN: Oh, you mean as between Legal
20 Assistance Foundation and --

21 MR. DANA: When the Legal Assistance Foundation
22 commences a suit against somebody in Chicago, do you regard

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1 that as an occasion for checking conflicts with your partner?

2 MR. EDELMAN: No.

3 MR. DANA: And that would indeed, with the thousands
4 of cases that you take every year, would be a nightmare at
5 least. There's only just two of you, right?

6 MR. EDELMAN: Yes.

7 MR. DANA: But if you were participating as a board
8 member in whether or not to take a case, wouldn't it be
9 absolutely essential for you to determine that you didn't have
10 a conflict on that issue?

11 MR. EDELMAN: A nightmare I hadn't actually thought
12 of. Yes, that's right.

13 MR. DANA: And if you were a member of a 70-person
14 law firm like Mr. Kirk, and you met every two months, wouldn't
15 it be necessary for each of the lawyers, like Mr. Kirk on your
16 board, and I assume there are lawyers on your board from
17 larger
18 firms --

19 MR. EDELMAN: Oh, yes.

20 MR. DANA: Wouldn't it be necessary if they were
21 going to have to participate in case selection decisions in
22 which the sue or not sue decision was made by the board, to

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1 check as to whether or not that particular lawyer or any
2 member of that lawyer's firm had a conflict?

3 MR. EDELMAN: I think that's a reasonable
4 interpretation of the rules of professional conduct.

5 MR. DANA: Thank you.

6 CHAIRMAN UDDO: Mr. Kirk.

7 MR. KIRK: I want to tell you how much I appreciate
8 both your presentations. I think it was really pointed and
9 concise and gave us something to work with.

10 How many class action suits are filed each year in
11 Chicago?

12 MR. EDELMAN: Well, I haven't counted them. I have
13 a list --

14 MR. KIRK: Just approximately.

15 MR. ROODMAN: I'm the Executive Director of the
16 Legal Assistance Foundation of Chicago.

17 CHAIRMAN UDDO: Do you want to pull a chair up to
18 the table? You're Mr. Roodman?

19 MR. ROODMAN: That's correct.

20 MR. UDDO: Why don't you identify yourself for the
21 record, just so the court reporter can keep track?

22 MR. ROODMAN: My name is Sheldon Roodman. I'm the

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1 Executive Director of Legal Assistance Foundation of Chicago.

2 We have at any one time approximately 48 to 50
3 pending class actions. Those are reported to the Legal
4 Services Corporation. In any given year, it would vary, but
5 it would certainly be somewhere between three and 10 might be
6 filed in a particular year.

7 MR. KIRK: How many lawyers do you have?

8 MR. ROODMAN: We have approximately 85 lawyers.

9 MR. KIRK: What type of approval is necessary before
10 one of your lawyers files suit?

11 MR. ROODMAN: That's an excellent question, and I
12 think I'm happy to answer it. We have a very detailed review
13 process. Our law firm is akin to your law firm, but we have
14 lawyers who are specialists in consumer law, housing law,
15 welfare law, and each area of poverty law.

16 Any class action, before it reaches my desk, is
17 first developed by the attorneys who the client initially
18 comes to and presents the problem. There is some discussion
19 with the substantive expert in the field. The matter is
20 reviewed by them.

21 Then we have a deputy director in charge of federal
22 litigation who also will review it. If it's particularly

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1 controversial, I'm brought in at the outset of the matter, and
2 there is some discussion about the issues.

3 The complaint in our office is often reviewed and
4 revised three and four times before it is filed and presented
5 to me for review. It comes to me with a recommendation from
6 the substantive team head or specialty head, plus the
7 director, recommending approval. Only at that time, then, do
8 I consider the matter and have yet another discussion on the
9 merits of the case.

10 MR. KIRK: So you're the veto?

11 MR. ROODMAN: Well, there are vetoes all along the
12 way. A number of cases are vetoed, are rejected by the
13 specialty head before it gets to me, but I do have the last
14 veto.

15 MR. KIRK: It would never go to you if somebody
16 below you rejected it?

17 MR. ROODMAN: Only if there was a difference of
18 opinion within our staff, which I would say occasionally
19 occurs. Class actions, often two or three attorneys will be
20 working on a case. If you have two attorneys who are pushing
21 it and the team head does not believe the case should go
22 forward, there is an opportunity for them to present their

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1 side of the issue to me for consideration.

2 MR. KIRK: Well, think about a typical law firm
3 where you may have a board of directors or something like that
4 that would okay any substantial lawsuit or a class action or
5 something like that, that the last step is you as opposed to a
6 committee that determines it.

7 MR. ROODMAN: There is, I mean a committee in a
8 sense, I mean one person has to have responsibility in
9 accordance with LSC regulations, and so that is myself, so
10 there is a clear line of responsibility, and I will take the
11 responsibility and other directors around the country take
12 that responsibility and try to discharge that responsibility
13 conscientiously.

14 But it is a team effort. I have some familiarity
15 with the areas that we work in. I feel more comfortable with
16 some than others. But I would say in our organization at
17 least three people concur. And to give you a sense of this,
18 the deputy director is a Harvard law school graduate with 20
19 years of legal experience. The substantive heads of each of
20 our specialty areas are people anywhere from 10 to 20 years of
21 legal experience.

22 So there is already a very substantial review of the

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1 merits of class actions by us. And, of course, the other
2 layer of responsibility that Mr. Edelman referred to as well
3 is the courts supervise class actions very carefully. You can
4 file it as a class action, but that doesn't mean it's approved
5 as a class action. So you have to meet certain standards of
6 Rule 23 in federal court and its equivalents in all the state
7 court systems.

8 There is careful review, once again, by the courts
9 to determine whether there are common questions of law and
10 fact.

11 MR. KIRK: Of the three to 10 a year that you file,
12 what percentage of those are in fact certified?

13 MR. ROODMAN: Ninety-five percent is my guess.
14 Virtually all of them. Most of the issues are B, if you're
15 familiar with class actions, they are B-2 class actions,
16 common questions of law and fact, and we're seeking equitable
17 relief often as opposed to individual damages for each and
18 every member of the class.

19 An overwhelming number of our cases are both
20 approved as class actions and overwhelmingly we prevail in
21 those class actions.

22 CHAIRMAN UDDO: Any more questions, Mr. Kirk?

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1 MR. KIRK: No, thanks.

2 CHAIRMAN UDDO: Mr. Wittgraf?

3 MR. WITTGRAF: Thank you. I want to ask the board
4 members a question first, either Ms. Lee or Mr. Edelman. I
5 think both of you were present and heard the comments of Kay
6 Ostberg a few minute ago, where she proposed that it would be
7 appropriate for a majority of the members of a board such as
8 yours for Legal Assistance Foundation of Chicago, to be
9 client-eligible board members rather than 60 percent or more
10 attorneys, as the law now requires.

11 And I think her concern, at least philosophically,
12 was that that would provide better priority setting or more
13 accurate priority setting.

14 I'd like to know what either of you think about how
15 accurately the priorities that are set by your board do
16 reflect the legal needs of the community that you're serving.
17 Is there a problem, or do you think it's going about as well
18 as it could right now?

19 MS. LEE: Well, I think it's going as well as it can
20 right now, because we don't have enough lawyers or money to
21 serve all the poor in the city of Chicago. We just don't have
22 it, you know. We don't have the lawyers or the money.

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1 We have a lot of poor people out there. Legal
2 Services can't serve everybody because they don't have the
3 money or the staff.

4 MR. WITTGRAF: Do you feel comfortable --

5 MS. LEE: I feel comfortable the way it is.

6 MR. WITTGRAF: -- that the kinds of cases you're
7 doing are the ones that should come first?

8 MS. LEE: I do. Yeah, we do. I do.

9 MR. EDELMAN: I can add to that that we don't have a
10 problem, in my experience since 1986, as we annually review
11 our allocation of resources. There is not rancorous debate
12 about that allocation. There is considerable disagreement in
13 other areas, but that's not one of them.

14 And certainly the client-eligible members, I haven't
15 perceived that there is an inability on their part to
16 communicate their perspective, which is a valuable perspective
17 and gets full hearing at every board meeting.

18 I guess if asked to address that question, my own
19 perspective is that we are primarily responsible with assuring
20 delivery of legal services to those who are eligible for them,
21 and that if someone is going to be designated to have a
22 majority, lawyers probably have a little better idea about how

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1 to deliver legal services, so that the distribution at present
2 has a logical basis for it.

3 I think I would consider an alternative if I had an
4 idea that the clients did not have appropriate input.

5 MR. WITTGRAF: You undertake an annual survey of the
6 needs of the community you're serving, I assume.

7 MR. ROODMAN: We have input from all directions. We
8 have advisory councils in each neighborhood office that we
9 have, plus we have a city-wide advisory council. So we do
10 hear lots of input from our clients in terms of needs.

11 MR. WITTGRAF: Approximately what proportion of the
12 Legal Aid Foundation's funds come from the Legal Services
13 Corporation?

14 MR. ROODMAN: Well, ball park, in any given year I
15 would say about two-thirds.

16 MR. WITTGRAF: So it is unquestionably the principal
17 funding source?

18 MR. ROODMAN: Absolutely.

19 MR. WITTGRAF: What do you do presently, and this is
20 really more for you, Mr. Roodman, what do you do presently in
21 terms of record keeping, timekeeping, as management tools in
22 terms of the utilization of the time of your more or less 85

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1 staff attorneys and how that matches the resources you have
2 and the needs that are being met?

3 When we talk about timekeeping which, as you are
4 well aware, is one of the so-called reform possibilities, what
5 does that mean to you?

6 MR. ROODMAN: Work.

7 MR. WITTGRAF: Is that something beyond what you do
8 now?

9 MR. ROODMAN: Yes. To answer the first part of your
10 question, we of course keep time records in accordance with
11 the requirements of the court system with regard to all fee
12 generating cases, all attorneys' fees cases.

13 We also keep records with regard to any of our
14 activities that are required to be funded by sources other
15 than the Legal Services Corporation. So we document all of
16 our activities in the field of legislative or alien
17 representation and any other field, which we are required to
18 separate it. We welcome the Corporation carefully reviewing
19 our books to establish that we are in fact doing exactly what
20 we are supposed to be doing. We use private funds for those
21 things that are permitted for private funds, and LSC funds
22 only for those things that are permitted under LSC

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1 restrictions.

2 We do not keep time records on every case and every
3 moment of time. We have a computerized client information
4 system where every client is entered into the system. We have
5 some generalized information with regard to the activities of
6 the lawyers on that case.

7 When you close a case, you mark whether you win or
8 lose. You also check off, if it's a case in litigation,
9 whether it's two to 10 hours, or over 10 hours. And we have
10 all of that computerized. But we do not have the equivalent
11 of a private law firm billing system to bill each client by
12 case and amount of work.

13 MR. WITTGRAF: Do you see any potential benefit to a
14 more precise calculation of time for cases other than, as you
15 indicated, the litigation, the two to 10, and the 10 plus?

16 MR. ROODMAN: I would say the first place to start
17 with the Corporation is to remove burdens of record that we
18 have.

19 MR. WITTGRAF: Get specific then if you can. Sure.

20 MR. ROODMAN: Well, first -- let's see.

21 MR. WITTGRAF: Forgive me if I'm catching you
22 unawares here.

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1 MR. ROODMAN: No, no. No problem at all. We
2 recognize the need to keep certain information to show what we
3 do. We do not object to having to establish we serve 35,000
4 clients a year and how many clients are served in each
5 particular substantive area and giving you that information.

6 The areas that we could start with, first in regard
7 to monitoring the amount of information, we have no objection
8 to monitoring whatsoever. It's an important function.
9 Somebody who gives us \$5 million a year, we're happy to have
10 them monitor our activities and show that we're performing our
11 activities in accordance with the requirements set out for us.

12 But I think a number of the requests for
13 documentation are excessive. Those should be reviewed, and
14 Mr. Martin has indicated that he is looking at ways to reduce
15 that requirement.

16 Some of the requirements with regard to alien
17 representation, if you review that regulation in particular,
18 the requirements there are excessive as well, that we would
19 have to keep time records or records on that score.

20 There have been other areas that have stopped and
21 started, that I would urge caution, the declination of
22 representation form is one that was imposed at some point

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1 during the last couple years and then stopped. Before new
2 time record burdens are established, such as timekeeping which
3 is a very onerous and major new system which would have to be
4 totally computerized in all the programs around the country,
5 we would like some relief from other of the paperwork funding.
6 You know, we have to have retainer agreements for every
7 client, signed. We have to have a citizenship requirement
8 signed by every client, even though in some of our offices
9 99.5 percent of the people applying for services are all
10 citizens, but we have to have every one of them sign a
11 citizenship form.

12 There are other forms that are required in our
13 records that I think are onerous for the staff, and if there's
14 one complaint, well, I hear many complaints from staff, but
15 one of course is record keeping.

16 MR. WITTGRAF: Let me go beyond -- I'm sorry.
17 You've done better, been much more specific than I thought you
18 were going to be.

19 Go beyond the paperwork then to the monitoring
20 process to which you've alluded. Do you see any way to change
21 the monitoring process so as to make it more beneficial, of
22 greater assistance to you as a project director and in turn to

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1 your project?

2 MR. ROODMAN: Yes. I think it's very important to
3 start a new environment in legal services, and hopefully we
4 are starting that new day. Monitoring can be helpful if it is
5 looked upon by both LSC and the program as a mutually
6 supportive system to try and correct problems, try to improve
7 compliance with regulations, and not a Sword of Damocles
8 hanging over the head of programs; that we are going to de-
9 fund you because you failed to comply with rule HB2 sub (i) of
10 a regulation.

11 There are programs, if there is a sense that if
12 there are problems in a program, LSC can lend technical
13 support, can lend money, can assist in hiring management
14 consultants to deal with problems, can provide support from
15 other legal services programs.

16 There's usually an answer and pretty well-thought-
17 out supportive system within our whole system of 300 programs
18 to help the programs that need help, and there are some that
19 need help.

20 MR. WITTGRAF: If you feel that you need technical
21 assistance or technical support in a particular area now, what
22 do you do?

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1 MR. ROODMAN: We do not go to the Legal Services
2 Corporation, and have not for a decade.

3 MR. WITTGRAF: And in addition to what you don't do,
4 what, if anything, do you do?

5 MR. ROODMAN: What we do -- well, there's a whole
6 range, depending on the problem. There are times when I will
7 talk to my peers, as other executive directors, and seek their
8 support and seek their guidance. Most problems have been
9 confronted before and are not unique.

10 At times, there is a group called the Management
11 Information Exchange which has been established, which has
12 some information available to assist programs. They keep a
13 certain library of information. The clearinghouse has some
14 information, of course. PAG and NLADA also are definitely
15 sources of support. They at times have had technical
16 assistance funds and money available to help.

17 Then if you had, depending on your financial
18 situation, you might also seek an outside consultant or
19 outside funding to help you hire computer consultants or hire
20 telephone consultants or hire other types of consultants that
21 are out there. And those are the kinds of consultants that
22 LSC, if you provided the support and assistance, if there was

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1 a good monitoring that pointed out weaknesses in a program and
2 it was received and presented in a constructive way,
3 monitoring could be useful. That's what we should be working
4 and striving for, is to have it improved, is to build on and
5 improve systems within programs today.

6 There are so few -- I mean I think situations where
7 de-funding is really what the concern is -- there has to be
8 some sense, we recognize the need to comply with regulations
9 and part of that could well be you are not complying with X
10 regulation and we will help you set up a system to do that.

11 MR. WITTGRAF: I have more questions, but Mr. Uddo
12 assures me that I've asked too many already. So thank you
13 very much, all three of you.

14 CHAIRMAN UDDO: No, it's been very helpful. But in
15 order to stay on some schedule, we have to be a little bit
16 careful about that.

17 Mr. Edelman and Ms. Lee, I appreciate your coming.
18 Thank you very much. Mr. Roodman, you are listed separately
19 as a representative of PAG. Would you want to go into some of
20 your comments that you had prepared for that?

21 MR. ROODMAN: Yes.

22 CHAIRMAN UDDO: Let me, before you do that, just run

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1 down the list of folks I think we're going to get to before
2 lunch, to give the rest of you some idea of where we're going
3 from here. And if you're not on the list before lunch, you
4 should pretty much rest assured that we'll get to you right
5 after lunch. And I'll probably take them in this order:

6 Mr. Baillie, the Minnesota Bar Association;
7 Mr. McCalpin from NLADA; Mr. Miller from Legal Services of New
8 Jersey; Mr. Wascher from the Chicago Council of Lawyers; and
9 Mr. DiSanto from the Legal Services Corporation staff.

10 I think we will get through those five before lunch.

11 Thank you, Mr. Roodman.

12 PRESENTATION OF SHELDON ROODMAN, EXECUTIVE DIRECTOR,
13 LEGAL ASSISTANCE FOUNDATION OF CHICAGO; ON BEHALF OF
14 PAG AND THE LEGAL ASSISTANCE FOUNDATION OF CHICAGO

15 MR. ROODMAN: Once again, my name is Sheldon
16 Roodman. I'm the executive director of the Legal Assistance
17 Foundation of Chicago. I'm speaking on behalf of both PAG and
18 of the Legal Assistance Foundation of Chicago. I have been
19 the director of the Legal Assistance Foundation of Chicago
20 since 1977 and have been with Legal Services for 20 years.

21 I would like to address my remarks just to one
22 simple sentence in the McCollum-Stenholm bill, and that is

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1 section 11(a), General Rule. "All grants and contracts
2 awarded by the Corporation shall be awarded under a
3 competitive bidding system."

4 This simple sentence is I think one of the most
5 serious impediments to our establishing a good working
6 relationship with the board of LSC. And so I urge you to give
7 this your most careful attention. If we are to start with a
8 positive relationship between field programs and the board of
9 LSC, we must start from the premise, I think, and build on
10 history.

11 We have all developed legal services programs around
12 the country over 20 years to try to deliver effective and
13 efficient delivery of legal services. To start with the
14 premise that every single system now will be awarded on a
15 competitive bidding basis and under the prior regulations
16 there will be at least three grantees in every jurisdiction
17 starts with the premise that we are going to destroy every
18 current legal services program in the country. That is the
19 wrong place to start.

20 If you want a fresh start, start from the premise
21 that these programs are effective programs and you want to
22 strengthen them and build on them. That's the place that I

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1 think any new board should start from, until you have
2 discovered ways to improve them and established a record that,
3 in fact, some other system would be more effective and
4 efficient.

5 I think it's helpful, and I think one of the first
6 points, I'm just going to make a few points, I know you're
7 running late here -- the first question, of course, with
8 regard to competitive bidding that I have a problem with and I
9 think PAG has a problem with is what are you competitively
10 bidding for.

11 I've just passed out to you, and if you open to the
12 center page of this pamphlet that I've just handed out, which
13 is a description of the activities of the Legal Assistance
14 Foundation, if you open to the center page and then look to
15 the right and to the left, you have each of the headings of
16 each of our various things that we do in our program.

17 What it shows you is our program, like other
18 programs, are very complex institutions with tremendous
19 demands for services. We have demands both in the
20 neighborhoods of Chicago, southwest and north of Chicago, we
21 have six neighborhood offices for more services. We demands
22 for Social Security disability cases from immigrants and

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1 aliens, for people with regard to problems involving Medicaid,
2 utility, consumer, housing law, and on down the line. Thirty-
3 five thousand clients a year seek our services.

4 Now, what is it that we are competitively bidding
5 for? Who is to determine that? What we do is, our program of
6 delivery is built on 20 years of trying to set the priorities
7 of the agency, and all throughout the country programs have
8 established systems to deal with the priorities that have been
9 developed. The local control idea with boards of directors,
10 and you just saw two fine members of our board of directors,
11 both client and lawyer members of the board, struggle with
12 these issues. That's where the decisions should reside.

13 The issues of priorities and what it is you do
14 should remain with the local community. There simply is not
15 the capacity within the Legal Services Corporation and this
16 board to determine, for Chicago I submit, and other places as
17 well, what our priorities are, what we should bid for. And
18 therefore, I think the premise of competitive bidding is
19 flawed in that regard.

20 The second point I want to make is the institutions
21 that you're dealing with. In answer to Mr. Kirk's question
22 before, I think I alluded a little bit to it. The legal

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1 services programs across the country have built some
2 outstanding institutions, given the environments that we work
3 in, given our limited funding. For example, we have 85
4 lawyers. Over 45 of them have seven or more years of legal
5 experience. We have people who have been doing work in
6 specialty fields and are the experts in the State of Illinois
7 in housing law, in unemployment law, in Social Security
8 disability law.

9 When you have hanging over their head the idea that
10 this law firm that we built up to be an outstanding law firm
11 may be subdivided into three separate parts, that would
12 destroy the whole institution. And I think that's hanging
13 over the heads of all legal services programs in the United
14 States now.

15 This language, the idea of competitive bidding and
16 destroying every institution, is the worst possible message to
17 send to all the programs if you want to work with them. So my
18 message to you is tomorrow to look at this particular language
19 carefully and to recommend to the full board of directors
20 opposition to this language.

21 PAG has taken a position that they are willing to
22 work within the context of the language in the Frank bill to

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1 study this issue. Maybe there can be found some areas in
2 which we can have competitive bidding and build upon that in
3 some limited areas, and we have some limited experience before
4 we proceed.

5 But to even have this language on the table creates
6 the wrong relationship between the Legal Services -- and to
7 the extent that you don't recognize that and oppose that, it
8 establishes a relationship of mistrust and difficulty between
9 the field programs and the Legal Services Corporation.

10 We certainly would like to end that whole
11 relationship and the period of the past and start anew on a
12 supportive system. There are things, I think one of the ideas
13 of competitive bidding, while the language is attractive,
14 competition free markets, which many people support, I would
15 urge you to look at things, if you're interested in proving
16 efficiency, try to help us out with management consultants.
17 Higher Booze-Allen for a number of firms. You know, hire
18 consultants to come in and make recommendations.

19 We have the same problems that Mr. Kirk and Mr. Dana
20 have in large law firms that they operate. We're always
21 interested in improving our efficiency and our operations, and
22 I think it's the area of support that we're looking for.

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1 That's where I think it can be particularly helpful.

2 The one other idea, Mr. Wittgraf, that you asked
3 earlier about positive things that could be done. Well, more
4 funding, of course, is the No. 1 positive thing. I don't want
5 to belabor that. That's true all across the board, and that
6 is the single most serious problem that all programs currently
7 have.

8 MR. WITTGRAF: And I think, to follow up on what
9 you've been talking about in terms of the working
10 relationship, and there are certainly people in this room who
11 are far more knowledgeable in working with the Congress in
12 this area than I, but to the extent that we can go hand in
13 hand cooperatively to the Congress, we're going to be able to
14 make a better and more convincing case for increased funding.
15 And we certainly want to meet the field, as it is, halfway in
16 being able to go forward to the Congress.

17 We've made small progress in that direction, which
18 will make a little more progress for October 1 of 1991 and
19 more beyond that. So funding, I think, flows from our ability
20 to work together.

21 MR. ROODMAN: We look forward to that. One other
22 idea I would just mention, because I think in some sense there

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1 are small steps that can be made, and so it's innovative
2 ideas, loan forgiveness is an area that I think programs
3 around the country would be interested in having some support
4 from LSC for a program that would provide loan forgiveness to
5 entering lawyers and current staff attorneys across the
6 program who want to work with legal service, but have debts
7 anywhere from \$15,000 to \$60,000 in our program.

8 MR. WITTGRAF: Are you talking about guaranteed
9 student loans?

10 MR. ROODMAN: Well, no. Once they have borrowed the
11 money, graduated law school, entered a legal services program,
12 that there would be some forgiveness of those loans for the
13 period of time in which they work in legal services.

14 CHAIRMAN UDDO: Of their student loans.

15 MR. WITTGRAF: They would have to be guaranteed
16 student loans if you're involved in the Federal Government, if
17 you're not looking at a direct repayment.

18 MR. ROODMAN: Well, there are both currently, and
19 many of the law schools across the country, as Professor Uddo
20 probably knows, have loan forgiveness programs, particularly
21 the more financially well endowed law schools. But many do
22 not. I think it is a problem, given the low level of salaries

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1 in legal services. Many people, particularly students from
2 minority backgrounds and others from low income come with
3 large loans. They want to participate in legal services, but
4 given the salary, given the economics of the situation, they
5 need some help.

6 And so that would be one small step that would be an
7 innovative program. I think it's small steps like that which
8 would be useful, and that's one idea.

9 CHAIRMAN UDDO: Mr. Roodman, I don't want to cut you
10 off, but I want to give the committee a chance to ask you some
11 questions about your primary concern here today which was
12 competition.

13 So are there any questions from members of the
14 committee? Mr. Kirk?

15 MR. KIRK: Mr. Roodman, I apologize for keeping
16 asking questions. I am the newest member of this committee
17 and have only been on the board for a couple of months, and
18 I'm trying to soak in a lot.

19 What I'm hearing is all field programs run well.
20 You know, take away as much of the local board control than is
21 possible, take away LSC's control of the boards, you know,
22 don't tell them what to do. I mean almost lead them to the

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1 field and pay them money and assume it's all going to be done
2 right.

3 And maybe that's the solution. Maybe that's what
4 ought to be done. And I know that there is no direct
5 comparison between a local -- I mean my private law firm and
6 yours, because our goals are certainly different. You know, I
7 operate day to day with the thought that if I lose my biggest
8 client, 25 percent of my funding gets cut. And I always have
9 that client to answer to.

10 I don't see similar controls on the local field
11 offices. Do you think there needs to be? I mean are we just
12 saying forget it?

13 MR. ROODMAN: No. Let me clarify. I was not trying
14 to convey that message, and I don't think that's an accurate
15 statement of my message.

16 MR. KIRK: It was not an accusation.

17 MR. ROODMAN: No, I know. I understand. First, let
18 me say I think that the reality of the situation in terms of
19 control and oversight, there is substantially more control and
20 oversight of legal services programs than any private law
21 firm.

22 Look what we have to do. We have independent

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1 auditors that review our books, that prepare an independent
2 audit. Private law firms don't have independent auditors. We
3 have the Legal Services Corporation monitor us every other
4 year. Nine people came to my program for a whole week, three
5 management consults, three or four lawyers and a couple other
6 people; your firm never has nine people come there for a week,
7 demand all of the records that they want to see in the whole
8 universe that we work in, and review and write a 100-page
9 report. That is

10 No. 2.

11 Also we have a 30-person board of directors. We
12 meet, once again, six times a year, our board. I present to
13 them all kinds of information. We have requests to review
14 what we do from our board of directors. Law firms do not have
15 that.

16 Then we have other funding sources, just like all
17 other legal services programs. We have funding from--
18 virtually every private foundation in Chicago has given us
19 money. We write reports to them, they review our work.
20 Lawyers Trust Fund reviews our work as well.

21 So I think, in fact, we have very substantial
22 oversight currently on our programs. And so I don't think

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1 that, while we may dream of being freewheeling and having
2 nobody looking over our shoulders, that's not the real world.
3 And in fact, we spend a good part of our time providing
4 documentation to all of our funding sources, and the Legal
5 Services Corporation asks for a substantial amount of
6 information from us; case service reports on a quarterly basis
7 that are very significant as well.

8 So I don't think that, I don't think that the notion
9 that we want to be free of regulation and free of oversight is
10 what we're saying at all. We recognize the need for that.

11 MR. KIRK: Well, I honestly have not heard any use
12 for Legal Services Corporation and this board. I have not
13 heard any, because we all agree that monitoring ought to be
14 thrown away or what have you, and doesn't really serve any
15 purpose. I mean that's what I've heard from everybody. And I
16 just don't see any --

17 MR. ROODMAN: There is. First of all, the first
18 obligation of the Corporation in my view is to help us secure
19 additional funds from Congress. And I think you have some
20 connections that are very important. And so I would urge you,
21 that is among the most important responsibilities of any board
22 of directors, is to help with the financial resources of the

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1 organization.

2 MR. WITTGRAF: And that securing of funds is founded
3 also on some accounting for the use of the funds.

4 MR. ROODMAN: They go hand in hand, and we are happy
5 to tell you our successes. There's a great story out there to
6 tell Congress.

7 So, No. 1, the use for the Corporation is to help us
8 secure funding.

9 MR. KIRK: I've heard that from my son.

10 MR. ROODMAN: But in terms of oversight, there is--
11 I did not suggest and do not suggest that every single
12 program, legal services program is doing an outstanding job.
13 So the efforts of the Corporation to be directed at the bottom
14 20, that's where I think there is some effort, really that's
15 where the Corporation -- is to isolate some programs that are
16 really having problems.

17 MR. KIRK: What control do we have over the bottom
18 20?

19 MR. ROODMAN: A lot. You give them a lot of money,
20 and with that goes control. The control that you have -- now
21 you're talking about the staff as opposed to the Corporation
22 board of directors? If you're talking about the staff, first

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1 is to have the competency to isolate those 20, to figure out
2 who they are, and to figure out what their problems are. How
3 can you help them?

4 That's where the efforts, I think, can be directed
5 is to help the programs that are weak. Bring in teams of the
6 strong executive directors or the strong litigation directors
7 or others, help pay for support to those programs. And there
8 are programs in need. There are definitely programs that
9 weak.

10 Now, other areas. I think some of the restrictions,
11 you know, the feeling of our staff, you know, ideally what
12 lawyers in legal services want, they want the respect of being
13 like any private lawyer. So any time that you are
14 considering, or anybody is considering a rule that will apply
15 just to legal services lawyers, you will find opposition to
16 that, because we don't want to be different than any other
17 lawyer. We don't want our clients, when they come to us, they
18 should get the same representation, the same range of
19 representation than if they come to your firm. That's all we
20 want.

21 That's not very much. We just want that same
22 ability to do a professional job for our clients.

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1 CHAIRMAN UDDO: Mr. Roodman -- okay, Mr. Kirk.

2 MR. ROODMAN: I'm sorry.

3 CHAIRMAN UDDO: No. Follow up. I was just trying
4 to get back to you for a second.

5 MR. KIRK: Don't you think that every client has
6 certain restrictions on him? I mean not everybody has all the
7 freedoms in the world. I'll assure that clients that come in
8 to me have restrictions that are placed on them, whether it's
9 financial, whether they can afford it and what they can afford
10 to have done, and things of this sort.

11 Don't you think that everybody has restrictions, and
12 that lawyer that decides to work for a big corporation doesn't
13 have the same rights and can't do the same law as somebody
14 else?

15 MR. ROODMAN: Absolutely. In fact, you know, my
16 thought is, actually our clients, some people I think don't
17 fully appreciate this. We turn down many clients that private
18 practitioners would accept their case. We turn down many more
19 cases. Part of what we have to do is, with limited resources,
20 to make certain priority decisions.

21 So I would say that there are many clients who, if
22 they came to you and were willing to pay, they would have a

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1 valid cause of action and a valid claim and you would
2 represent them. If they came to us, we would not represent
3 them. Our standards are tougher, we have fewer resources, we
4 have to make tougher priority decisions.

5 So in fact, we do have lots of restrictions on us,
6 and we turn away many clients saying, I'm sorry, we just don't
7 have the resources.

8 MR. KIRK: Perhaps you and I can carry this on in a
9 private conversation sometime.

10 CHAIRMAN UDDO: I don't want to discourage the
11 exchange, but we do have a schedule that we have to keep, and
12 I know Mr. Wittgraf has at least one question that he wants to
13 ask of Mr. Roodman. Mr. Wittgraf.

14 MR. WITTGRAF: I didn't. Howard, did you have a
15 question?

16 MR. DANA: Sheldon, the statute requires that we
17 monitor and we monitor for a variety of things. Does the
18 Corporation monitor for quality lawyering?

19 MR. ROODMAN: No. In fact, it does not. And there
20 is no -- we've had, as I said, nine people come to us. There
21 is absolutely, our last monitoring which occurred a couple of
22 years ago, no review of the quality of our legal work. You

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1 might be surprised to hear our staff would like it. We laugh;
2 I mean for us the idea that somebody would come and spend all
3 this time and energy looking at our work and not review the
4 quality of our work seems to miss the whole mission, the
5 principal point of what we are there for.

6 So we would not in any way resist, we would welcome
7 a review not only of the compliance with regulations, but a
8 quality review of legal work that we do.

9 CHAIRMAN UDDO: Mr. Wittgraf.

10 MR. WITTGRAF: Just as inevitably as Mr. Dana's
11 questions are rhetorical, mine always involve a preface?

12 (Laughter.)

13 MR. WITTGRAF: My preface in this instance is that
14 as we look at grantees across the country, not all of them are
15 the same as the Legal Aid Foundation of Chicago. A couple of
16 days ago, I was at East River Legal Services in Sioux Falls,
17 South Dakota, one urban county, Minnehaha, and 32 very, very
18 rural counties.

19 About a third of the funds spent by East River Legal
20 Services are spent on judicare, the provision of legal
21 services on a contractual basis with private practitioners,
22 which I assume you do very little of.

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1 MR. ROODMAN: We have, some of our PIA program, we
2 have a reduced fee compensated program, but on the totality of
3 our expenditures it's small.

4 MR. WITTGRAF: My point is as I look at competitive
5 bidding, and I think there will be a bow to competitive
6 bidding probably not as you're concerned with, that all grants
7 should be bid competitively henceforth, but even looking at
8 Congressman Frank's draft bill of this week, some recognition.
9 I'm wanting this, as we discuss our right to look at it in a
10 constructive, positive way, I'm looking toward the next 25
11 years at the provision of civil legal services for the poor
12 and wanting to know other ways to provide legal services.

13 What can competitive bidding, what can the use of
14 additional funds beyond the funds you receive now and trying
15 alternative means of delivery of services with those
16 additional funds, how can we do that constructively, whether
17 you call it competitively or something else, but how can we
18 move forward and build, as you say, upon what we know and what
19 we've done in the last 25 years.

20 If we're going to study competitive bidding, how
21 best can we do it under the terms of reauthorization,
22 authorization?

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1 CHAIRMAN UDDO: And you have about three minutes to
2 tell him.

3 MR. ROODMAN: I don't have all the --I wish I could
4 answer.

5 MR. WITTGRAF: I want to go beyond just saying don't
6 give us competitive bidding for all grants. That probably
7 won't happen. But we're going to do something, probably. The
8 Congress is going to do something, probably. What should we
9 do?

10 MR. ROODMAN: First you should think small. Think
11 small; because you have the capability of screwing up a
12 system. Maybe there are some better systems out there, but
13 start with a few experimental programs. Start with well-
14 designed, well thought through programs in different settings.
15 Maybe one is rural areas. There's everything under the sun in
16 legal services programs, and try a few different settings.

17 And you could, just as my suggestion, deal with
18 particular problems that are there.

19 MR. WITTGRAF: Do you have any such problems in mind
20 that need to be dealt with?

21 MR. ROODMAN: Well, I'll give you one problem in
22 Chicago here. We have maybe 75,000 to 100,000 people who go

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1 through our eviction court a year. Most of them are
2 unrepresented. We and the courts and the Chicago Bar
3 Association are trying to figure out ways that we can deal
4 with providing greater representation to a number of those
5 individuals. That's a discrete, limited problem.

6 Maybe we can work together to try to put together a
7 system that will help that. The judiciary is interested,
8 clients need the representation. It's a discrete and limited
9 problem that we can try to address. It builds on what we are
10 doing; it doesn't destroy what we currently have.

11 MR. WITTGRAF: And might that problem even be
12 addressed by something other than the conventional and
13 traditional staff attorney model?

14 MR. ROODMAN: It might, but I would not start from
15 the premise that another model is necessarily going to be the
16 more efficient model.

17 MR. WITTGRAF: And I don't think I am, at least for
18 one, but I am starting from the premise that we need to
19 consider different options.

20 MR. ROODMAN: You know, legal services are a group
21 of innovative, creative people. There is not opposition to
22 innovation and creative thought. We are not opposed to

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1 experimentation. Just start at a place where we can begin
2 something and look at it, study it, and see how it works. If
3 it works, we'll go with it.

4 So we're willing to experiment with opportunities
5 for others, ranging from private lawyers to more paralegals,
6 more nonlawyers. There are all kinds of different systems
7 that can be looked at. So we welcome the opportunity to do
8 that, and I hope that's responsive and gives you one discrete
9 suggestion.

10 MR. WITTGRAF: Yes, thank you.

11 CHAIRMAN UDDO: Thank you, Mr. Roodman. Because of
12 the schedule, I'm going to apologize to the non-committee
13 board members, and not ask a question from you just on this
14 particular witness, so we can move on.

15 Mr. James Baillie from Minnesota Bar Association.
16 Do you have a written statement that you want to distribute?

17 MR. BAILLIE: What I brought was a biography, so
18 that my background --

19 CHAIRMAN UDDO: If you would give it to Ms. Beatty,
20 she can distribute it to the board.

21 MR. BAILLIE: Thank you.

22 CHAIRMAN UDDO: And please do identify yourself for

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1 the record.

2 PRESENTATION OF JAMES BAILLIE, ESQ.,

3 MINNESOTA STATE BAR ASSOCIATION

4 MR. BAILLIE: My name is Jim Baillie. I am in
5 private practice for 23 years with the firm of Fredrickson &
6 Byron in Minneapolis, a 110-lawyer firm. I'm also involved in
7 the administration of that firm and I am co-managing partner.
8 I have been for 21 or 22 years a volunteer attorney with the
9 Legal Vice Clinics in Minneapolis, board member and
10 chairperson of that board; chairperson of the Legal Assistance
11 to the Disadvantaged Committee of the Minnesota State Bar
12 Association, involved in a number of programs that we
13 innovated in Minnesota, primarily in the early '80s;
14 chairperson of the Legal Services Advisory Committee for the
15 Minnesota Supreme Court. The principal obligation was to
16 advise the Minnesota Supreme Court on the distribution of
17 about a million dollars a year in funding through a filing fee
18 surcharge. Much of that was mandated by the statute, but
19 about 15 percent went on a grants basis.

20 That's my basic background. I've had a number of
21 other involvements with legal aid type programs as a
22 volunteer.

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1 What I would do is -- well, let me say first that I
2 am also delegated by the president of the Minnesota State Bar
3 Association to come down here and testify on behalf of the Bar
4 Association. Last fall, the Bar Association through its board
5 of governors did take a position in opposition to the
6 amendments that were pending then, which are similar but not
7 exactly the same as the ones before this committee now.

8 What I would do, obviously there's a lot more that
9 could be said than time available, is pick out a few areas
10 that are of particular interest to us in Minnesota and try and
11 emphasize some of our experiences and some of the information
12 that apply to Minnesota programs.

13 The first that I would take is section 9, having to
14 do with the restriction on the use of non-LSC funds. One of
15 the questions to a previous person who testified was the other
16 sources of funding. In Minnesota there is relatively generous
17 funding to the legal services organizations. We have six LSC-
18 funded programs, and the percentage that is provided by the
19 LSC to that group as a whole has been declining, of course,
20 over the last few years and is now 29 percent.

21 For the Legal Aid Society of Minneapolis, one of the
22 two large providers in Minnesota, LSC is not the largest

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1 source of funds. It is third, behind a variety of state
2 programs and behind the United Way. All of these programs get
3 very substantial support from the private bar, through the Bar
4 Association's foundations, through special fund-raising
5 programs: the Fund for the Legal Aid Society will have its
6 annual dinner, a very major fund-raiser for the Legal Aid
7 Society, in about a month; IOLTA; filing fee surcharge; and a
8 variety of special programs through the Minnesota legislature.

9 So the point is there that it's inappropriate, I
10 think, these offices are not local branch offices just of the
11 LSC, but have other funding sources to which they are
12 responsible and which are very significant in the services in
13 Minnesota.

14 Those funding sources, I think, would be quite
15 offended to have restrictions on the uses of the funds which
16 they provide for services as they see the needs in Minnesota.
17 All of those are quite responsible, I think, in looking at
18 priorities and requiring information back as to the use of the
19 funds and the like, and they ought to be separated. I suppose
20 that the Legal Services Corporation can place some restriction
21 on the use of its funds, but shouldn't attempt to do that for
22 other very important and very responsible funding sources.

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1 Maybe a corollary to that point is the organizations
2 we have in Minnesota, particularly the largest and oldest
3 ones, are not LSC-created either. They have gone through a
4 history of funding sources. The Legal Aid Society of
5 Minneapolis was founded in 1912. And it has become one of the
6 largest and best law firms in Minnesota, and it gets funds
7 from a variety of sources and it will be different funds in
8 the future, and we should leave that diversity of funding
9 alone and leave it to grow as it has. We are very concerned
10 about driving away those other sources.

11 The second point that I would address, each of these
12 very briefly, is legislative advocacy. The programs in
13 Minnesota do this. I am told that the percentage of resources
14 devoted to this is something, I don't know the exact number,
15 something in the nature of 2 percent or something like that.
16 It is relatively small. I did participate in some ABA
17 hearings that were held in Minnesota a couple of years ago, in
18 which legislators came before the ABA committee and testified
19 that they consider it very important that they have access to
20 information which is not available from any other source as to
21 what is the situation of poor people in Minnesota, what is
22 their experience in the judicial system. And they should be

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1 permitted to continue that.

2 I have, myself, several experiences which I think
3 are very positive. When I chaired the Debtor-Creditor
4 Committee of the Hennepin County Bar Association in 1978, we
5 undertook as a project a new replevin statute. Because of a
6 result of litigation coming out of Florida, the United States
7 Supreme Court had declared a typical form of replevin statute
8 to be unconstitutional. And so in Minnesota, as most places,
9 we went without a statute.

10 The Bar Association, which consisted of mostly
11 private attorneys representing creditors, in that situation
12 felt that a new statute was necessary from the standpoint of
13 the creditors. We formed a Bar Association committee in which
14 we expressly invited representatives of the Legal Aid Society
15 who were expert in representing debtors, who had in fact
16 clients with those issues pending, and went through a process
17 of about a year and a half in which we debated every
18 provision, tried to come up with a good piece of legislation.
19 I think we did. We found sponsors, we presented it to the
20 state legislature, and the director of the Legal Aid Society
21 and I were the parties that went before several committees and
22 testified and walked that thing through.

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1 It worked so well, we repeated it two years later
2 with attachment, and again just recently with new legislation
3 this year with a garnishment statute that was rewritten from
4 top to bottom. I think it's a very good process, and we need
5 the involvement of that kind of person and expertise in that
6 process.

7 They are involved in a number of other things. Just
8 by way of example, utility shutoff, an important issue in
9 northern climes as to when utilities can shut off service when
10 it's very cold, and I think only legal services people can
11 provide input on that basis. Some argue that this is
12 different from what private bar attorneys do, and I say it's
13 not, again, from my own experience. We represent individual
14 clients and groups of clients before the legislature. It's
15 not a major part of our own practice, obviously, but a lot of
16 firms do that in our case.

17 I was, myself, one week ago talking to a group of
18 bankers at a seminar put on just for bankers about legislative
19 issues pending, and recent legislation, and we give that kind
20 of advice. Yesterday, the lobbyist for the Independent
21 Bankers Association of Minnesota, who calls us and calls me
22 periodically on pending legislation, called and asked for

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1 advice as to the interest of bankers on debtor-creditor
2 issues, which is my area of practice. I think that's very
3 appropriate, and I think the legislature needs information
4 from that kind of source, from that interest, and from the
5 other side of that to people whose exemptions are at issue or
6 whose property may be foreclosed on, whatever the legislative
7 issue is.

8 So in our experience, it's appropriate. I've been
9 an observer of the legal services programs in Minnesota for a
10 long time, and it has not been controversial. I have not
11 heard any complaint, I suppose there must have been some, I
12 have not heard a serious complaint about the extent to which
13 it is done or the method that it's done. It's just a very
14 appropriate part of representing that group of clients and
15 having the information that's known to those people available
16 to legislators.

17 A third point would be competitive bidding. I did
18 hear the tail end of the last testimony, and just from a
19 personal standpoint I think some form of experimenting and
20 innovation is appropriate, but it's very, very important not
21 to disrupt an existing system, which to our observation in
22 Minnesota works very well. The support from the Bar

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1 Association and from other groups is consistently strong and
2 favorable.

3 We have one of the oldest law firms in Minnesota,
4 the Legal Aid Society, 1912, functioning at a level that's
5 highly approved of. There is real expertise in that law firm,
6 expertise that doesn't exist anywhere else. It's baffling to
7 me personally, the Social Security things and the income
8 rights, and so on, legislative and regulatory stuff that they
9 have to work their way through.

10 When we needed assistance on replevin, which some of
11 us know from the creditor side, we had to go there. There's
12 no where else where you have that strength of knowledge and
13 diversity. And I would not damage what is a very good
14 organization. I am not involved in the monitoring process,
15 but I heard back, second-hand and third-hand in the process,
16 as questions were asked. There was some monitoring of
17 quality, I think, by asking judges what they thought of the
18 Legal Aid organization in the Twin Cities and I heard back,
19 through judges and otherwise, that the commentary was very
20 favorable, that these are among the best lawyers that appear
21 in front of those courts.

22 I don't think you can expect that if you put it out

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1 for bidding, any significant part of the service, and take the
2 lower bidder. I've read a little bit about how it's worked
3 elsewhere. I just don't picture the quality of service that
4 you can get by that process. Let's try some innovation, but
5 you really have something going there which you need to be
6 very careful with.

7 CHAIRMAN UDDO: Mr. Baillie, do you have another
8 topic that you're going to address, because I want to get some
9 time in for questions; or does that cover the three things
10 that you --

11 MR. BAILLIE: Well, I would have briefly discussed
12 attorneys' fees, some of the restrictions on litigation,
13 timekeeping, and privilege each very briefly. But whatever
14 you wish.

15 CHAIRMAN UDDO: All right, why don't we do this?
16 With the committee knowing that those are other areas that you
17 are interested in, and I'm assuming oppose the McCollum-
18 Stenholm approach to this thing --

19 MR. BAILLIE: Yes.

20 CHAIRMAN UDDO: -- why not see if there are some
21 committee questions on the three things that Mr. Baillie
22 discussed more extensively, and the others that he named that

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1 he had an interest in. Are there any questions? Mr. Dana?

2 MR. DANA: I'd be interested in Mr. Baillie's view
3 on the attorney-client privilege issue.

4 CHAIRMAN UDDO: All right. Before I just let him
5 answer that in global, Mr. Kirk, do you have any specific
6 questions?

7 MR. KIRK: On the lobbying, I really see your point
8 on the replevin. That's clearly a legal issue. The utility
9 turnoff, I see that as an emotional issue that appeals -- is
10 that particular legal issue, I mean aren't there other people
11 likewise interested in that that could be using their funds to
12 do the lobbying, rather than have lawyers doing the lobbying
13 when they could spend the money perhaps to keep somebody from
14 being evicted from their apartment or something?

15 MR. BAILLIE: I can't answer that very well. I
16 wasn't involved in that particular process. The other one was
17 my experience, and that one is not. I would say that I do not
18 know of another organization in Minnesota that is active in
19 representing on legislative issues a group of people that are
20 poor. And that's really what we're talking about exactly:
21 Are we going to cut off the heat or the utilities in January?
22 I don't know another organization that would have picked up

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1 that cudgel. I can't tell you to a certainty that there isn't
2 any; I don't know of any.

3 MR. KIRK: I think that's some of the question that
4 we're going to get from Congress, you know, aren't these
5 things that are not particularly legal, that someone else
6 could or should be doing, and maybe there ought to be
7 something out there. That's just the general tenor of what
8 I'm hearing.

9 MR. BAILLIE: Yes. I see the point to that. I'm
10 sure that the groups exist.

11 CHAIRMAN UDDO: Mr. Wittgraf, do you have any
12 specific questions?

13 MR. WITTGRAF: Not at this time, thank you.

14 CHAIRMAN UDDO: Then would you want to answer Mr.
15 Dana's question, general question about attorney-client
16 privilege?

17 MR. BAILLIE: In a general way. I have not
18 undertaken a careful study of the subject, but I have in my
19 background quite a bit of litigation, including on some of
20 these issues, so I know something about the subject.

21 The entire language that goes to the substance of
22 the privilege, I did write down here. The term "attorney-

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1 client privilege" protects only a communication made in
2 confidence to an attorney by a client for the purpose of
3 seeking legal advice. That is a very short description of a
4 subject that is very, very large and, as I say, I have
5 litigated some of those issues.

6 There are a lot of questions about the scope of the
7 attorney-client privilege that aren't touched there, but to
8 me, by implication, are excluded from what would normally be
9 an attorney-client privilege. For example, normally in my
10 experience, and I have litigated this, the privilege goes also
11 to communications from the attorney back to the client, at
12 least to the extent that those communications, by implication,
13 reveal the communications made by the client to the lawyer.

14 And then when you go to a second level, which is the
15 communication of legal advice, opinions, and strategy, you get
16 into work product. I do not know, sometimes that's
17 denominated separately, but the protection for the work
18 product of the client, which becomes intertwined with
19 privilege, may be excluded by this. I certainly would be very
20 nervous about it.

21 A second point has to do, of course, with creating a
22 federal privilege. And I wonder how that works with legal aid

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1 lawyers litigating in state court, where the state court
2 normally applies a state-created privilege, there is no
3 federal-created privilege, by and large, which is going to be
4 broader, quite a bit broader. Does it follow that that group
5 of litigants, as opposed to that type of case, that group of
6 litigants operate on a different privilege standard? And that
7 seems a quite difficult problem to me, but in any event
8 creates a federal privilege which is sort of a big step.

9 And the third point has to do with what defeats the
10 privilege, what blows the privilege, and there are provisions
11 here as to -- well, there are not provisions as to what
12 happens if third parties are present, agents and so on, and
13 then the issue of disclosing some of this information to
14 administrators and to people who do monitoring. And I would
15 raise a question of whether the privilege can be preserved in
16 those circumstances.

17 CHAIRMAN UDDO: Thank you, Mr. Baillie. Mr. Kirk?

18 MR. KIRK: The attorney-client privilege. Are you
19 talking about the early section, about attaching an affidavit
20 to the --

21 MR. BAILLIE: No. No, this is section, I think, 21.

22 CHAIRMAN UDDO: There is a section that defines

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1 attorney-client privilege.

2 MR. BAILLIE: The exact words I read, but I can find
3 it for you.

4 MR. KIRK: I was not clear on it.

5 MR. BAILLIE: I think it's 21.

6 CHAIRMAN UDDO: I think there is a separate section.

7 MR. BAILLIE: Yes. That is separate from what I
8 call barriers to litigation, which is the requirement of a
9 detailed affidavit signed by the client before a case is
10 undertaken, which I think is a wholly different problem,
11 although you are opening doors to discovery that some lawyers
12 would not in their professional judgment like to open because
13 those statements being created --

14 CHAIRMAN UDDO: Mr. Baillie, I'm going to have to
15 stop you there. I'm about out of time. Are there any
16 questions from the other members of the board?

17 (No response.)

18 CHAIRMAN UDDO: In order to get folks in before
19 lunch, I'm going to have to ask you to stop there. Thank you
20 very much for taking your time to come and speak with us.

21 Mr. Bill McCalpin, representing NLADA. Welcome,
22 Mr. McCalpin, it's good to see you again.

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1 PRESENTATION OF F. WILLIAM MC CALPIN, PRESIDENT,
2 NATIONAL LEGAL AID AND DEFENDER ASSOCIATION

3 MR. MC CALPIN: Mr. Chairman, thank you. Mr.
4 Chairman, Members of the Board, Mr. President, it's a pleasure
5 to be with you this morning on this important subject of
6 reauthorization. I am F. William McCalpin. I am the
7 incumbent president of the National Legal Aid and Defender
8 Association.

9 Although I appear before you in that capacity this
10 morning, I think that I should tell you that the remarks that
11 I'm about to make are not institutional in the sense that
12 they've been approved by our board or our executive committee,
13 although they are based on many of the materials which have
14 been made available to us in our study of this important
15 subject. I suspect also that to some extent
16 they may be personal based on my experience sitting on your
17 side of the table, as will appear.

18 I would like to suggest to you that the Legal
19 Services Corporation has a limited restricted rule in the
20 development of its governing charter. I would recommend that
21 as you think about this legislation, your focus should be
22 directed at the effect of the legislation on two

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1 relationships.

2 First and primarily, it's the relationship between
3 the Corporation and its grantees. And second, and to a lesser
4 extent, the relationship of your grantees to the communities
5 in which and the constituency to which the legal services are
6 rendered.

7 Other considerations, other elements of the
8 legislation are public policy decisions for the Congress to
9 determine and for this Corporation to implement the will of
10 the Congress as expressed in the legislation.

11 The two relationships which I have described should
12 be governed, I submit to you, by the responsibilities of the
13 parties within the relationship. As to the
14 Corporation/grantee relationship, it seems to me that the
15 Corporation is responsible, first, to disperse funds to
16 grantees on the basis and in the way that the Congress has
17 dictated; and second, to assure adherence to the authorizing
18 statute and to other relevant legislation that may be on the
19 books.

20 As far as the grantees are concerned, I believe it
21 is their lot to determine within the parameters of the act
22 what services are to be rendered and how they should be

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1 rendered, that those are matters for local determination.

2 Let me turn for a moment to some of those proposals
3 within the suggested legislation which deal with the
4 responsibilities and the relationships which I have described.
5 First of all, as to the relationship between the Corporation
6 and its grantees, the first and in my mind the most important
7 is one which has been touched on several times here this
8 morning. That is the monitoring and evaluation relationship
9 between the Corporation and its grantees.

10 I need not remind you that has been a constant
11 thorn, a perennial area of dispute, so much so that the ABA
12 has recently spent several years working out monitoring
13 standards. The proposed Frank legislation in section 6 on
14 page 6, and in section 12(d) on page 25, address this
15 important subject quite specifically. The McCollum-Stenholm
16 proposal does so only very tangentially in section 21, which
17 was referred to in the question Mr. Dana put to the prior
18 witness.

19 Basically this problem arises out of something that
20 Mr. Roodman mentioned earlier to you, and that is the fact
21 that in the last decade, this monitoring evaluation process
22 has been adversarial rather than supportive. And I like to

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1 think that in the period 10 to 15 years ago, it was more
2 supportive than adversarial.

3 Specifically, section 6 of the Frank draft bill sets
4 out the authority of the Corporation with respect to enforcing
5 the statute drafting regulations, enforcing regulations, and
6 so on. But then it draws the line between what the
7 Corporation may do and what it may not do. It clarifies, very
8 significantly, the relationship between the Corporation on the
9 one hand and the local programs on the other.

10 It provides due process, something which has become
11 necessary because of the actions of the Corporation over the
12 last decade. It does specify when funding may be affected by
13 virtue of some action of a grantee. It provides in a general
14 way that the Corporation may also take action with respect to
15 the employment status of its own employees, which is no
16 particular problem, but also the employment status of
17 employees of grantees. But it does so without the explication
18 of the basis for such action that exists in connection with
19 affecting funding.

20 I suggest to you that this is a piece of legislation
21 which experience has dictated to us is much needed. And as I
22 mentioned, section 21 of the McCollum bill only tangentially

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1 and then inappropriately in my judgment touches upon this with
2 a skewed definition of privilege which has been the subject of
3 discussion a few moments ago, and on which I shall not
4 elaborate.

5 I would therefore encourage you to support sections
6 6 and 12(d) of the Frank draft legislation and to oppose
7 section 21 of the McCollum-Stenholm bill.

8 A second area affecting the relationship between the
9 Corporation and its grantees is in the so-called fraud
10 provisions, section 4 of the Frank bill, section 3 of
11 McCollum-Stenholm. Interestingly enough, with one exception,
12 the draft of these two provisions is identical. And the
13 exception is a limiting clause in subsection (k).

14 Our view is that this legislation is really
15 unnecessary in view of the opinion of the general counsel of
16 the Corporation dated June 5, 1989, and in view of the history
17 of the programs in this respect. Mr. Wear, in a letter of
18 about the same period, was able to detail only 10 cases in 10
19 years which would fall under any of these provisions, and in
20 each of those cases the program, not the Corporation,
21 uncovered the problem and prosecuted and corrected it.

22 The subsection (k) limitation in the Frank bill

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1 limits the designation of funds as federal funds for the
2 purposes of the imposition of federal criminal statutes only.
3 That limitation is not involved, is not included in the
4 McCollum-Stenholm provision. Its absence would mean that
5 Corporation funds could not be used to match AOA funds, would
6 limit representation of the elderly, might subject Corporation
7 funds to impoundment and apportionment, and indeed would open
8 a great Pandora's Box with respect to the possible application
9 of myriads of other federal statutes and regulations affecting
10 federal funds which are not presently applicable to the
11 Corporation funds.

12 I suggest to you, therefore, that the Frank version
13 of the fraud provisions is preferable.

14 Lastly, in this area of relationships between the
15 Corporation and its grantees is really what I would consider
16 an abstention provision in section 12(b) of the Frank Bill.
17 There is no comparable provision in the McCollum-Stenholm
18 Bill. It's an aspect of preventing this Corporation from
19 being more restrictive with respect to the activities of its
20 grantees than the Congress has provided in the Act.

21 It also precludes as a result of suggestions that
22 were made in earlier drafts of legislation -- precluded the

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1 Corporation from enforcing disciplinary actions against
2 lawyers and leaves that to state disciplinary bodies as has
3 always been the case.

4 Let me turn for just a moment then to the
5 relationship between the grantees and the local community
6 which I think are an apt subject for your consideration.

7 Section 11 in the Frank draft deals with what I
8 consider to be the bedrock principle of local control. The
9 McCollum-Stenholm legislation does not really address it. The
10 Board composition provisions are essentially unchanged. There
11 are some original McCollum provisions there which have been on
12 the statute books for some time that incorporates what's in
13 the riders over the recent years and deals specifically with
14 support centers as compared with the local grantee service
15 rendering program.

16 Section 11 of the Frank bill spells out
17 responsibilities of local boards to set policies and assign
18 responsibility. Again, it draws the line between the
19 responsibilities of the corporation and local boards based on
20 experience.

21 I have to say to you that in this respect the
22 provisions on competition trespass upon and violate, in my

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1 judgment, the principle of local control of who is to render
2 the services, what services are going to be rendered, leaving
3 unfortunately most of those decisions in Washington rather
4 than locally.

5 I suggest to you that if it's necessary to do
6 something in that respect, it ought to be done on a limited
7 basis and I would enter the suggestion that the prior witness
8 gave that you ought to resort to that technique only where
9 there is an existing program which is beyond salvage and you
10 must go to a new program. Work with the program, try to
11 correct it. If it's beyond salvage and you have to do
12 something different in that service area, then and then only
13 consider replacement of that program through some process of
14 competitive bidding.

15 The second area that I want to touch upon is
16 priority-setting. I have a firm belief personally that the
17 principle of local control requires devotion and strict
18 adherence to priority-setting on a broad basis within the
19 community so that those are community decisions and we can
20 eliminate once and for all the allegation that those are the
21 staff decisions based on some social or political
22 consciousness.

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1 Section 25 of the Frank bill intensifies Section
2 100782(c) of the Act. It takes the LSC out of the local
3 priority-setting picture. Unfortunately, the last sentence-
4 Section 8 of McCollum-Stenholm is, in my judgment, too rigid
5 and inflexible with respect to priority-setting and the last
6 sentence unfortunately would put the corporation back into the
7 local priority-setting instead of removing it as the Frank
8 bill would do. The Frank bill, in my judgment, is much more
9 preferable on the subject of priority-setting to the
10 provisions of McCollum-Stenholm.

11 These, I believe, are areas of the legislation which
12 affect the operation of the corporation vis a vis its grantees
13 and are appropriate for your consideration and comment to the
14 Congress.

15 Other aspects of the legislation deal with broad
16 matters of public policy, are essentially political in nature.
17 I submit to you, I suggest to you that they are the problems
18 of the Congress, not the corporation. I say that for two
19 reasons.

20 One, as I have said on earlier occasions and I'm
21 sure that some of you are probably tired of hearing me say it,
22 but resort to the legislative history of the Legal Services

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1 Corporation Act. It is abundantly clear that the purpose of
2 the Congress was to take the delivery of legal services as far
3 as possible out of the political arena. These others are
4 political issues which I suggest you should not touch.

5 The second reason is that since most of these issues
6 deal with restrictions upon the services which should be
7 rendered, for you to take the position on them puts you in an
8 adversarial position to those persons who are intended to be
9 helped by the corporation which you are directed to manage.

10 I suggest to you that if you were to take a position
11 at all, it should be to maximize the services to be rendered
12 to indigents by your corporation but I believe the better
13 approach is for you to stay out of that political thicket
14 altogether. I include in that political thicket how services
15 are to be rendered, class action, negotiation, the so-called
16 procedural safeguards, what services are to be rendered,
17 legislative, administrative advocacy, redistricting,
18 evictions, to whom are the services to be rendered, aliens,
19 where the poverty line is to be drawn, relationship to other
20 statutes, the voting rights statute, the fee-shifting statute,
21 the funding, the private funds -- these are matters for the
22 Congress -- copayments.

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1 I suggest that if you are to take positions on
2 these, it has to be expansive in terms of maximizing the
3 services of this corporation. If you take other positions and
4 the Congress should decide otherwise, you take positions and
5 the Congress decides otherwise than your positions, then you
6 are put in the difficult position of having to implement a
7 statutory position with which you are on record as
8 disagreeing. That, inevitably, will create doubt, suspicion,
9 confusion.

10 I would confess to you that I have the feeling that
11 years ago, when I had something to do with this, some of the
12 interpretations of the statute pushed the outer limits of the
13 application of the statute and created problems which linger
14 with us today. I think the only position for you is one of
15 neutrality with respect to these political issues so that when
16 you are called on to implement them in the future, you are
17 doing so from a clean slate and not from a contrary committed
18 position.

19 Thank you.

20 CHAIRMAN UDDO: Thank you very much, Mr. McCalpin.
21 Any members of the committee have questions of Mr. McCalpin?

22 MR. KIRK: Would you summarize the areas that you

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1 think we should address one more time? I didn't get them all
2 down, I must confess.

3 MR. McCALPIN: I think they are the areas that
4 affect the relationship between the corporation and the board.
5 I think they are monitoring and evaluation, Sections 6 and
6 12(d) of the Frank bill and tangentially, Section 21 of
7 McCollum-Stenholm; the thought provisions, Section 4 of Frank
8 and 3 of McCollum-Stenholm; Section 12(b) of the Frank bill.

9 Now, with respect to relations of the local grantees
10 to their communities, I refer you to Section 11 of the Frank
11 bill. I already cited Section 25 of the Frank bill, 8 of the
12 McCollum-Stenholm bill.

13 CHAIRMAN UDDO: Any other questions for Mr.
14 McCalpin?

15 MR. WITTGRAF: Mr. McCalpin, I think I understand
16 your rationale and particularly the last list that you
17 described procedural safeguards, lobbying and administrative
18 involvement, limitations and so forth, you view as political
19 matters properly left to the Congress to be voted up or down
20 by the Congress and beyond the purview of this Board, either
21 in terms of restricting or opining as to the advisability of
22 that?

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1 MR. McCALPIN: I frankly think that you will be in
2 the better position to implement whatever it is the Congress
3 does if you have not previously committed yourself to a
4 possibly contrary position.

5 MR. WITTGRAF: I understand that, I think. Do you
6 feel that we have any responsibility to opine in those areas
7 that our opinion is of any value, or significance, or that we
8 even have an obligation perhaps to opine to the Congress?

9 MR. McCALPIN: Well, I suppose that I could look to
10 the legislative advocacy position and say that we do advocate
11 that programs ought to be able to respond to a legislative
12 inquiry. I guess equal treatment would suggest that if the
13 Congress asks you, then I guess you ought to be able to
14 respond. Whether you ought to volunteer something to the
15 Congress, I think is another issue.

16 MR. WITTGRAF: I guess if we went back a year in
17 time, just about exactly a year in time, when the Board first
18 started to consider and passed one in June and then another in
19 September, fairly general resolutions in the area of reform
20 and reauthorization, for better or worse we chose on those
21 occasions to opine.

22 I guess under Mr. Uddo's leadership what we are

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1 doing in part now is trying to opine more thoughtfully and in
2 a little greater detail. I can't help but think if, as
3 suggested by Mr. Rudman we were to opine as to the reasons for
4 more money, or they make the case for more funds, which in
5 fact we've been doing in the spring of 1990 and again this
6 spring of 1991, that we may have some obligation to opine in
7 some of these other areas as well beyond simply monitoring an
8 evaluation of theft, fraud and abuse provisions.

9 Do you think that though we're irresponsible if we
10 limit our opinions only to those couple of areas?

11 MR. McCALPIN: Not only do I not think you're
12 irresponsible, I think it is the more responsible position to
13 take, and furthermore, I don't see that there is any necessary
14 nexus between your taking a position that this corporation
15 ought to have greater funding than taking a position on
16 evictions, redistricting, class action, and the like. I don't
17 think there is any logical connection between those two
18 issues.

19 I think you can make the case for more funding on
20 supply and demand criteria -- the numbers of clients served
21 and numbers of clients turned away; the inability of the
22 program to meet the demand. I don't think you need to get

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1 into the minutia of these other political issues.

2 MR. WITTGRAF: I think that you're probably right
3 that we could say based upon these studies done by these
4 entities, the need is far greater than the available funds
5 will allow and anymore that you members of Congress can give
6 us can and will be utilized.

7 I guess my concern at least, as one Board member, is
8 that to be credible in making that case, we have to show that
9 we're not only engaged financially but that we're engaged
10 substantively across these other areas. I guess I can't help
11 but think that be it Senator Rudman and Senator Hollings in
12 the Senate, or Congressmen Smith and Rogers in the House--
13 one Republican and one Democrat in each body -- that certainly
14 the questions they've raised have gone beyond simply how much
15 money is thought to be available to what are our views in
16 these different areas.

17 I think by making some response to their inquiries,
18 we're probably more credible and then in turn our funding is
19 more credible than if we just said, well, we don't think it's
20 appropriate for us to have opinions in those areas. I guess
21 I'm a little fearful, as you may have assumed by now, that to
22 opine in just a couple of areas is to default and is to

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1 undermine our credibility in the larger context, including the
2 context of funding.

3 MR. MCCALPIN: Obviously, Mr. Wittgraf, I don't know
4 the Senate and the Congress as well as I did 10 years ago but
5 were I sitting in your seat, I think the position that I would
6 take with respect to those gentlemen is that you created an
7 entity, you passed a statute intended to take this out of
8 political affairs. Now, we think those are political affairs,
9 we think our attention is better devoted to how we operate
10 this corporation vis a vis the grantees, how we cause them to
11 operate.

12 If you want us to talk about these, if you want to
13 ask us questions about these other things, we'll respond to
14 them based on our experience.

15 Let me say this. As you know, I have taken the
16 position -- I think it's perfectly appropriate for this board
17 and this corporation to give facts. I thought it was
18 inappropriate for this board to represent the Executive Branch
19 of government in the draft of a statute.

20 MR. WITTGRAF: To what are you applying that comment?
21 I'm not sure I follow you philosophically.

22 MR. MCCALPIN: I thought I had sent you a copy of my

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1 letter to the Executive Branch of government setting forth
2 that position?

3 MR. WITTGRAF: You may well have and forgive me that
4 I forget the contents of it if you did. I'd just say one more
5 thing and that is, because the appropriations process, as you
6 know better than most of the rest of us, has been the forum
7 for substantive legislating yea these last 10, 11 or 12 years,
8 while I may agree with you philosophically, I think
9 practically and realistically, it's virtually impossible in
10 1991 to separate the reauthorization process and the views
11 that we have regarding reauthorization from the appropriations
12 process. Again, I just state my fear that to opine so
13 narrowly, I guess we'd be better off, in my judgment, not to
14 opine at all; that if we are going to opine at all, it should
15 be beyond simply monitoring and evaluation, and waste, fraud
16 and abuse.

17 MR. McCALPIN: Then if you're going to do so more
18 broadly, then I think your obligation is to opine on the basis
19 of expanding the services to the greatest possible degree and
20 therefore, in essence, opposing all of McCollum-Stenholm and
21 advocating the Frank bill, and even going beyond the Frank
22 bill.

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1 MR. WITTGRAF: I'm certainly with you at least
2 philosophically on the notion of expansiveness rather than
3 limitation, but I am delighted, really, as I look at the two
4 1991 proposals from Congressmen McCollum and Stenholm and the
5 draft from Congressman Frank as compared just with 1990, let
6 alone 1989, that those men who are engaged in this subject
7 have come so close together from where they were in prior
8 years.

9 MR. MCCALPIN: Some progress has been made.

10 MR. WITTGRAF: I think so.

11 CHAIRMAN UDDO: Mr. Dana, I think you had a
12 question?

13 MR. DANA: Mr. McCalpin, I take it from your comments
14 that you do not think that this Board's conduct last year does
15 not make us a little bit pregnant on the subject of taking
16 positions in this area. I'm reminded of the fact that we have
17 endorsed in principle, McCollum-Stenholm in the past, and
18 further that a plurality of this Board has endorsed the
19 legislation last year in particular.

20 I take it that it is your view that were we to back
21 off and not take any position now, and were Frank to pass,
22 that we would not, as a board, be placed in the position that

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1 you posit, being a board that had opposed legislation that
2 didn't pass and be put in the position of having to enforce
3 something that we as a board had not endorsed?

4 MR. McCALPIN: Mr. Dana, as I recall, the action of
5 this Board last year was by a vote of 4 to 2 with one
6 abstention. It did not represent the vote of a majority of
7 the Board. I think that under those circumstances, this board
8 is entitled to rethink its position and not necessarily to
9 follow what was the action of a number lesser than a majority
10 of this board last year.

11 MR. DANA: So you think it is possible for the Board
12 to climb back off the limb we went out on?

13 MR. McCALPIN: I think it is possible for this board
14 to take a statesmanlike position and say, having rethought it,
15 we think we will not act on these areas this year.

16 CHAIRMAN UDDO: Mr. Kurland?

17 MR. KURLAND: One specific question, sir, involves
18 the role of the Board in having input into policy. Is it your
19 position that the Board should not have any input to say, hey,
20 we think there is not enough attention being paid to the
21 homeless, we would encourage the local recipients to consider
22 giving higher priority to this issue? Would you just stay out

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1 of that?

2 MR. McCALPIN: Well, I think the problem is that
3 particularly in the present atmosphere of corporation/grantee
4 relationships, this Board is not simply going to make a
5 recommendation about homeless, to use your example, that the
6 field programs will not think is an iron hand in the velvet
7 glove, and that it may cause them to override what they
8 consider to be more pressing -- local needs.

9 I think it's inappropriate for the Board to attempt
10 to establish priorities on a national basis when the needs
11 vary so greatly from community to community and maybe in
12 another time when the relationship is more harmonious, a
13 suggestion of that sort might be more palatable, but I'm
14 afraid that it would be regarded as something of a threat in
15 the current state.

16 MR. KURLAND: To restate what you said,
17 philosophically, at a time when the relationships were not
18 like this, you might not be opposed to a communication of
19 priorities but because of the relationship today, you would
20 oppose it?

21 MR. McCALPIN: I certainly oppose it today and I'd
22 have to see what the situation was in the future before I

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1 would tell you whether I would approve it then or not.

2 MR. KURLAND: And then to your broader overall
3 question, do you think that if the Board stays out of the
4 broad philosophical issue and deals specifically with the
5 relationships with the recipients that the recipients likewise
6 should stay out of the debate and should be involved only with
7 those things that directly affect them and leave these
8 broader, general issues to Congress where you state they
9 really should be debated?

10 MR. MCCALPIN: Well, obviously it only gets before
11 the Congress in terms of the public hearings which the
12 committees of the two Houses hold. It's been my experience
13 that to some extent the committees of the Congress invite
14 people to come in and talk to them. To another extent they
15 are willing to listen to anybody who comes to them in a
16 policy-making role.

17 I would think that since they have the factual
18 materials -- and again I say that this corporation can provide
19 factual materials with respect to these issues. I don't think
20 it ought to take an up or down, yes or no policy position. I
21 think that is essentially what the programs do in the
22 legislative process.

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1 MR. KURLAND: So you would agree that the recipient
2 programs, people who testified, should be giving facts and
3 really stick to the facts they are going to present?

4 MR. McCALPIN: I would think that would be the
5 preferable thing to do, yes.

6 MR. KURLAND: That's an interesting offer.

7 CHAIRMAN UDDO: Any questions from members of the
8 Board?

9 (No response.)

10 CHAIRMAN UDDO: Let the record also reflect that Mr.
11 Hall has joined us in the past few minutes. I let this go
12 much longer than we really had time for obviously because Mr.
13 McCalpin speaks for an organization that's very important in
14 making these determinations and also because Mr. McCalpin
15 himself is who he is and has been involved in this so long,
16 and I wanted to give the Committee and the Board an
17 opportunity to engage in this exchange.

18 We thank you very much, Mr. McCalpin.

19 MR. McCALPIN: It's been a pleasure. Thank you, Mr.
20 Chairman.

21 CHAIRMAN UDDO: But the problem that creates for me
22 though is that I won't get the three people in that I said I

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1 was going to get in before lunch. I think I can get one more
2 in. Let me check.

3 Mr. Wascher, what's your schedule like? You need to
4 get out of here?

5 MR. WASCHER : It would be my preference, yes.

6 CHAIRMAN UDDO: Mr. Miller, you're from New Jersey,
7 so your schedule is controlled by your flight, I take it.
8 Afternoon would be okay for you if we held you over until
9 afternoon? When do you leave?

10 MR. MILLER: Later this afternoon.

11 CHAIRMAN UDDO: How late? Let's see if we can
12 accommodate you?

13 MR. MILLER: If I'm the first to go after lunch,
14 that would be fine.

15 CHAIRMAN UDDO: We have two people that have to
16 leave, you and Ms. DiSanto. Let me talk to you during the
17 break, both of you, to see how long you think you're going to
18 need and let's take Mr. Wascher right now, if we could.

19 PRESENTATION OF JAMES WASCHER

20 MR. WASCHER: I appreciate your accommodation, Mr.
21 Chairman.

22 My name is James D. Wascher. I'm a member of the

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1 law firm of Freeman and Holtz here in Chicago. I'm also the
2 President of the Chicago Council of Lawyers which is a 1300-
3 member organization which is permanently represented in the
4 House of Delegates of the American Bar. In addition, I'm a
5 member of the Chicago Bar Association and it's Legal Aid
6 Committee.

7 Two years ago, the Chicago Bar Association appointed
8 me as a member of the Board of Directors of the Legal
9 Assistance Foundation of Chicago which, as you've heard today,
10 is the Legal Services Corporation's grantee in this city.

11 MR. WITTGRAF: Excuse me, Mr. Wascher, just a
12 moment. What's the relationship between the Chicago Bar
13 Association and then the Council?

14 MR. WASCHER: They are two independent bar
15 associations. There is no relationship other than that they
16 both -- they have a certain commonality of membership, but
17 there is no formal affiliation and you might say that when the
18 Council was formed some 22 years ago as an alternative to the
19 Chicago Bar Association, so that's really the nature of it.

20 MR. WITTGRAF: Perhaps this is unfair, but could you
21 use a couple of adjectives to characterize each of them, or a
22 couple of nouns to characterize each of them so we can have

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1 some appreciation for their perspective perspectives?

2 MR. WASCHER: You're going to get me in a little bit
3 of trouble here.

4 MR. WITTGRAF: If the rest of us have to get in
5 trouble, I don't know why you can't too.

6 MR. WASCHER: That's fair enough. I was going to
7 later refer to the Council as Chicago's public interest bar
8 association. That probably doesn't tell you very much. We
9 have been more interested -- at least from our perspective--
10 in legal reform issues, improving the quality of the judiciary
11 here in Cook County in Chicago, than we felt the Chicago Bar
12 Association was certainly at the time that we were founded.

13 We have, as I will also refer to, a rather profound
14 interest in improving the delivery or the quality of legal
15 services to the poor. So whether you want to say public
16 interest --

17 MR. WITTGRAF: I think you've helped me understand
18 the difference.

19 MR. UDDO: Do you have a prepared statement?

20 MR. WASCHER: I do, yes. I've given staff one copy
21 of it. I have a few others, which unfortunately I don't have
22 enough for all members of the Board or the Committee that are

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1 here today.

2 MR. UDDO: I think I'd better ask you a question.
3 If that's one copy of your statement, then maybe you'd better
4 go ahead and get into your statement.

5 MR. WASCHER: All right. As I said, I'm also on the
6 Board of Directors of the Legal Assistance Foundation of
7 Chicago. Just to pick up on what I was referring to a moment
8 ago, the Chicago Council of Lawyers is this city's public
9 interest bar association. Many of our members work for the
10 Legal Assistance Foundation of Chicago and other legal
11 services providers in this area. I can confidently state that
12 all of our members share a commitment to improving the
13 delivery of legal services to the poor.

14 The Council strongly supports congressional
15 reauthorization of the Legal Services Corporation. The legal
16 needs of the poor that were identified by Congress in the
17 statement of findings and declaration of purpose in the Legal
18 Services Corporation Act of 1974 were remain needs today. A
19 study released in October of 1989 by the Illinois State Bar
20 Association and the Chicago Bar Association found that at
21 least 80 percent of the civil/legal needs of the poor in
22 Illinois go unmet, not withstanding the best efforts of LSC

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1 grantees and other legal services providers throughout the
2 State.

3 We endorse Congressman Frank's draft Legal Services
4 Reauthorization Act of 1991. The Council is particularly
5 enthusiastic about the following provisions of the
6 Reauthorization Act.

7 Section 6(c) which provides a badly needed reminder
8 to the Legal Services Corporation and its staff that the
9 purpose of LSC's monitoring of grant recipients is to insure
10 compliance with the LSC Act and the rules and regulations
11 promulgated pursuant to it and not to manage the day-to-day
12 operations of recipients.

13 Section 12 permits the governing boards of the
14 grantees to include attorney members other than those
15 appointed by the dominant bar association in the relevant
16 locality, a measure which should promote increased diversity
17 of Board membership. Section 12 also would provide a welcome
18 statement congressional intent that the governing board of
19 each grant recipient and not the Legal Services Corporation in
20 Washington, D.C. shall determine all broad policy for the
21 recipient, including policy related to client eligibility, the
22 nature of services to be provided by the grantee and the

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1 priorities for the use of available resources. These are
2 decisions best made at the local level rather than by the
3 Federal Government.

4 The Council is, however highly skeptical of the
5 competitive bidding and time-keeping concepts set forth in
6 Sections 17 and 19 of the Reauthorization Act. In particular,
7 we believe that competitive bidding for LSC grants, at least
8 in the Chicago area, would seriously undermine the very goals
9 of such competition as stated in the Reauthorization Act,
10 namely assuring the provision of high quality, economic and
11 effective legal services in order to resolve client problems.

12 If Congress should choose to include Section 17 in
13 the Reauthorization Act, we welcome the requirement in that
14 section that LSC develop criteria to evaluate the performance
15 of grantees and that these criteria include the grantees
16 demonstrated ability to provide a comprehensive range of legal
17 assistance to eligible clients.

18 MR. DANA: Excuse me. You're talking about Section
19 17 of what?

20 MR. WASCHER: Section 17 of the Frank draft.

21 MR. DANA: Section 16, perhaps? Is that dated March
22 20th?

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1 MR. WASCHER: The draft that I have is actually
2 entitled the Legal Services Reauthorization Act of 1990, so I
3 may not be working with the current draft, but that's what was
4 provided to me by LSC staff in advance of today's hearing.

5 MR. DANA: We may be able to translate your comments
6 into the current sections that we're talking about. Is that
7 the Frank bill of last year that you're talking about?

8 MR. WASCHER: Yes.

9 MR. DANA: Fine. If you could use generic
10 references rather than the section references, the sections in
11 this week's bill are slightly different by number.

12 MR. WASCHER: I'm sorry. I was not aware of that,
13 so I did not mean to confuse the members of this committee.

14 MR. KIRK: Do you have copies of your presentation?

15 MR. WASCHER: Yes, I have some extra copies. I only
16 provided one to staff.

17 The Council strongly opposes H.R. 1345, also known
18 as the Legal Services Reform Act of 1991. We respectfully
19 submit that the system for the delivery of legal services in
20 this country is in need of reform primarily at the top, at the
21 Legal Services Corporation in Washington at least as it
22 operated until recently, and not among the actual providers of

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1 legal services at the local level who seem to be the principal
2 targets of H.R. 1345.

3 Section 7 of H.R. 1345 would require time-keeping by
4 Legal Services attorneys but in a fashion far more sweeping
5 and far more burdensome than is contemplated in the Frank Act
6 or the Frank draft.

7 Speaking as a member of a recipient's governing
8 board, I can tell you from firsthand experience that grantees
9 are always staggering under the load of paperwork imposed by
10 LSC. The last thing that we need is the massive additional
11 burden that Section 7 of the so-called Reform Act would
12 create. Such detailed timekeeping simply is not justified by
13 any of the rationales advanced by its advocates. LSC already
14 has more than adequate tools to insure accountability of local
15 grantees.

16 Section 9 of H.R. 1345 would completely and
17 unacceptability change the rules by which the LSC grantees,
18 such as the Legal Assistance Foundation of Chicago, have used
19 funds received from sources other than LSC.

20 As you know, federal funding of legal services for
21 the poor has only recently been restored to its pre-1981
22 dollar level. Of course in real dollar terms, we are still

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1 far behind where we were 10 years ago. In the meantime,
2 agencies such as the Legal Assistance Foundation of Chicago
3 have worked hard to develop and expand the base of private
4 financial support for the programs and to obtain non-federal
5 public funding from sources such as the Lawyers Trust Fund of
6 Illinois, which is an IOLTA, Interest on Lawyers Trust
7 Accounts, entity.

8 It would be entirely unreasonable for Congress to
9 interfere with these relationships by presuming to tell
10 private and nonfederal public funders how their contributions
11 and grants can be spent by local legal services providers.

12 Section 11 of H.R. 1345 would require competitive
13 bidding for all grants and contracts awarded by LSC, in
14 contrast to the Frank draft's provision for a limited study of
15 the feasibility of competitive bidding. I know that other
16 witnesses appearing before you today have addressed the issue
17 of competitive bidding in detail, so I will merely restate the
18 Chicago Council of Lawyers' skepticism about this concept and
19 our belief that it requires considerably more study before
20 Congress requires it nationwide.

21 Finally, as a member of the governing board of the
22 LSC grantee in Chicago, I am compelled to comment on Section

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1 14 of the Reform Act. Section 14 would require that in order
2 to a legal services provider to file a class action on behalf
3 of its clients against the Federal, State or local government,
4 the governing board of the agency would have to give its
5 express approval. Such a requirement is both inadvisable and
6 unworkable.

7 The function of any board of directors is, and can
8 only be, the setting of broad policy for the entity it
9 governs, and not the day-to-day management of the entity's
10 affairs. I seriously question whether the governing boards of
11 LSC grant recipients have the expertise necessary to decide
12 upon the advisability and propriety of each and every class
13 action that its clients wish to file.

14 Board involvement in the approval of class actions
15 also would inevitably expose client confidence to improper
16 disclosure and would routinely involve the attorney members of
17 the Board in conflicts between the interests of the agency's
18 clients and the interest of the attorney's own clients.

19 In addition, since governing boards typically only
20 meet eight or nine times a year or, in our case, six times a
21 year, requiring board approval of class actions could
22 jeopardize the ability of agency attorneys to protect the

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1 interests of their clients in a timely fashion when time is
2 often of the essence for those clients.

3 There is an expression, "Don't fix it if it ain't
4 broke." I submit to you that, at least in Chicago, the
5 delivery of legal services ain't broke and does not need
6 fixing by the Legal Services Reform Act. As a Director of the
7 Legal Assistance Foundation of Chicago, I am proud of the work
8 that our agency does and proud of the way that we go about
9 that work.

10 The attorneys, paralegals and other staff of our
11 agency are highly skilled, dedicated and perhaps most of all,
12 efficient. They provide outstanding legal services to the
13 poor of Chicago on what is, at best, a shoestring budget. In
14 short, the grant money of the Legal Services Corporation is
15 very well spent here in Chicago.

16 On behalf of the Chicago Council of Lawyers, I
17 respectfully submit that the time has come for Congress, the
18 Legal Services Corporation, local legal services providers,
19 and the private bar to stop fighting each other and to start
20 working together to meet the goal established by the Legal
21 Services Corporation Act of 1974 to provide equal access to
22 justice to all Americans regardless of their ability to pay

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1 for legal services.

2 I am pleased to say that I have seen strong evidence
3 of the potential for such cooperation during today's hearing.

4 Thank you, Mr. Chairman.

5 CHAIRMAN UDDO: Thank you, Mr. Wascher. We're not
6 going to have time to ask you questions. If any members have
7 questions for you, I'm going to ask them to ask them to you
8 after we recess, and if it's something that needs to be put on
9 the record, they may have to prevail upon you to stay and let
10 us do that after lunch, but we don't have time to do that
11 because we need to take a lunch recess.

12 I had said 30 minutes. We're going to have to take
13 45 minutes because of a couple of other things we need to deal
14 with, so it will be 1:15 p.m to 1:20 p.m. when we reconvene to
15 finish up our testimony.

16 The room is going to remain open. I think the Board
17 and staff are going to have lunch in here and anyone who wants
18 to stay in here is welcome to stay.

19 We are recessed then until 1:15 p.m.

20 (Whereupon, at 12:30 p.m., the meeting was recessed
21 to reconvene at 1:20 p.m.)

22

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A F T E R N O O N S E S S I O N

1
2 CHAIRMAN UDDO: Would everyone please take his place
3 or her place?

4 Mr. Miller, if you would come to the table, we have
5 all of our committee members who are present -- Mr. Kirk, Mr.
6 Dana, Mr. Wittgraf, and myself. We still haven't seen Ms.
7 Pullen. Has anybody heard from Ms. Pullen?

8 (No response.)

9 CHAIRMAN UDDO: Well, we're going to go ahead and
10 start because we have all the members of the committee who are
11 present present.

12 Mr. Miller?

PRESENTATION OF MELVILLE D. MILLER

13
14 MR. MILLER: Thank you, Mr. Chairman.

15 For the record, I am Melville D. Miller. My title
16 is President of Legal Services of New Jersey. I'm here on
17 behalf of the legal services programs in that State and I'm
18 joined in my remarks by the President of the New Jersey State
19 Bar Association, Alan Begarski.

20 I first just would like to say thank you to the
21 Board for its willingness to go around the country and gather
22 input from any interested parties on this major policy issue.

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1 I really hope that would be something you could find the time
2 on at least major policy issues in the future. It's a very
3 hopeful signal.

4 I gave a written statement to Ms. Beatty which I
5 will not repeat. It's a very short statement which puts out
6 the general principles and general areas of concern. What I'd
7 really like to do in a couple of minutes today is just target
8 on some very specific issues within those areas of concern.

9 Let me first just set the context very briefly for
10 New Jersey because this will give you some sense of where our
11 perspectives come from. It's a very diverse State, both
12 urban, suburban and rural. It has a voluntary bar
13 association; it's not a unified bar association, so that the
14 ethics enforcement in New Jersey is done by the Supreme Court
15 and its offices and committees, not by the State Bar. That's
16 going to be important and relevant to some of the comments
17 I'll make about ethics in a moment.

18 Jersey has nearly \$16 million in funding for legal
19 services; a little over \$9 million of that comes from nonlegal
20 services corporation sources so that the LSC overall in New
21 Jersey is the largest single funding source, but it makes up
22 less than half of the money, so that you can guess that we

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1 were very concerned about the provisions around restrictions
2 of non-LSC funds.

3 It has 14 local programs, and my program which is
4 sort of a statewide umbrella program. It gets State support
5 money from Legal Services but it also is the administering
6 program for the IOLTA Fund and Legal Services in New Jersey
7 gets \$4 million through IOLTA.

8 MR. WITTGRAF: Legal Services of New Jersey
9 administers all the IOLTA funds?

10 MR. MILLER: Just the legal services portion. By
11 court rule, 75 percent is ear-marked for legal services and
12 goes directly to Legal Services of New Jersey and we then
13 disperse it out by grants to everybody from all the other
14 programs.

15 Just as personal background, I've been in legal
16 services as a director for 20 years and I was pretty
17 extensively involved in one fashion or another with the
18 reauthorization process in 1970 and with the original
19 authorization efforts around the corporation in 1973 and 1974.

20 In the ethics area, New Jersey was the first State
21 to adopt the new model rules of professional conduct after
22 they were promulgated by the ABA. I was a member of the

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1 committee that advised the court on that adoption and now have
2 sat for several years on the Advisory Committee for
3 Professional Ethics of the Supreme Court which issues opinions
4 which interpret those ethics rules.

5 In general, legal services programs and the State
6 Bar of New Jersey support most of the most current Frank bill
7 that I have and that I guess you received yesterday or the day
8 before yesterday and oppose most of the McCollum-Stenholm
9 bill. That's set out in the written statement.

10 As I started to mention a moment ago, our first and
11 major area of concern is around the attempts to restrict non-
12 Legal Services Corporation funding. Many of the reactions
13 that the State Bar and Legal Services programs in Jersey have
14 to the McCollum-Stenholm proposals are a negative reaction to
15 what appears to be a very heavy federal hand. The ethics
16 comments I'm going to make in a moment sort of follow the same
17 line.

18 I think I missed the early part of Mr. Kirk's
19 question, and I think it was the first or second speaker
20 today, when you were starting to inquire on the non-LSC funds.
21 I think it started to get into whether or not it would be
22 advisable or possible to have, in effect, dual entities or

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1 side-by-side entities, or multiple entities as providers.

2 MR. KIRK: That stems from my own personal
3 experience in Orange County, Florida where we have a local one
4 that's been in existence far longer than the federal program.
5 The federal program came in and they do operate side-by-side.

6 MR. MILLER: I see. In Jersey, just by contrast,
7 really all I need to do today is try to give you one piece of
8 the mosaic and there are 49 other ones out there. We now have
9 a fairly unified system of 14 providers; we have 21 counties.
10 The 14 providers cover all 21 counties and there is a single
11 provider for each geographic area in the State, so there is no
12 dualization on a city/county basis or two in a county. It's
13 pretty much exclusive in that way.

14 MR. WITTGRAF: Are all 14 providers individual
15 recipients of LSC grants?

16 MR. MILLER: Yes, direct and individual. The thing
17 that we experienced during the 1980s with the federal cuts and
18 the freeze was, as everybody else did, the need to go very
19 aggressively out and raise other sources of money. I think we
20 have had a very high degree of success in that regard, but
21 that money has come in from United Ways, from County Offices
22 on Aging, from county government, from municipal government

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1 and from State government to these same 14 providers, so that
2 if there were the broad kind of imposition of the federal
3 restrictions that McCollum-Stenholm would portend, in New
4 Jersey that would have the effect of having at least the major
5 provider certainly in a fairly active process of reexamination
6 of whether they wanted to continue.

7 We get State money, we get IOLTA money. Those two
8 sources alone account for I guess about \$7 million non-LSC
9 funding and those are essentially not -- they don't have
10 parallel restrictions to the federal provisions. There are
11 nonduplication provisions and that sort of thing.

12 It's just a very important issue and very likely--
13 one can never predict precisely what the State will do -- to
14 have a chilling effect and a disruptive effect if there were
15 that kind of sudden imposition of a whole host of new
16 restrictions.

17 One related point, timekeeping, which --

18 MR. WITTGRAF: I didn't hear, what's the total
19 funding?

20 MR. MILLER: Total funding is just under \$16
21 million. Last count -- it shifts probably from week to week--
22 - it was \$15.9.

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1 MR. WITTGRAF: More than half that came from non-LSC
2 sources?

3 MR. MILLER: Yes, correct.

4 On the timekeeping provisions, the plural is
5 appropriate there, we are more happy with the Frank provision
6 than the McCollum-Stenholm provision but would urge an
7 additional change in the Frank provision.

8 Our major concern for the programs in New Jersey,
9 mine is one of them, they keep very detailed time records
10 across all categories. We keep it in tenths of an hour.
11 That's not an issue. My concern is a different one. I've had
12 the same system in place since early 1980s and I am very much
13 concerned that a sudden federal system mandated the system and
14 approach could really cause a lot of disruption and
15 unnecessary kind of downtime, and you'd probably have to
16 recomputerize and everything else. So that it's very
17 important that if the time-keeping section goes into
18 legislation, from my perspective that it express that no
19 national system be mandated where there is a satisfactory
20 alternative.

21 Just by contrast, the language of Frank now makes
22 cost effectiveness the test rather than simply effectiveness.

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1 Cost effectiveness, I think, relates to a different question
2 which is, do you need the information at all, is it essential,
3 is it cost effective? That's where the cost effectiveness
4 concept belongs.

5 We say it's key in the second part of the Frank
6 provision on timekeeping to say don't mandate a national
7 system of gathering it as opposed to the kind of information
8 you need. You mandate the kind of information you need, leave
9 it up to the providers to figure out the best way to generate
10 the information for you. Is that murky?

11 MR. KIRK: I'd like to hear how this operates?

12 MR. MILLER: Let me just respond to his frown in
13 terms of puzzlement. The version I'm referring to is on page
14 30 of the Frank bill, specifically (a) and (b) at the top of
15 that page. The provision is, "The corporation may not require
16 any maintenance of a recordkeeping system that includes
17 information that's not essential." We would add "or cost
18 effective" there "to insure that corporation funds are used in
19 a manner that is consistent with the requirements and
20 restrictions applicable to such funds, or (b) that the
21 information be recorded in a particular manner when such
22 information can be obtained," and we would add here, "by the

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1 recipient in alternative ways," simply not to get away from
2 the mandate of the system.

3 Ours operates on the basis -- like lots of private
4 lawyers -- of keeping time on tenths of an hour. Because of
5 the kind of program I run, I do it by function because we have
6 a vast variety of different kinds -- we do training, we do
7 responses to requests, we do fundraising, we do a lot of
8 things, so I have a large number of functional categories,
9 about 80 or so.

10 MR. DANA: By case?

11 MR. MILLER: Case by case because we do very few--
12 my program has to do very few cases because it's an umbrella
13 organization. We do it by case where there is potential fee
14 recovery but not as a matter of course by case. We could
15 easily do that if we suddenly got into the business of doing a
16 lot more cases.

17 MR. WITTGRAF: Programming allows a certain amount
18 cross-referencing, I assume, by case, by name?

19 MR. MILLER: Right. That's correct.

20 Just to continue, on the area of discussion which is
21 euphemistically called procedural safeguards to litigation, a
22 couple of problems that we have with that that were not

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1 mentioned I think in the earlier testimony today, one, we
2 believe the Frank provision is much the better. There are a
3 couple of problems even with that.

4 The thing that I'd most like to call to your
5 attention is the likelihood of a significant new paper burden.
6 There was discussion this morning about what kinds of
7 recordkeeping could be taken off the backs of the program.
8 This one portends significant additional paper step. In every
9 case, there's going to have to be this kind or recitation of
10 statement of facts.

11 The Frank provision would require it really before
12 any significant activity is taken even in a prelitigative kind
13 of way. In either case, if it's more than an attorney would
14 normally do, either in the course of retainer or the
15 preparation of a complaint, or verified complaint in an
16 action, then it's something that has to be evaluated very
17 carefully, what is the evil that this process or problem--
18 this proposed process is being designed to cure? That is
19 manifestly unclear to us. It's just not clear what the
20 problem is that's trying to be solved here.

21 So in both provisions, both Frank and McCollum, we
22 think that the paperwork requirement as it now reads goes too

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1 far in terms of posing an additional new step of
2 documentation.

3 A related issue, attorney/client confidentiality.
4 As you, I'm sure, know the rules of professional conduct, the
5 RPCs, in 1.6 provide that the confidentiality attaches to
6 communications from the client which are given, made in a way
7 that's related to the representation. That's the verbiage.

8 In McCollum, this provision around the preparation
9 of the statement of facts, attorney/client confidentiality is
10 not mentioned or privilege, which is a different concept--
11 testimony and privilege is clearly a different concept from
12 the broader concept of confidentiality. Never is mentioned in
13 McCollum so that this statement of facts is, in no way, under
14 the McCollum language protected any existing attorney/client
15 confidentiality doctrine.

16 Frank mentions it but mentions it in a way that the
17 exception swallows the rule. Under our State, anything that
18 would be included in the ambit of a statement of facts as the
19 legislation would require, would plainly be something related
20 to the representation and therefore, confidential. So it's
21 almost kind of an exercise that becomes goofy in terms of the
22 time-wasting problem that I mentioned earlier.

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1 That to us leads to another point which worries us-
2 - particularly the McCollum proposal. There is this tendency
3 -- it was alluded to earlier this morning -- in the definition
4 section, McCollum has a piece about defining the
5 attorney/client privilege. One of the witnesses, I forget
6 which one -- I think the man from Minneapolis raised the
7 question of how that interacted, in effect, with both the
8 prevailing ethics principles in the Federal District Courts
9 and even more sharply, of course, how it interacts with the
10 ethics principles and codes that are in place in the State
11 courts which are the province of the State courts or the
12 unified bar association, depending on the particular State.

13 If the federal legislation redefines or defines
14 attorney/client privilege in a particular way, that's going to
15 do violence, I would suspect -- it certainly will do violence
16 to all of the States that follow the RPCs in defining
17 attorney/client confidentiality.

18 I can't say it's 100 percent true but the vast
19 majority of the Federal District Courts follow the State codes
20 of ethics rather than generating their own codes from the
21 whole cloth. So this area of getting into the question of
22 definition of new ethics rules or new special ethics rules for

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1 legal services attorneys is fraught with difficulty, and I
2 think very unwise and is seen by bars and judiciary -- at
3 least the Bar in New Jersey I can speak for -- as a offensive
4 as well. It's just an example of potential overreaching at
5 the federal level.

6 CHAIRMAN UDDO: Mr. Miller, I'm going to have to get
7 you to sum up so I can get some questions in here.

8 MR. MILLER: Okay. That's fine because actually the
9 two other major areas of concern -- competition, I think has
10 been exhaustively discussed this morning.

11 CHAIRMAN UDDO: And in San Francisco.

12 MR. MILLER: I would not claim to have new insights.
13 We plainly support the study rather than the mandated approach
14 for the reasons that have been advanced.

15 Lobbying, we are very much in support of the Frank
16 alternative as distinguished from the McCollum alternative. I
17 could give you, if people want, in response to questions, a
18 couple of examples of both State legislative lobbying that's
19 important.

20 CHAIRMAN UDDO: Let's see if there are some
21 questions along those lines. Are there any questions from
22 members of the committee about that matter or any matter that

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1 Mr. Miller addressed? Yes, Mr. Dana?

2 MR. DANA: On the question getting back to the
3 attorney/client and the solicitation issue, you're implying a
4 conflict between the McCollum legislation and State ethical
5 rules. Would not the congressional statute control?

6 MR. MILLER: As to the Federal District Courts,
7 there is a conflict. As to the Federal District Courts, I
8 think the better argument probably is that Congress has the
9 power to prescribe ethics principles -- Congress and the
10 Supreme Court, that's a little unclear -- as to the federal
11 court system.

12 As to State courts, I would suggest to you it's an
13 utterly unresolved issue. I'm not aware of a situation where
14 the Federal Government has in the past expressly enacted
15 ethics provisions that were designed to govern the conduct of
16 attorneys and preempt State codes of ethics. I think there
17 the argument of congressional preemption probably does not
18 have the better of the two positions.

19 MR. DANA: So an attorney endeavoring to comply with
20 the statute under the Legal Services Reform Act were to pass
21 might well be in violation of his own State ethical codes?

22 MR. MILLER: Correct. Absolutely.

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1 MR. DANA: And so could not lose his job because he
2 followed the statute and the Legal Services Corporation
3 couldn't yank his job, but he might lose his ticket because he
4 was violating the State Ethical Code. So we put the lawyer in
5 that options choice?

6 MR. MILLER: Right. I think that's correct, and I
7 think we probably spawn a minicottage industry of
8 interpretative litigation.

9 MR. DANA: Another one of Mr. Wittgraf's questions.
10 I apologize.

11 CHAIRMAN UDDO: Mr. Kirk?

12 MR. KIRK: No, thank you.

13 CHAIRMAN UDDO: Mr. Wittgraf?

14 MR. WITTGRAF: The Frank legislation on lobbying is
15 quite similar to the present law?

16 MR. MILLER: Correct.

17 MR. WITTGRAF: Obviously the McCollum language is
18 more restrictive. Do you think, on the other hand, that the
19 Frank wording is broad enough or enabling enough to use, I
20 think Mr. McCalpin's term?

21 MR. MILLER: I think my answer to that would be yes,
22 that with all due recognition of the political realities and

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1 the fact that this is one of the age old topics in legal
2 services, I think it basically describes a set of rules the
3 programs have come to live with and understand and work
4 within. It allows the individual representation in both
5 forums and it allows responding to requests. Those are the
6 important positions.

7 MR. DANA: Did Chairman Wittgraf suggest that
8 McCollum was somewhat more restrictive than Frank on the
9 question of lobbying? Was that your characterization?

10 MR. WITTGRAF: I don't remember my exact words.
11 Restrictive, you thought somewhat was a little short?

12 MR. DANA: Just in my reading of it, I didn't think
13 there was any lobbying that could be done in McCollum. In
14 fact, even if a legislator were to ask a legal services
15 attorney to testify on a matter which he had some expertise,
16 he might lose his job if he complies.

17 MR. WITTGRAF: Except as it affects a recipient
18 directly, a local grantee directly, I think is the only
19 exception.

20 MR. MILLER: I don't think that exception exists
21 under McCollum either. I think that's totally out. The only
22 thing as I recall under McCollum --

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1 MR. WITTGRAF: Except to the extent a governmental
2 agency or legislative body, committee or a member of the
3 organization considering a measure directly affecting the
4 recipient, in this case, meaning the grantee.

5 MR. DANA: That would be like funding of the
6 grantee.

7 MR. WITTGRAF: Yes. I think it's got to be a direct
8 bearing on it, right, but not a client of the recipient, no.

9 MR. MILLER: Isn't that Frank and not McCollum?

10 MR. WITTGRAF: No. I think I'm quoting McCollum
11 correctly. I think the only point Mr. Dana was trying to make
12 was that there's an even greater polarization between the two
13 positions than my characterization indicated. Isn't that all
14 you were saying, Mr. Dana?

15 MR. DANA: I just wanted to be sure I was reading
16 the same statute. Yes.

17 MR. WITTGRAF: It is very limiting, I'll agree, but
18 in light of comments made this morning, and in light of the
19 philosophical comments made by Mr. McCalpin, I was just
20 wondering what Mr. Miller's opinion was in terms of further
21 enabling or whether or not the present law essentially is
22 workable and Mr. Miller, as he has indicated, certainly

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1 understands some of the history that brought the statute to
2 the point that it's at now. You answered that question.

3 CHAIRMAN UDDO: Any members of the Board have
4 questions?

5 (No response.)

6 CHAIRMAN UDDO: Let me just ask you one quick
7 question, Mr. Miller. What do you think about the proposed
8 restriction on LSC grantee involvement in redistricting?

9 MR. MILLER: Again, I don't want to be held to be
10 taking a national position on this, but from the perspective
11 of New Jersey, we have not had that kind of involvement, so
12 that it is really -- and don't, I think, frankly anticipate
13 that we would. So the issue for us, is not one of heavy
14 impact.

15 CHAIRMAN UDDO: Okay. Thank you very much, Mr.
16 Miller.

17 Ms. Emilia DiSanto is going to testify next. At the
18 invitation of the committee, we asked her to give some
19 thoughts from the staff's perspective about some of the
20 proposals that are currently pending so that we are sure we
21 don't overlook some practical effects within the corporation
22 itself and the operation of the corporation.

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1 Let me just look a little bit beyond that. I just
2 got a note as to who is here and who is not. Let me just make
3 sure it hasn't changed since Ms. Beatty prepared it. Is Mr.
4 Dan Houlihan here?

5 (No response.)

6 CHAIRMAN UDDO: Kenneth Howell? Kenneth Howell is
7 not here.

8 Ms. DiSanto?

9 PRESENTATION OF EMILIA DiSANTO

10 MS. DiSANTO: Good afternoon.

11 For the record, my name is Emilia DiSanto. I am the
12 Director of the Office of Monitoring, Audit and Compliance at
13 the Legal Services Corporation in Washington. First, let me
14 say it's a pleasure for me to be here and I thank you for the
15 opportunity to address the committee on the sections of
16 Congressman Frank's bill regarding complaint and monitoring
17 reviews.

18 Section 6 of the bill outlines these provisions
19 which are currently governed by Sections 106(B)(1)(a) and
20 Section 107(D) of the Legal Services Corporation Act. Those
21 are then implemented through various guidelines and procedures
22 that have been developed by the Corporation.

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1 First, I'd like to briefly describe for you and
2 outline the current procedures for complaint and monitoring
3 reviews and second, I'll comment on the practical effects
4 which I believe Congressman Frank's proposal would have on our
5 work.

6 With regard to the current procedures, let me begin
7 by emphasizing the distinction between a complaint review and
8 a monitoring review.

9 Complaint reviews are initiated by an incoming call
10 or a letter received by the Corporation. These can come from
11 a variety of individuals. They can come from members of
12 Congress; they can come from private attorneys; they come from
13 opposing counsel; they come from persons that have been turned
14 away by a grantee because they're not income eligible; they
15 come from patients in mental hospitals; they come from
16 husbands alleging that their ex-wives are ineligible for
17 service and they ought to know; and an incarcerated
18 individuals; and landlords alleging a program's interference
19 in what it is they are trying to do.

20 Monitoring reviews, on the other hand, are much more
21 routine practices that are conducted by the Corporation. In
22 monitoring reviews, third party involvement in the process is

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1 very rare. In light of this fundamental difference, there are
2 separate procedures for handling complaints and for conducting
3 monitoring reviews.

4 Our complaint procedures are based on the fact that
5 the corporation is the middleman between a complainant on one
6 side and the program on the other side. The procedures that
7 we have reflect the fundamental belief that every complaint
8 has got to be treated respectfully, has got to be handled
9 professionally -- which at times can become very difficult
10 with some complainants -- and that every alternative be
11 explored before we go to a program with what may very well end
12 up being a very baseless allegation.

13 Some statistics will probably clarify this point.
14 We get about 200 complaints a year. Of these, about 10
15 percent asks for the Legal Services Corporation's legal advice
16 and those people are then referred to the program in their
17 respective area. Another 35 to 40 percent allege that a
18 program inappropriately denied them legal assistance. In
19 these instances, we usually explain the relevant eligibility
20 guidelines to the complainant and we never reach the program
21 at all.

22 Only half of the complaints that we receive contain

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1 allegations that merit a program's response. These complaints
2 raise questions about specific provisions of law and often
3 require some type of communications between LSC and the
4 program and LSC and the complainant.

5 This communication insures that LSC has the facts to
6 reach accurate conclusions regarding the program's compliance
7 with the law, as well as the validity of the complaint that
8 has come in. Eighty percent of the time, we find no
9 violation, but our job is to document carefully program
10 compliance in order to fully respond to the complaint. Keep
11 in mind that complainants sometimes will threaten to sue us if
12 we don't help them.

13 The remaining 5 to 10 percent of the complaints that
14 we receive merit an on-site review. This occurs after
15 allegations have been examined and in-house review of
16 available information supports the allegations in the first
17 place. In these instances, the grantee is notified of the
18 allegation, of the provision of law that is at issue, and the
19 anticipated procedures that are going to happen on-site.

20 Following the on-site review team members prepare a
21 memorandum of findings and a letter is then sent to the
22 grantee detailing those findings. In the event no violation

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1 is found, the review is concluded. If preliminary findings
2 identify a violation, we provide the program, and very often
3 the entire board of directors of the program, with an
4 opportunity to comment.

5 Keeping in mind those procedures, the provisions set
6 forth in Section 6 of Congressman Frank's bill regarding
7 complaint reviews raises several concerns. In the first
8 place, the language does not allow any flexibility for the
9 different types of complaints that we receive. Rather, it
10 requires that all complaints be handled in the same way and in
11 the same time frame regardless of whether the complaint has
12 little merit or whether the complaint alleges a very serious
13 concern.

14 This lack of flexibility would place unnecessary
15 burden on the programs which our current procedures seek to
16 minimize.

17 Secondly, this legislation would not help insure a
18 thorough fair and accurate review. For example, for those
19 complaints that require an on-site review, the time frame set
20 forth in the Frank bill are unrealistic to achieve an adequate
21 investigation. The bill does not adequately balance the
22 interests of the complainant with that of the program and

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1 reduces our ability to insure a fair review in the first
2 place. Apart from these concerns, there are provisions in
3 Congressman Frank's bill that reflect procedures that we
4 already have in place. First, we do ask that complainants put
5 their concerns in writing while at the same time trying to
6 accommodate those people who can't write. Second, we do
7 notify the program when a complaint has merit.

8 Third, we do provide programs with an opportunity to
9 respond to any allegations. Fourth, we do provide conclusions
10 to the programs. Finally, we do not disclose preliminary
11 findings to anyone other than the program staff and often to
12 the programs' Board of Directors.

13 Turning now to monitoring reviews, many of you know
14 that we conduct on-site reviews on about a two-year cycle.
15 The grantee is notified three to four months in advance of the
16 planned visit. We then work with the grantee to identify the
17 most convenient time for the on-site review, and the team
18 stays on site for about four to five days.

19 During the review, the monitoring team conducts
20 interviews and looks at documents. Sometimes there is a
21 dispute about a requested item, but 90 percent of the time the
22 team and the grantee work things out and get the necessary

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1 information. At the conclusion of the monitoring review, the
2 program is given a draft report. The program is given an
3 opportunity to comment on that report, and those comments are
4 incorporated in the final report, which is then the public
5 document.

6 Please note that this description of the monitoring
7 process reflects about 90 percent of our visits, visits which
8 are cordial, visits which are cooperative. The remaining 10
9 percent of the visits are more complex. The reasons that they
10 are more complex vary. Some say that the problem is
11 overreaching by the Corporation. Others point out that it's a
12 lack of reasonable cooperation by the program.

13 I guess my point is that the provisions set forth in
14 Congressman Frank's bill are in response to a small minority
15 of monitoring activities and don't serve the interest of the
16 overwhelming majority of the programs.

17 Section 6 sets out various requirements and
18 restrictions for the Corporation. Many of the requirements,
19 such as insuring compliance with the law and considering the
20 ethical responsibilities of the recipient, already exists in
21 the LSC statute. Other requirements, such as limiting LSC's
22 access to personal information and personnel-related

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1 documents, have been imposed on LSC by LSC itself.

2 Other procedural issues, such as advanced notice for
3 monitoring, an opportunity to comment on the monitoring
4 report, are routine practices of our day-to-day operation in
5 MAC. Again, the primary distinction between the proposed
6 legislation and the current monitoring process is that
7 flexibility is limited. Responding to concerns on a case-by-
8 case basis will now be governed by an inflexible statute.

9 Some questions come to mind in reading Mr. Frank's
10 bill. For instance, must the Corporation now seek ethical
11 opinions about its monitoring process and the documents it
12 needs to review from every bar association in each
13 jurisdiction served by our recipients? Is the Corporation, in
14 fact, barred from looking at names on payroll registers and
15 timesheets, since they relate to individual employees? Do
16 these restrictions on disclosure compromise the Corporation's
17 fundamental duty to ensure compliance with the LSC Act?

18 These are difficult questions. We, in MAC, are
19 constantly seeking the balance that would meet our statutory
20 obligation and, at the same time, protecting the rights of the
21 grantees, the attorneys, the clients, and the taxpayer. I
22 believe that Congressman Frank's bill may clarify procedures

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1 in some isolated monitoring situations but complicates the
2 procedures for the overwhelming majority and, therefore, does
3 not serve the best interest of either the Corporation or of
4 the field programs.

5 Chairman Uddo and members of the committee, if I can
6 conclude, I guess, on a somewhat broader note, for myself and
7 for President Martin, we, at the Corporation, seek more light
8 than heat in fulfilling MAC's function and in cultivating
9 relations with field programs.

10 We also, at the same time, acknowledge the need to
11 have a mechanism in place to respond to complaints filed
12 against field programs. In like manner, the Corporation needs
13 to conduct regular program monitoring and to receive
14 meaningful data about program operations and program
15 activities.

16 The only question is how to best fulfill these
17 functions without being unduly burdensome on both the
18 Corporation and on grantee program management. Although it's
19 lost from time to time -- and I know I've had individual
20 discussions with many of you in recent times -- the
21 Corporation and the field programs do share the same goal,
22 which is to maximize efficient, effective, and economic

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1 delivery of high-quality legal services to the poor people of
2 this country.

3 To achieve that goal, I strongly believe that we
4 need the flexibility to manage ourselves, to adopt procedures
5 to individual situations and cases, tailoring them to meet the
6 needs of a wide variety of Legal Services' grantees. We need
7 to be free to identify innovative approaches that are
8 appropriate to individual communities, groups, and client
9 programs. Every program in this country, all 323, are
10 different.

11 We do not need an inflexible statute which would
12 have the effect of increasing administrative burdens on all of
13 us at a time when it's particularly important not to divert
14 scarce resources to administrative matters.

15 Under the leadership of David Martin and of this
16 Board of Directors, we are, in fact, exploring new ways to
17 perform our mission and, at the same time, reduce the burden
18 imposed on field programs. Within MAC, we are designing, and
19 we will be implementing new procedures to determine with more
20 precision what information is needed for accountability, and
21 how often does it need to be collected.

22 This endeavor needs to be viewed as part of a

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1 greater effort to diversity and strengthen the system of this
2 liberty of legal services. I am not saying that MAC's
3 procedures are the key to reaching the goal of making access
4 to our legal system a reality to the nation's poor, but I am
5 saying that MAC can have a real contribution to this goal and
6 to fulfilling our necessary function in the least burdensome
7 way possible.

8 In that sense, I think that MAC can do more than
9 just ensure financial accountability and statutory compliance.
10 We can assist in raising the efficiency, the economy, and the
11 effectiveness of legal services' programs. For example, the
12 information from a well-planned and well-executed monitoring
13 report can help better advise a grantee about the relative
14 efficiency and quality of its operations and make clear the
15 type of technical assistance that may be necessary.

16 In turn, it can help a field program identify areas
17 of strength and of needed improvement. I believe that
18 unrealistic and unnecessary complaint and monitoring
19 requirements, especially when enshrined in an inflexible
20 statute, can have a negative effect on these policy goals and
21 do not serve the best interests of either the field or
22 Corporation headquarters.

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1 Thank you for your time and attention. I'd be happy
2 to answer any questions that you might have.

3 MR. UDDO: Any questions from the committee?

4 MR. WITTGRAF: Emelia, would it be possible, do you
5 think, to provide us with copies of your remarks? They are
6 typed up or prepared in some fashion.

7 MS. DiSANTO: They are typed up. They've got some
8 writing on them, but I'll be sure to get a clean copy to Pat
9 first thing Monday morning.

10 MR. WITTGRAF: Yes. I think that would be helpful.
11 Again, if we were to defer to the philosophical approach to
12 reauthorization suggested by Mr. McCalpin, we should be
13 particular concerned with the area of enforcement sanctions
14 and monitoring. I think it would be very helpful to have your
15 text.

16 MS. DiSANTO: Surely.

17 MR. UDDO: Mr. Dana, did you have a question?

18 MR. DANA: I did. Emelia, it would be helpful, I
19 think, also, generically, to have you take the Frank
20 legislation and indicate what changes you would make in it, or
21 are you suggesting that the existing statute should remain
22 unchanged? I don't ask you to rush to a response, but in at

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1 least one respect, I completely agree with what you've said.
2 You know, on page 7, for instance --

3 MS. DiSANTO: Of the Frank bill, Mr. Dana?

4 MR. DANA: Of the Frank bill, under Section ii,
5 which I think is the second of those sections, so it probably
6 ought to be changed to iii, the Corporation --

7 MS. DiSANTO: I don't have, I think, the same thing
8 that you're looking at, Mr. Dana.

9 MR. DANA: Are you dealing with last year's Frank
10 bill? Were your remarks focused on the last year's Frank
11 bill?

12 MS. DiSANTO: My remarks were focused on the '91
13 bill that I think arrived in draft this past week. That is
14 what my remarks were addressing.

15 MR. DANA: To the current bill?

16 MS. DiSANTO: Yes.

17 MR. DANA: Starting at line 10, ii, which is the
18 second of those, it says, "Within 30 days of receipt of a
19 complaint, the Corporation has either got to reject the
20 request as groundless or commence an investigation." I don't
21 know how the Corporation could reject a request as groundless
22 if it hadn't commenced an investigation of sorts.

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1 MS. DiSANTO: That's absolutely true.

2 MR. DANA: I'm troubled by the fact that -- my guess
3 is that lots of the complaints you receive are of a type that
4 might not merit running out and doing one of the other within
5 that time frame.

6 MS. DiSANTO: That is often the case. Just looking
7 at the statistics on how complaints break up, we've got a good
8 portion, about 50 percent, of the complaints that we receive
9 that we never approach the program at all. We more or less
10 deal with them inside on a pretty prompt basis.

11 MR. DANA: Let me tell you what I understand to be
12 part of the concern that promoted some of this. You may
13 recall in the early 80s, there were a series of vignette
14 allegations of wrongdoing on the part of Legal Service's
15 programs. They were constantly being thrown out to the
16 programs by the people who hated legal services as examples of
17 what a terrible program was done.

18 These were investigated by the Corporation, but the
19 programs were never advised of the investigation. They were
20 never told of the result. So they were never put to bed.
21 They were constantly being thrown up. Washington moves on
22 stories like that. It moves on allegations.

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1 So, in a sense, this is a response to that era, I
2 think. I'd like to think that that era is behind us, but
3 we're still dealing with the remains of a period of
4 confrontation where any allegation was made and then remade
5 and remade. The Corporation contributed to that by never
6 advising the program that it had been investigated and found
7 to be either a slap on the wrist or no problem at all.

8 The way the procedure currently works is that if
9 there is a violation or we sense there is a violation, I think
10 it's important on our part, the Corporation's part, when a
11 complainant comes in to the Corporation, of looking at the
12 voracity of the complaint at the motivation of the complaint
13 on an initial line. That's important for us to do
14 because we are sometimes the middle man between the
15 complainant and the program. The Corporation would like not
16 to be used by the complainant if we can avoid that. Right now
17 what we do do is that if there is merit to the violation, and
18 the complainant typically will provide us with information, we
19 will also look in house at the information that we have
20 available to us to see if we have identified anything
21 similarly.

22 If those two, more or less, tests are met, we will

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1 then go to the program and say, we have this complaint. This
2 is what it's about. Can you give us the documents?
3 Typically, as I said, in 80 percent of the cases, we do not
4 find any violation. The complainant came forward, and there
5 is no violation. We more or less tell them.

6 The whole idea, as you said, of old allegations keep
7 coming up, I'm a good one to talk to about that because
8 sometimes I think we're in a similar circumstance of what was
9 happening then in what happens and what's happening now. But
10 we usually tell the program, and we either close the case, or
11 you continue the case until some kind of closure.

12 MR. DANA: It seems to me one of the problems with
13 this section is it does not distinguish between a complaint
14 that is of criminal conduct and a complaint which is arguably
15 a violation of procedure or something like that.

16 MS. DiSANTO: Or even more, a substantive complaint
17 that has merit versus a complaint that is meritless.

18 MR. DANA: I think our response, as a Corporation,
19 has got to be in the context of history. We've got to
20 understand what the problem is that brought this forward.
21 This Frank bill constantly refers to independent evaluations,
22 an undefined term. Some would argue that what the Corporation

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1 does is an independent evaluation, especially since you go out
2 and hire "independent monitors" to come in and do it.

3 I'm not sure that's what the author has in mind. So
4 I think there are some problems with the Frank bill,
5 especially in this area, and I think this is the first time
6 that the Corporation has responded to us late on the second
7 day of hearings about a bill that is put forth by the chairman
8 of the committee. I'm encouraging you to help us mechanically
9 respond to these issues.

10 MS. DiSANTO: Surely.

11 MR. UDDO: Let me go farther and say we would need-
12 - I'm going to request that you do what Mr. Wittgraf and Mr.
13 Dana have said, if at all possible, Emelia, by next weekend.
14 This committee is scheduled to meet again next Sunday, the day
15 before the Board meeting.

16 I think I'm safe in saying that for the most part
17 this committee is not going to get into that kind of detail on
18 most of the things that they're going to recommend or deal
19 with. But since this is a fairly detailed area, the comments
20 on the practical effect of that section of the Frank bill I
21 think ought to be laid out fairly clearly and presented to the
22 committee next Sunday. The committee may want to pass it on

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1 to Congressman Frank as a matter of concern or information
2 from the committee. So, if we could have that by next Sunday,
3 I think that would help.

4 MS. DiSANTO: Surely.

5 MR. UDDO: Mr. Kirk, do you have any questions?

6 MR. KIRK: No, sir.

7 MR. UDDO: Mr. Wittgraf?

8 MR. WITTGRAF: Just one moment.

9 MR. UDDO: Well, I'll ask a couple while you're
10 doing that. Emelia, the sections of the McCollum-Stenholm
11 bill that deal with procedural safeguards and attorney-client
12 privilege, are those matters that appear there because they
13 are perceived as things that would be helpful in monitoring?

14 MS. DiSANTO: I think that some of the language that
15 was brought forward on attorney-client privilege had something
16 to do with monitoring. I can tell you that the issue of the
17 attorney-client privilege is one that at one time I could say
18 about three years ago was a constant problem. I think today
19 it is much less so as we manage to work it out with most of
20 the programs, as I had said.

21 But overall, the issue of the attorney-client
22 privilege, confidentiality, work product, even trade secrets,

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1 are things that we are faced with on a more or less daily
2 basis. What exactly it is, and does it change from service
3 area to service area, which we do see it does, and the
4 informal bar opinion that we are provided on the first day of
5 the visit that advises us that client names are attorney-
6 client privileged information, although pleadings have already
7 been filed in the court, and we can't have access to that
8 information unless we go to the court to get it, present
9 problems for us.

10 They present problems not only for us, but they
11 present problems for the programs. It affects both of us
12 because it lends itself to inefficiency and ineffectiveness to
13 the visit as well as a lot of discussion on the program side
14 at trying to get down to what is the attorney-client
15 privilege, how does it change, which one do you listen to, how
16 many different interpretations are there for the attorney-
17 client privilege, or trade secret, or work product, as you
18 move from bar association to bar association, and formal
19 opinion to informal opinion, to ABA opinion, to a court case.
20 Those questions are things that we encounter most often.

21 MR. UDDO: I'm concerned about trying to federalize
22 the definition of attorney-client privilege. Yet, I

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1 understand the concerns that you have and the problems that
2 you have. I'm interested in your statement that it's less of
3 a problem than it once was.

4 Do you think it's necessary to make a change on the
5 federal level in the definition of attorney-client privilege
6 or is there some other mechanism that might work as well
7 without trying to do that?

8 MS. DiSANTO: I think that there are always a lot of
9 options in dealing with problems and perceived problems. The
10 attorney-client privilege is one that can be dealt with on a
11 federal basis through a statute. I understand the concerns
12 that have been brought forth here today about, I've got the
13 federal law, I've got the state law, I have model codes, I
14 have the requirements that we each have to meet as attorneys.

15 How do you balance all these things that are out
16 there? I don't have the solution to it, but clearly you can
17 do it through a statute, you can do it through regulation, you
18 can do it through a policy with the Corporation, you can do it
19 through some type of agreement, or you could do it very much
20 like what we're doing now, which is on a case-by-case basis,
21 looking toward the individual program and the circumstances
22 that arise on site.

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1 Each program is different. The things that a
2 monitor sees and a team leader sees on site are different.
3 The extent to which you can accommodate a document or take an
4 alternative document to reach the same goal changes from visit
5 to visit.

6 So, I guess my answer, the long and short of it, is
7 there are a lot of different ways, depending on which way you
8 want to go.

9 MR. UDDO: I guess my question is, are you satisfied
10 that you have the tools to do it now, or do you feel that we
11 really need a federal statute defining attorney-client
12 privilege?

13 MS. DiSANTO: I think, as we stand now, we are able
14 to resolve most of these concerns between 85 and 90 percent of
15 the time, to some degree. It's that remaining 10 percent,
16 those 10 percent of the visits that you go to, that are
17 difficult, that are complicated, that people get a little bit
18 emotional about them, that raise the issues. Maybe dealing
19 with them on a one-by-one basis is the thing to do, as you do
20 with the other 90.

21 MR. UDDO: Mr. Wittgraf, do you have any questions?

22 MR. WITTGRAF: I think you said some things earlier,

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1 based upon the work that you and President Martin are doing,
2 that were really pretty much in sync with what I believe I
3 heard Mr. Wootton saying this morning about the more
4 constructive nature of monitoring visits rather than simply
5 the literal compliance aspect, which has been the focus, I
6 guess, in recent years.

7 Are you at a point where it's possible for you to
8 share any of those possibilities with us, or is it premature?

9 MS. DiSANTO: Sure. No. I'm really glad you asked
10 the question, actually, Mr. Wittgraf. Talking as of late, I
11 can tell you from my own experience that I think monitoring
12 visits are becoming increasingly more constructive. I say
13 that to the extent that I do have programs that call me that
14 ask for assistance.

15 I have sent staff members on site to programs to
16 stay for a week or more, to try and help the program that is
17 trying to get off the ground or a troubled program that can't
18 get over a specific hurdle. I can tell you that we get
19 probably 15 to 20 phone calls in our audit division per week
20 from programs that have questions about their accounting
21 systems. We're there to give them a hand with that.

22 We also provide, and each of our reports contains,

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1 somewhere between 10 and 15 recommendations to a program that
2 may or may not be compliance related. Things can deal with
3 anything from "be sure that in the future you don't write
4 checks to cash" to "make sure that your tickler system is
5 consistent through your whole office so you don't miss a court
6 date" to a very compliance-orientated issue that your
7 40-60-10 percent requirement in 1607 board composition isn't
8 working. You've got to get it fixed.

9 What we're probably looking toward in the future is
10 something along a self-assessment where a program can do a
11 critically honest review of itself before we get there. We
12 can assess that document to make a determination as to what we
13 think is the next best thing to do with regard to the program
14 which could be an on-site review of the type we do now, which
15 is a full on-site review, to just a straight compliance review
16 on what we had seen last time, or just a review for a day or
17 two on site, or requesting some additional documents.

18 I think it will open up the ability to have a choice
19 of the type of visit that you would do as opposed to the type
20 of cycle which we have been on of every 24 months a full
21 on-site review would take place.

22 MR. WITTGRAF: Thank you.

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1 MR. UDDO: Any questions from the Board?

2 (No response.)

3 MR. UDDO: Thank you very much, Emelia. We will
4 look forward to getting that additional information for next
5 weekend.

6 MS. DiSANTO: Sure. You bet.

7 MR. UDDO: Before we go to the next speaker, I want
8 to recognize for the record that Ms. Pullen has joined us.
9 Ms. Pullen is a member in the committee, and that give us our
10 full contingent now.

11 Mr. Daniel Houlihan, if you would identify yourself
12 for the record, Mr. Houlihan.

13 PRESENTATION OF DANIEL HOULIHAN

14 MR. HOULIHAN: Thank you, Mr. Chairman, and members
15 of the committee. By way of identification, my name is Daniel
16 Houlihan, H-o-u-l-i-h-a-n. I am state legislative counsel for
17 the Illinois State Bar Association. I'm appearing here today
18 on behalf of our president, Maurice Bone of Bellview. He
19 wished to be present himself, but he and other members of the
20 Board of Governors of the Association are at a previously
21 scheduled Board of Governors' meeting in St. Louis.

22 The statement which I am going to make here, or

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1 frankly which I am going to summarize here, is that of Mr.
2 Bone.

3 MR. UDDO: Go right ahead. Do you have copies of
4 his statement?

5 MR. HOULIHAN: I don't because I've marked this up,
6 but I'd be happy to submit copies afterwards.

7 MR. UDDO: That's okay.

8 MR. HOULIHAN: Last year the Illinois State Bar
9 Association adapted a resolution opposing the McCollum-
10 Stenholm Amendments then pending before Congress. A copy of
11 that resolution was circulated to the Illinois Congressional
12 Delegation.

13 The State Bar Association continues to be opposed to
14 these amendments which now appear in H.R.1345 and which was
15 introduced by Mr. McCollum in March of this year. In
16 Illinois, Legal Services Corporation-funded programs and the
17 Illinois State Bar Association have had a cooperative and
18 productive association.

19 We are proud of our legal services program and the
20 work that they do for the disadvantaged in Illinois. We are
21 proud also of the thousands of private attorneys who volunteer
22 their time to help legal services programs meet the

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1 overwhelming unmet legal needs of Illinois citizens.

2 The willingness of these volunteers to help legal
3 services programs in their own communities is convincing
4 testimony of the support that these programs enjoy in the
5 legal community. Our members know these programs well. They
6 serve on their boards. They oppose them in court. They serve
7 on bar committees with them, and they accept pro bono
8 referrals from them.

9 The attorneys who work in these programs are
10 diligently advocating the rights of their clients in court and
11 administrative hearings. These legal services programs, Land
12 of Lincoln Legal Assistance Foundation, Prairie State Legal
13 Services, the Legal Assistance Foundation of Chicago, the
14 Legal Assistance Foundation of Cook County, and West Central
15 Legal Assistance are fine programs.

16 Many state bar members work very hard as volunteers
17 to ensure that they continue to be responsive to local needs.
18 Your grantees continue to need your support. We hope that you
19 will show that support by opposing the restrictions contained
20 in H.R.1345, and that you will work with Congress to develop a
21 reauthorization bill that allows legal services programs to
22 deliver a full-range of legal services to low-income clients.

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1 In line with the director to address views to
2 specific sections of the bill, I will try to be brief in
3 outlining our opposition to certain provisions, although
4 failure to comment on other provisions should not be taken as
5 an indication of support. Rather, these are some of the
6 principal concerns.

7 In Section 5, entitled "Procedural Safeguards for
8 Litigation," H.R.1345 would impose a set of conditions that
9 are burdensome and unwarranted. These requirements will
10 establish procedural obstacles in the path of low-income
11 clients seeking equal justice from the court system.

12 They subject potential plaintiffs to harassment and
13 intimidation. To the best of our knowledge, there has been no
14 demonstration that there isn't a need for these procedural
15 obstacles. Section 8, entitled, "Authority of Local Governing
16 Boards," is a slight improvement over last year's provision
17 but is still unacceptable.

18 In it, the Legal Services Corporation would
19 promulgate a suggested list of priorities from which local
20 Boards of Directors could select local priorities. Local
21 Boards would then set priorities for types of matters and
22 cases to which the Legal Services staff should devote its time

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1 and resources.

2 Any cases handled outside of these priorities could
3 not be taken except in emergency situations defined by such
4 board. Deviations from this set of priorities would be
5 reported to the Legal Services Corporation annually. This
6 proposal, in our view, distorts the role of the Board of
7 Directors, would eliminate comment from other elements of the
8 community, and make staff response to client legal needs rigid
9 and inflexible. In fact, it is an attempt, we feel, to fix
10 something which is not broken.

11 The present priority-setting system works and
12 provides the needed flexibility to programs and allows
13 important input from a number of community sources. In any
14 corporation, profit or not profit is the role of the Board of
15 Directors to policy and to review its implementation.

16 Employees implement the policy and are responsible
17 to the Board of Directors when it is not implemented. We know
18 no reason why the present system needs to be changed. A
19 recently completely legal needs study, funded by both the
20 Illinois State Bar Association and the Chicago Bar
21 Association, did not find programs unresponsive to needs.
22 Rather, it found programs unable to respond because of

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1 inadequate funding and, in consequence, inadequate staffing.

2 Section 9, entitled, "Regulation of Non-Public
3 Resources," poses particular problems to members of the
4 Illinois State Bar Association and Illinois Legal Services
5 programs. Until now, the restrictions contained in the Legal
6 Services Corporation Act and Regulations applied generally to
7 LSC funds only. Other public funds could be used for purposes
8 deemed appropriate by the unit of government providing the
9 funding.

10 We feel that the present system works and is
11 appropriate. State and local governments, the governing
12 bodies of United Ways, the Board of Directors of our state
13 IOLTA program, Lawyers Trust Fund of Illinois, and other
14 funders are perfectly competent to determine whether they wish
15 to give a legal services program money to fund a particular
16 kind of case or to provide legal services to a particular
17 class of people.

18 Congress is perfectly free to limit how its money
19 can be spent, but other funding bodies should be allowed to
20 make their own decision based on legal needs, local needs, and
21 not on national needs. This would amount, in our view, to a
22 federal overreaching as far as local legal services funding

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1 decisions, and it frankly is not warranted.

2 It would denigrate the ability of these groups to
3 decide how best to spend their precious local dollars. It
4 will ultimately lead to the contraction of local public and
5 private funding and would therefore result in fewer legal
6 services being delivered to low-income individuals and
7 families.

8 Yet, another section of the bill would attempt to
9 introduce the concept of competition into legal services. The
10 state bar association, as it did last year, feels this is ill-
11 conceived and strongly opposes the concept. As we have said
12 before, the legal services program in Illinois have built a
13 fine reputation and provide generally excellent legal services
14 to low-income clients.

15 They've been able to do that because they have had a
16 base of reasonably predictable funding from the Legal Services
17 Corporation and have been able to recruit and maintain quality
18 staff attorneys. While H.R.1345 does not outline the process
19 of competitive bidding, the concept of lowest cost is inherent
20 in the process, a concept that we think is inappropriate for
21 determining providers for legal services to the poor.

22 Currently, the quality of the legal services

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1 provided and the skill and confidence of the program clearly
2 ought to be basic and minimal qualities. Will established
3 private lawyers be likely to bid on these contracts? It is
4 unlikely, in our view. How will the bids be determined? Will
5 these bids be for particular types of cases predetermined as a
6 legal need in Washington? Will only routine and simple cases
7 be included in the bidding?

8 The legal services program in Illinois have
9 developed expertise in helping low-income people solve their
10 legal problems. Competitive bidding could destroy those
11 programs and add expertise. It amounts to a convoluted
12 solution being developed for a problem which does not exist.

13 Finally, Section 21, which is harmlessly titled,
14 "Definitions," contains the definition of the attorney-client
15 privilege that is not used in court cases or in ethical
16 opinions. If adopted, it could erode a basic principle of our
17 legal system and result in providing that what a poor person
18 tells a legal services attorney is not protected in the same
19 fashion or to the same extent as a paying client. Attorneys
20 on the Legal Services Corporation Board of Directors should
21 find this section particularly troublesome.

22 In closing, on behalf of the state bar, we urge you,

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1 the Legal Services Corporation Board members, to reject these
2 proposals contained in H.R.1345. We are opposed to them, and
3 we will continue to express that opposition to the Illinois
4 Congressional Delegation. In our view, these restrictions
5 violate and undermine what should be the governing concept of
6 equal justice for all.

7 Thank you very much.

8 MR. UDDO: Thank you, Mr. Houlihan. Any questions
9 from members of the committee? Ms. Pullen?

10 MS. PULLEN: First, it's good to see you, Dan.

11 MR. HOULIHAN: It's good to see you, Penny.

12 MS. PULLEN: Are you familiar with the policies of
13 Illinois' IOLTA program?

14 MR. HOULIHAN: Only very generally. As I indicated
15 here, I am pinch-hitting today, and did not know I was pinch-
16 hitting until late yesterday afternoon, so I don't feel versed
17 as far as the subject matter. IOLTA generally, yes. IOLTA is
18 an acronym for Interest On Attorneys Trust Accounts, a program
19 developed, as far as a mandatory program, developed by the
20 Illinois Supreme Court. It is providing a rather substantial
21 number of dollars for these poor programs.

22 MS. PULLEN: Are you aware of whether the IOLTA

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1 program has any policy with respect to its grantees being
2 involved in abortion-related activity?

3 MR. HOULIHAN: I do not, Penny.

4 MS. PULLEN: You do not know?

5 MR. HOULIHAN: I do not know, but I'd be happy to
6 get the answer for you. We will submit it to you.

7 MS. PULLEN: I would appreciate that. Do you know
8 whether any legal service grantees in Illinois are involved in
9 abortion-related activity?

10 MR. HOULIHAN: I do not. I am simply not that
11 versed with the programs. Again, I will get the answer for
12 you, and we will submit it to you in writing by mid next week.

13 MS. PULLEN: Thank you. I'd like that in terms of a
14 five-year overview.

15 MR. HOULIHAN: All right.

16 MS. PULLEN: Thank you.

17 MR. UDDO: Any other questions from members of the
18 committee?

19 (No response.)

20 MR. UDDO: Members of the Board?

21 (No response.)

22 MR. UDDO: Thank you, Mr. Houlihan.

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1 MR. HOULIHAN: Thank you.

2 MR. UDDO: We have two add-ons that are going to
3 have to come at the end of the day, Mr. Yoder and Mr. Haynes.
4 If we have enough time, we'll work them in at the end of the
5 day. The rest of the schedule, as far as I'm aware, the only
6 other people on the schedule who are here are Professor Cox
7 and Professor Meeker, who we are going to have on together,
8 and Mr. Wootton. That accounts for everyone. Mr. Howell is
9 scheduled, but, to my knowledge, he hasn't appeared yet.

10 So, with that in mind, we're going to take a five-
11 minute break, at the request of one of the committee members,
12 and we will come back with Professor Cox and Professor Meeker,
13 and follow that with Mr. Wootton and, if there's time, and
14 with the two add-on gentlemen. Thank you.

15 (A brief recess was taken.)

16 MR. UDDO: I have enough members of the committee
17 here to start. Professor Cox and Professor Meeker, if I could
18 get them in here. These two gentlemen are also appearing at
19 the invitation of the committee.

20 Because Professor Meeker appeared in San Francisco
21 and alluded to some studies that had been done by the
22 Corporation with respect to matters that directly or

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1 indirectly impact on competition and competitive bidding, and
2 since that was a matter of quite a bit of comment, both in San
3 Francisco and then again here today, it was the feeling of the
4 committee in San Francisco that we ought to invite Professor
5 Meeker back.

6 Because it was also explained that Professor Cox had
7 been involved in a study originally funded by the ABA and the
8 Legal Services Corporation, we ought to have Professor Cox
9 come and give us some insight into his work.

10 I remind you that this morning there was introduced
11 into the record a study by the ABA that was sent to us by
12 Lonnie Powers, which was the ABA's report on the Cox study.
13 So, it should be quite clear to everyone that this is a
14 complicated matter here with an awful lot of people having an
15 awful lot of different opinions about what it all means.

16 I frankly thought it would be helpful to have
17 Professor Cox and Professor Meeker meet here with us with the
18 committee and give the folks who were not around at the time
19 the study was done a little bit more information.

20 I think the best way to do it, since we did hear
21 Professor Meeker in San Francisco, is to let Professor Cox go
22 first and make any comments that he might have and then I

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1 guess let Professor Meeker speak, and then we'll get the
2 questions. So, Professor Cox, if you would.

3 PRESENTATION OF PROFESSOR STEVEN COX

4 AND

5 PROFESSOR JAMES MEEKER

6 PROFESSOR COX: Thank you very much. I want to
7 address three subjects: competition, copayments, and
8 timekeeping. We'll reserve to your questions any kind of
9 comments on the San Antonio study that I directed.

10 With respect to competition, I want to distinguish
11 between two phenomena; one what I will call one-time
12 competition, the other that I will call constant competition.
13 An example of one-time competition is competitive bidding,
14 what I believe many of you are thinking about as a result of
15 the proposed legislation.

16 What I favor is not that but what I'll call constant
17 competition that comes from having a multiple model delivery
18 system, the kind of thing that we examined in the San Antonio
19 study where, at the same time, in the same area, handling the
20 same services, different delivery mechanisms.

21 What we had there was voucher, contract, and staff
22 model. To make it effective competition, effective in

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1 constant competition, in my judgement, you would need to add
2 one more element that I wanted to add but was not permitted to
3 do so with respect to the San Antonio study, and that is add
4 an element of client choice.

5 In the San Antonio study, the clients were simply
6 referred to one model or another. Ultimately, what you would
7 really like to make the competition between the alternative
8 providers operating under different delivery systems effective
9 would be for the clients to actually have the choice of what
10 model they would like to have their case handled by, whether
11 voucher, contract, or staff, or, you know, some other
12 possibilities.

13 Now, I think this is just incredibly important when
14 you talk about the word "competition," because all the
15 legislation that I've seen so far talks about what I have
16 called one-time competition, competitive bid whereby instead
17 of sending the money to the same program year in and year out,
18 instead you would have different entities bidding each year
19 for the opportunity to delivery services.

20 That is not what I would like to see happen. What
21 I'd like to see happen is this side-by-side daily operation of
22 a multimodel delivery system along with free client choice,

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1 okay.

2 MR. WITTGRAF: May I interpose a question,
3 Professor? It may be a bad precedent, but I'll do it anyway.

4 PROFESSOR COX: My students are doing it all the
5 time.

6 MR. WITTGRAF: Good. Is that in the great State of
7 Indiana now?

8 PROFESSOR COX: That's right.

9 MR. WITTGRAF: The only state that doesn't
10 participate in IOLTA. Perhaps we can learn more about that
11 later.

12 When you say a multiple model delivery system and
13 give examples of different kinds of models, are you
14 contemplating that this would be one, or two, or several legal
15 services projects or local agencies?

16 PROFESSOR COX: I guess I don't quite understand the
17 question.

18 MR. WITTGRAF: Let me try it this way. For example,
19 the Legal Aid Foundation of Chicago, of which Mr. Wootton, of
20 course, is the executive director, it could, it seems to me,
21 do all of these that you've proposed as one agency and one
22 agency that happens to get two-thirds of its budget from the

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1 Legal Services Corporation.

2 On the other hand, you could have two, or three, or
3 four entities, particularly in a larger urban area, less
4 likely in Minihaha County, South Dakota, or Points West,
5 providing different of those model services. I was just
6 wondering if you were stating a preference, having a
7 preference, or not.

8 PROFESSOR COX: No. All I really want, and why I
9 say I want, I believe what's necessary for effective
10 competition and all the good things that come from the
11 effective competition. What I believe is necessary is that
12 you have operating on a daily or weekly basis multiple models,
13 private attorneys and staff attorneys, handling the same type
14 of cases.

15 Then, as I say, I think there is one other critical
16 ingredient that was absent in the San Antonio study, and that
17 is that the clients be able to choose which model handled
18 their case.

19 Now, having made that point, namely the distinction
20 between one-time competition and what I call constant
21 competition, there is a push for research on the whole issue
22 of competition. It is something with which I have substantial

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1 agreement. I think you need to do research before you move
2 into the adoption of a system across the country.

3 But what I see being discussed and what I see in
4 these bills is a call for demonstration project research.
5 That was the research design of the delivery system study of
6 the 1970s. Demonstration project research, research in which
7 you try a program in one area -- so you would try vouchers in
8 Connecticut and contract in Indiana and staff program in South
9 Dakota -- allows you to examine to answer only one question,
10 and that is feasibility or workability.

11 Are the different models workable? But that kind of
12 research design does not permit the gathering of information
13 necessary to answer what I think is the more interesting and
14 the more compelling question, and that is what is the relative
15 effectiveness of the different models?

16 That was the purpose of the San Antonio study, to
17 examine the comparative effectiveness of vouchers, contracts,
18 and staff. So we had to have what researchers known as
19 quasiexperimental research design -- forget the big words;
20 it's comparative research -- which calls for the side-by-side
21 operation of the different models in the same area at the same
22 time handling the same kinds of services.

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1 I beg you, frankly, just absolutely beg you, do not
2 take us back 15 years and do demonstration project research.
3 For God's sake, I worked four years of my life on implementing
4 a quasiexperimental, a comparative research project. Let's
5 move on to the more interesting questions of effectiveness and
6 relative effectiveness as opposed to just talking about
7 feasibility or workability. So that's point number two.

8 MR. DANA: Sorry. Could I just make sure I
9 understood that point?

10 PROFESSOR COX: Yes.

11 MR. DANA: Do you mean the worse studies, you would
12 like them to be of the San Antonio variety?

13 PROFESSOR COX: Yes.

14 MR. DANA: Generically. I mean, I understand you
15 would not do it exactly that way, but you would have a series
16 of free-standing competitors in the same community, and you
17 would evaluate their relative performance and effectiveness?

18 PROFESSOR COX: Yes. Let me even illustrate it by-
19 - I just earlier said that I don't really favor competitive
20 bidding. What I favor is this constant competition of, you
21 know, multiple models operating at the same time. But let's
22 say that via legislation, competitive bidding is compelled or

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1 at least the study of it, okay.

2 Then, you don't want to just simply do competitive
3 bidding in one, or two areas, or three, or four areas and then
4 see how it works, because all you'll know from that is whether
5 or not it's feasible or workable.

6 What you'd really like to do is you'd like to have
7 some mechanism, and I haven't thought this out entirely, of
8 how effective is that vis-a-vis the current system of simply
9 giving the money to the same program year in and year out on,
10 if you will, a traditional basis, okay.

11 So, you want to conduct research in a manner that is
12 consistent with the questions of interest. Professor Meeker
13 calls it construct validity. That's the fancy academic term
14 for it. But just make sure, make sure, that the research
15 design is consistent with the questions so that after the
16 project, the data you've gathered will give you the
17 information necessary to, what, answer the questions of
18 interest to you, okay.

19 With respect to copayments --

20 CHAIRMAN UDDO: Before you get to copayments, let me
21 just -- if I understand correctly what you're saying -- you
22 have read the McCollum-Stenholm proposal?

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1 PROFESSOR COX: Yes.

2 CHAIRMAN UDDO: I suspect from what you're saying
3 that you would not endorse the idea of competitively bidding
4 all grants relatively overnight?

5 PROFESSOR COX: That's right.

6 CHAIRMAN UDDO: That you think there's more work to
7 be done before you can get to the point of doing something
8 that extreme?

9 PROFESSOR COX: Well, moreover, not only that--
10 yes, I agree with that point -- until further study is
11 undertaken, the idea of bidding out the opportunity to serve
12 the legal needs of the poor in a particular area, and at the
13 end of that process selecting only one provider, ultimately is
14 antithetical to the objective, namely what, using competition
15 to improve effectiveness and efficiency.

16 While you've got the competition at the time of the
17 bid, you've got a monopoly there on out because you have but
18 one provider of service.

19 CHAIRMAN UDDO: So you're suggestion that there's at
20 least one additional step before you could get to the point of
21 designing a system of competitive bidding, that is some
22 further research as to how it should be done. But it's your

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1 thesis, though, that even after that, you're going to have to
2 implement it on what you call a constant competition basis and
3 not just a competition for the monopoly to provide legal
4 service.

5 PROFESSOR COX: That's accurately stated.

6 CHAIRMAN UDDO: All right.

7 PROFESSOR COX: What you accurately stated is my
8 beliefs.

9 Now, with respect to copayments, here again I want
10 to bring forth two ideas here, one that I will simply call
11 client service needs or what economists call client service
12 demand, and program priorities.

13 As a result of my experience with doing legal
14 services research, I understand that the theory is that
15 supposedly program priorities are determined by client service
16 needs. Common sense, experience, intuition, tells us that
17 client service wants or demands for services is very much
18 influenced by the price they've got to pay.

19 If there's a zero price associated with anything,
20 you're going to demand, use, want, more of it than if there is
21 a, what, positive price. I mention these two ideas, program
22 priorities and client service needs, because the way the

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1 legislation reads is let's experiment with copayments, let's
2 study copayments as a means by which to establish program
3 priorities.

4 I believe that's a bit misleading, all right,
5 because there's this intervening variable that what the
6 copayments will really influence, ultimately, is the client
7 service demands which, then, assuming that the legal services
8 model continues to work, should, in turn, influence program
9 priorities.

10 Let me give you an example. In San Antonio and, by
11 the way, it's Bexar County, the X is silent, Legal Aid, the
12 demand for divorces is just simply overwhelming, okay,
13 absolutely incredible, hundreds of calls weekly, I guess, such
14 that, in essence, the program, with its current resources and
15 staff -- and I'm actually talking back in the 80s when I was
16 associated with it -- simply couldn't handle it all, okay.

17 The idea of copayments here is one of under a
18 copayment system as opposed to the existing system whereby you
19 simply if you want divorce service, call in, get an
20 appointment to come in for the initial interview, so on and so
21 forth.

22 The idea of copayments would be to see whether or

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1 not under a copayment system the volume of calls, the volume
2 of shows at the initial appointment interviews, the volume of
3 follow up to initial interviews would change under a copayment
4 system as opposed to the current system.

5 I strongly suspect that it would, thereby lessening
6 the workload of the program but more importantly really giving
7 an indication of what I would call true demand for divorce
8 services. Under the current system, where there is no
9 copayment whatsoever, if you will, the call is free. Just
10 call and get an appointment.

11 Whereas, if there were a copayment of when you call
12 and when you want an appointment, you need to plop down five
13 dollars, okay, you would then find out whether or not the
14 clients truly are wanting this kind of service and thus
15 whether the program truly should be, what, allocating the
16 volume of resources to divorce services as opposed to some
17 other alternatives.

18 So I see some blank looks from you. I don't have
19 the same concern here with copayments, in terms of the wording
20 of the legislation, that I do with respect to competition,
21 okay. With competition, I think it's very important that you
22 make the distinction that I made before. I see the

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1 legislation as aiming in one direction and I going I the other
2 direction.

3 With respect to copayments, I don't see that
4 difference, but I think it's very important for you to see
5 that the connection between copayments and program priorities
6 is an intervening variable called client service needs. The
7 way in which copayments might ultimately affect program
8 priorities is that the copayments might alter the kinds of
9 services that the clients actually seek and thereby change the
10 allocation of resources of programs.

11 MR. WITTGRAF: Experimentation has been done in San
12 Antonio and elsewhere with different delivery systems,
13 different models. Are you able to share any experience that
14 you've had or that anyone has had with this copayment
15 approach, or is it just philosophical at this time?

16 PROFESSOR COX: That's right, the latter, because we
17 were not allowed to use copayments in the San Antonio study.
18 There were no copayments associated with that study.

19 MR. WITTGRAF: Would it be fair to say that
20 copayments could be experimented with by a delivery agency
21 along with vouchers, contracts, staff attorneys and so forth?

22 PROFESSOR COX: Yes.

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1 MR. WITTGRAF: This can be part of an overall
2 experiment?

3 PROFESSOR COX: Absolutely, and I think would be
4 highly desirable. What you're basically saying is you could
5 kill two birds with one stone. You could both examine the
6 issue of competition and the issue of copayments in the same
7 study.

8 MR. WITTGRAF: Thank you.

9 PROFESSOR COX: Yes. In fact, I urged that in 1985
10 or in 19184 but was unsuccessful. that's the times. The
11 whole idea of a quasiexperimental design as we implemented in
12 San Antonio was so foreign at the time that I decided that it
13 was best not to push it beyond that.

14 The third issue, timekeeping, the speaker this
15 afternoon from New Jersey stated something which I believe in
16 very strongly. That is that the current system is inadequate,
17 or at least the current system as I knew it a few years ago.
18 But what you want to go to is not a mandated system that is
19 totally inflexible or totally uniform across the country,
20 because it may not meet your needs. It may not be the least
21 cost way of meeting your needs.

22 The legislation, McCollum-Stenholm bill, calls for

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1 timekeeping. My own personal opinion is that that may not be
2 necessary. You may be able to gather the information you need
3 via what I know as the case fractionalization system that we
4 used in the San Antonio study.

5 My point is that you need first of all to decide
6 what it is that you want to have information on. What I see
7 is the inadequacy of the system that I knew back in '85 to
8 '88, which might still be used, I don't know, called the case
9 reporting system.

10 It gave you virtually no information on the extent
11 to which or the degree to which individual cases were handled.
12 So it was just a matter of reporting that Bexar County Legal
13 Aid handled 3,000 divorces this year.

14 MR. WITTGRAF: What's your sense of what can be
15 accomplished from timekeeping one fashion or another aside,
16 simply, from better management for a given agency? What would
17 you see the information helping to decide?

18 PROFESSOR COX: That's why I'm having so much
19 trouble with timekeeping. It seems to me what you really want
20 to know, what you, the Board, what the LSC, really wants to
21 know in deciding on the effective use of grant money is the
22 extent, not only how many cases are being handled, how many

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1 clients are being seen, but the extent to which the cases are
2 being handled.

3 Under what I know as the case reporting system, all
4 you knew was those that were, what, litigated, and everything
5 else was thrown into the same category. Whereas, for example,
6 in the San Antonio study, we had a fractionalization system of
7 a quart or a half, three-quarters and one.

8 One was where a divorce decree was granted. A
9 quarter, on the other hand, was where the client had come in
10 and had been interviewed but had never pursued the case beyond
11 that. Then what the half and the three-quarters were I've
12 forgotten. But you've got an idea of not only how many
13 divorce cases were being handled but the extent or degree to
14 which they were being handled.

15 You can handle thousands of quarter cases. You can
16 interview clients up the wazoo, frankly, with relatively
17 little staff, okay. You can handle many, many fewer cases to,
18 what, final judicial resolution divorce decree.

19 CHAIRMAN UDDO: Is wazoo an economic term?

20 PROFESSOR COX: Pardon me?

21 CHAIRMAN UDDO: Wazoo, an economic term?

22 PROFESSOR COX: Yes, wazoo, that's right, that's

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1 right. So, you know, I would just urge you, before taking any
2 kind of position with respect to timekeeping, you decide what
3 it is that the LSC needs from local programs and then seek to
4 have, one, the authority and, two, to implement the kind of,
5 let me call it, recordkeeping, that will give you that
6 information. I strongly suspect that you don't need and that
7 the programs would find extremely costly to have a timekeeping
8 system.

9 Okay, I've spoken about competition copayments and
10 timekeeping. From time to time in my remarks I've alluded to
11 the San Antonio study but did so, really, only to illustrate
12 my main points. That is that I highly favor reform. I also
13 heard this morning somebody say and invoke the philosophy or
14 the attitude of, "if it ain't broke, don't fix it."

15 I would like to offer to you a different philosophy.
16 That is, if it's less than perfect, there's room for
17 improvement. I might just parenthetically add here that
18 recently I was introduced to the idea that maybe the Japanese
19 production system is superior to the U.S. production system in
20 many areas because of that philosophical difference.

21 I heard the speaker characterize the American
22 attitude as one of, "if it isn't broken, don't fix it" and the

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1 Japanese attitude of, "if it's less than perfect, then let's
2 move to improve matters." I buy into, if you will, the latter
3 philosophy, not with the idea that perfection can be obtained
4 or that necessarily the resources that must be expended to
5 make it perfect is worthwhile, but instead with the idea being
6 that some movement towards reform, I think, is highly
7 desirable.

8 The movement that I would like to see occur is one
9 of additional research and study with respect to constant
10 competition, with respect to copayments, and with respect to
11 development of systems that yield information useful to field
12 programs and to the LSC that will lead ultimately to more
13 efficient and effective use of the very limited funds that are
14 available. Thanks.

15 CHAIRMAN UDDO: Thank you, Professor Cox. Before I
16 call for questions, I think we may go to Professor Meeker.
17 But it seems to me that we have less of a disagreement on the
18 issue before the committee than I thought we might have. The
19 way I perceive it, and you can correct me if I'm wrong, the
20 question of reauthorization raises the question of the
21 McCollum-Stenholm proposal about competition.

22 In San Francisco, Professor Meeker, among others,

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1 testified that the McCollum-Stenholm provision on competition
2 was not a particularly good idea, and they didn't recommend
3 it. Hence, we come here today and have Professor Cox here
4 with us.

5 As I understand what Professor Cox has said, he
6 doesn't think that the provision of McCollum-Stenholm is a
7 good idea either. The disagreement may come in where
8 Professor Cox thinks it's worth further research in moving on.
9 I don't know if Professor Meeker thinks it is worth additional
10 research. Maybe that's what you need to address your comments
11 to, since it looks like you're in agreement that what's on the
12 table in McCollum-Stenholm is not something either one of you
13 would recommend that we endorse.

14 PROFESSOR COX: May I add just one more thing?

15 CHAIRMAN UDDO: Sure.

16 PROFESSOR COX: You have accurately characterized my
17 feeling, but that feeling is based on the following
18 interpretation. I want to make it clear just in case my
19 interpretation of the bill is incorrect. That is, I see the
20 bill as calling for competitive bidding only, and that the
21 competitive bidding would take place in each of the service
22 areas, and that the ultimate outcome of the competitive bid

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1 would be the selection of a single provider.

2 If that is not an accurate interpretation of the
3 bill, then, of course, my opinion might change.

4 CHAIRMAN UDDO: It's my understanding of
5 McCollum-Stenholm -- I mean, I agree with that. We're going
6 to hear from someone a little bit later who is more familiar,
7 I guess, with what went into McCollum-Stenholm. He may have
8 some additional comments. But it's my understanding that
9 that's what McCollum-Stenholm is proposing.

10 So, Professor Meeker, whatever comments you want to
11 make -- I'm not trying to limit your comments, but it seems
12 that if we're all in agreement as to what McCollum-Stenholm
13 says, it doesn't look like there's much disagreement as to
14 what the short-term response to that should be.

15 PROFESSOR MEEKER: A little deja vu here. We always
16 seem to be starting out limiting my comments. I don't know if
17 you all talk to my students or --

18 CHAIRMAN UDDO: Because you're an academician, I
19 know if I don't, you'll talk forever.

20 MR. WITTGRAF: At least this time we're on a level
21 playing field. You should appreciate that.

22 PROFESSOR MEEKER: Oh, yeah. Well, it doesn't

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1 bother me one way or the other.

2 Well, in terms of calling for more research, yes,
3 we're both in accord for that. Before I get into those
4 comments, I want to clear one thing for the record, just to
5 make sure everybody's coming from the same basis that I think
6 they are. You all have copies of the thing that I submitted
7 in San Francisco, I presume. I presume you all have copies of
8 -- Bob Cohen bought one of these, the Orange County study.

9 CHAIRMAN UDDO: Ken, everything that Professor
10 Meeker submitted in San Francisco has been made available to
11 all committee members?

12 MR. BOEHM: I think so.

13 PROFESSOR MEEKER: Bob Cohen bought an extra one of
14 these. This is my only one.

15 MR. BOEHM: We have summaries and we have the
16 originals. I don't know --

17 CHAIRMAN UDDO: I think we got the originals in San
18 Francisco. I don't know if Penny got a copy of them all.

19 MR. WITTGRAF: We have the paper that you gave
20 recently, and I think that's what we all have.

21 PROFESSOR MEEKER: Yes. This is the detailed report
22 of the Orange County studies. My understanding, you got the

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1 ABA study this morning.

2 CHAIRMAN UDDO: Yes. If you want to make that a
3 part of the record, if that's your only copy, you can give it
4 to Ken, and we'll have it reproduced and made a part of the
5 record and distributed to the committee.

6 PROFESSOR MEEKER: All this stuff historically came
7 out of the conclusions of the delivery system studies. Since
8 it came from you guys, I presume you have one of those.

9 CHAIRMAN UDDO: Yes, we do. I don't know that
10 that's been distributed to the committee, but I've seen it.

11 PROFESSOR MEEKER: Also, I had, the first time, the
12 opportunity to read in detail the transcript of Schaumburg,
13 which goes over a lot of the distinctions between the two
14 studies that I had never seen before. I presume you all have
15 that, too.

16 CHAIRMAN UDDO: Ken, we may want to distribute the
17 transcript of Schaumburg '89.

18 PROFESSOR MEEKER: Although I did notice some of the
19 statements I made were attributed to Charlie Moses; technical
20 detail. The points were important; that's all.

21 CHAIRMAN UDDO: Discuss that with Charlie Moses.

22 PROFESSOR MEEKER: I think I'll limit my comments,

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1 at least starting out here, I've got some concluding things
2 addressing some issues brought up earlier that I'd like to say
3 later. In terms of the competition, I agree that the one-time
4 competition is completely undefensible.

5 It's undefensible under true economic theory, as I
6 understand it. I agree with Cox that that's not the way to
7 go. However, even the constant competition I am not sure
8 that's the best way to go in light of the evidence that we
9 have to date in terms of delivery of different types of
10 service to the indigent population.

11 In particular -- that's another thing. You all
12 ought to have the Spangenberg testimony to the Barney Frank
13 hearings in '90. That should definitely be made a part of the
14 record. I read from that in San Francisco as far as the
15 conclusions, or at least one conclusion, in terms of, they
16 found that competitive bidding, at least in the indigent
17 defense system, does not seem to produce better quality, lower
18 cost services.

19 Some of those models do have competition over time.
20 As a matter of fact, there are a couple of findings of their
21 studies, and there's also some other political scientists who
22 agree with these findings. I have a copy of a study that is

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1 going to be released in 1991. I can give that site to Ken
2 Boehm also.

3 But there's a tendency in a lot of these types of
4 systems to actually create instability in some such
5 situations. That is, the provide shifts rapidly over time.
6 In a prolonged period of time, after this shifting of
7 different providers, there tends to be a reduction in the
8 market in terms of the number of people willing to enter.

9 Specifically, you have more entry of lower overhead,
10 less trained, less experienced attorneys where those attorneys
11 with high overhead and more experience tend to opt out of the
12 system. Then this instability can create several different
13 costs, I think, extra costs that go to this copayment issue
14 that I think economists tend to ignore when looking at
15 calculating costs for the delivery of legal services.

16 So, even if you have this competition that occurs
17 year after year without some very strong restrictions on those
18 models and without knowing the parameters to a much greater
19 detail than we know today, I still don't think the economic
20 theory is going to work that will produce better quality
21 services at a lower price.

22 It hasn't proved in the case of the indigent defense

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1 system, and I have a paper here that looks at it in terms of
2 providing indigent medical care. Just an interesting
3 statement: they conclude that the empirical literature
4 suggests that the reality of competitive bidding can differ
5 considerably from a simple general principle. Then it goes on
6 a list of how it can affect the market.

7 So, we do have some related evidence to suggest that
8 perhaps this is not the single best way to go. In terms of
9 demonstration projects, I agree wholeheartedly, especially if
10 you're demonstration projects are geared at only determining
11 the feasibility of a particular delivery mechanism.

12 Now, we can get into semantics in terms of what do
13 you mean by demonstration project. The bottom line on any
14 further research should be on the issue of comparing different
15 delivery models in a particularly defined market for a
16 particularly defined legal service, realizing that you always
17 have to keep a strong eye out to the problems of this
18 generalizability in terms of its validity to other situations,
19 realizing that your markets may not be very representative.

20 Your legal issue may be peculiar in terms of the
21 cost of delivery services that may be encountered. Your
22 client community may not be very generalizable. You need to

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1 be very careful in generalizing from that. Also, I would
2 suggest you need to take a much broader view in terms of
3 delivery mechanisms other than staff models or competitive
4 privatization models.

5 As the point I made last time, none of these studies
6 have effectively tested a true voucher model in the sense of a
7 voucher being like a food stamp where a citizen gets a check
8 for \$5,000 worth of legal services, and you shop around to an
9 attorney.

10 None of them have tested that, an observation made
11 by that, the delivery system study here, an observation I
12 make, and it holds true for both the San Antonio and the
13 Orange County study. We should be perfectly clear, these
14 models that were tested are what are commonly called judicare
15 models.

16 There are other types of delivery mechanisms that
17 may be far more economical than any of these that involve a
18 client-to-attorney interface. For instance, when Orange
19 County was approached to duplicate the San Antonio study, when
20 asked to handle noncontested, noncustodial divorces, Cohen
21 said we handle these in a clinic situation where clients
22 basically have an interface with a paralegal, and these

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1 paralegals are supervised by attorneys.

2 Once he showed them how much it cost them to handle
3 one of these cases, even through judicial termination, the
4 costs were so low that LSC decided that it wasn't fair to put
5 these in a model where the paralegals would be compared to
6 attorneys. You just can't beat those costs. Well, there
7 hasn't been any discussion here in terms of those kinds of
8 alternative mechanisms, which should be looked at.

9 Finally, in terms of this competition, we always
10 seem to be talking in terms of competition versus a staff
11 model. I know you made an illusion to it, Mr. Wittgraf, in
12 terms of mixed models. As I said in San Francisco, I think
13 that is a very fruitful area to look at.

14 One thing that was clearly demonstrated in the
15 Orange County study, in the Jacksonville study, where Kenneth
16 Spuler wrote a letter on the record in Schaumburg, and I just
17 got a chance to look at this today from Lynn Sterman that was
18 clear in the study in Columbus, Ohio.

19 These are two of those illusive private law firm
20 studies, which I still haven't managed to find who all was
21 involved and what the final reports were.

22 MR. WITTGRAF: We at least have some statistics now.

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1 If you don't have copies of the statistics, I'm sure Mr. Boehm
2 or one of us could give you some of those statistics at a
3 minimum. We got those in the two weeks since last we visited.

4 PROFESSOR MEEKER: Great. I've love to see that.
5 What is clear in at least three of these studies, whether
6 there were five, or seven, or whatever, is that --

7 MR. WITTGRAF: Eleven, I think.

8 PROFESSOR MEEKER: Eleven, okay. At least in these
9 three it was documented that there was severe problems with
10 central administration by LSC with the contracting attorneys.
11 All of them complained of lack of call backs by LSC. All of
12 them complained in terms of negotiating contracts with LSC.
13 All of them complained in terms of delay of implementation of
14 contracts and in terms of delay in payments.

15 So, the thing that we need to consider if you were
16 going to talk about these kind of privatized models is what's
17 better; a local administration or central administration. The
18 evidence suggests today, at least the way these things have
19 been run so far, central administration has worked lousy
20 unless the other projects were a lot different than the three
21 that I know of.

22 That begs the question, who is going to administer

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1 these? Also, who is going to determine the local priorities?
2 Again, that would suggest, perhaps, the most fruitful approach
3 to these things would be a mixed-staff alternative model
4 system in which you have a staff model or staff that
5 determines the priorities of the community, and that who knows
6 the legal markets in those communities, and who exercises the
7 negotiation for some competitive bidding and some judicare
8 models and so on. No one has experimented with that.

9 Now, in terms of copayment, I know it's a common
10 economic assumption is that if people don't put something of
11 value up front, they are not going to value the service that
12 they receive. I think that's the basis behind the copayment
13 argument generally.

14 The problem here is the assumption that just because
15 there's no money, there's no price. I know in terms of Orange
16 County, and some of the other agencies that I know of, there
17 is fantastic price exacted from participants of these delivery
18 systems in other ways, such as the price of searching and
19 finding out where the legal aid office is, arranging for
20 appointment.

21 I know in some cases you would show up on certain
22 days for certain screening, and you can sit around the office

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1 three or four hours before you finally get a chance to be
2 economically screened to see whether or not you qualify.
3 That's a price.

4 There's also a price in terms of transportation to
5 and from these organizations. I think if you're going to look
6 at this copayment issue, if you're going to look at price,
7 then you have to have a model that's robust enough to include
8 the cost of time, the cost of transportation, the cost of
9 information and not just a copayment of bucks.

10 I do know that in the medical care, indigent medical
11 care literature, there is evidence to suggest that even
12 nominal copayments substantially reduces the level of medical
13 care to the indigent population. I think that that literature
14 ought to be perused very closely to see whether or not it's
15 likely to apply in the delivery of legal services.

16 It's also not clear that no-shows are a function of
17 lack of copayments. These other studies also -- I noticed
18 that at least the Ohio study talked a lot about no-shows.
19 Orange County had a problem with no-shows. But I also
20 completed, along with Professor Don Brick, a study recently on
21 the lawyer referral service in which clients who don't qualify
22 for legal aid are referred to lawyers in a panel that agree to

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1 take on the cases but for a fee.

2 Most of them charge going rates. The only thing
3 that they guarantee to give is 20 minutes of free
4 consultation. Even in this study where we did a follow up, we
5 found that there was a phenomenally high no-show rate, even
6 amongst those clients who had paid some initial amount of
7 cost, not the complete cost but some.

8 Why don't these people show up? I don't know, but
9 that's a phenomena that seems to exist a lot across legal
10 services. That's something that also should be studied
11 irrespective delivery system.

12 The timekeeping stuff, I don't know --

13 MR. WITTGRAF: Excuse me, Professor, just a moment.
14 You were applying that to legal services projects or to bar
15 administered referral services or both?

16 PROFESSOR MEEKER: This was a legal aid referral
17 service, not a bar referral service, the one that we study.

18 MR. WITTGRAF: The Iowa State Bar Association, for
19 example, has a lawyer referral service. I think that
20 phenomenon, whatever the underlying reasons, that phenomenon
21 is true there, too.

22 PROFESSOR MEEKER: The no-show.

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1 MR. WITTGRAF: Yes.

2 PROFESSOR MEEKER: Right. But there are some that
3 refer no cost. There are some that refer at a nominal cost of
4 \$20, which would meet your normal copayment criteria. There
5 are programs out there. There is data out there. I think we
6 should look at those. I don't think we can just assume that a
7 copayment is going to increase the show rate or eliminate the
8 no-show problem.

9 In terms of timekeeping, if you've read my paper,
10 you know, especially if you read the Orange County study, it
11 goes into great detail, there are some very attractive
12 theoretical elements for the fractionalization scale for
13 payment.

14 I think it goes without saying that we can't allow
15 attorneys just to bill at whatever hours they accrue in terms
16 of solving a problem. You'd have a runaway program in terms
17 of paying at that rate. However, substantial research needs
18 to go into how to devise a rational fractionalization scale.
19 The scale that was applied in San Antonio and Orange County
20 assumed a linearity in terms of amount of hours it took to
21 reach different levels. At least that was reflected in terms
22 of the payment scheme. Our analysis in terms of the hours it

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1 took to reach different levels of the fractionalization scale
2 differed significantly for the different models.

3 It was far from linear. So, before any wholesale
4 policy changes adopted in using this as opposed to some other
5 way of measuring time, you need to engage in a substantial
6 effort to understand exactly what goes on behind this
7 fractionalization scale, how well it works and what motivates
8 attorneys to spend different amounts of hours at different
9 levels. It needs to be empirically based.

10 So far the Orange County one and the San Antonio one
11 are the only ones I know of, and neither one were based on
12 empirical estimates. They were based on consultation with
13 attorneys and best guesses of what they should be compensated
14 at. So that needs to be validated.

15 That limits my comments to what Professor Cox
16 brought up.

17 CHAIRMAN UDDO: Thank you both very much. Are there
18 any questions from the committee? Mr. Dana?

19 MR. DANA: Both of you seemed to assume that
20 copayments are a way of substituting for the priority setting
21 that is done typically by local boards. In other words, the
22 copayments are used as a way of making sure that the clients

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1 decide what kind of services are provided.

2 PROFESSOR MEEKER: No. I'm not arguing that at all.
3 I'm saying that it shouldn't be used for that. The evidence
4 that I've seen does not argue that the reason for copayments,
5 that is the client needs to invest something in order to view
6 the services as worthwhile, that doesn't seem to be
7 empirically backed up with the little bit of evidence I've
8 seen. In no way would I argue that copayments should take the
9 place of local establishment of priority.

10 MR. DANA: Professor Cox, did I get your view
11 correct?

12 PROFESSOR COX: I don't think so.

13 MR. DANA: I should have woke up earlier.

14 PROFESSOR COX: I think I can explain my view via
15 the example of San Antonio that I'm familiar with. There is a
16 tremendous volume of divorce work done at Bexar County Legal
17 Aid. As a result, much of the resources of that program are
18 devoted to divorce work.

19 I suspect, this is just a suspicion, that if a
20 copayment system were implemented there, the volume of client
21 demand for divorce work would fall drastically. Thus, more of
22 the program's resources could be devoted elsewhere. So, when

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1 you say using copayments to establish program priorities
2 rather than client service needs establishing, misses the
3 point, I believe.

4 I believe the copayments, the copayment scheme,
5 would better reveal client service desires, wants. With that
6 greater information so revealed, program priorities, program
7 resources, could be better allocated.

8 MR. WITTGRAF: That's purely your intuition, if I
9 understand you correctly.

10 PROFESSOR COX: That's right.

11 MR. WITTGRAF: Your premise about there being fewer
12 people wanting divorces if they had to make a \$25 down payment
13 or something, considering what a sort of personal and
14 emotional and all encompassing concept marriage and divorce
15 is, I have trouble accepting.

16 If you were using the example of even bankruptcies,
17 I guess, it would strike me as less compelling than your
18 hypothetical regarding divorces, aside from the fact that
19 Bexar County Legal Services or Legal Aid has an awful lot of
20 people coming in wanting divorces.

21 PROFESSOR COX: It's not a matter of wanting
22 divorces; it's a matter of calling the program and seeking

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1 that initial appointment.

2 Let me present an alternative view to mine, and that
3 is one of Brendon Gill, the director of Bexar County Legal
4 Aid. I don't know whether he's still director or not, but let
5 me present to you his point of view as best as I understand
6 it.

7 When I presented the argument that I just stated a
8 couple seconds ago to him, his reply was that, Steve, we want
9 the clients calling us even if, in seeking that initial
10 appointment, even if they don't follow up with their divorce
11 case, because it demonstrates to us that they know we exist.
12 They can call us. They can seek our assistance, not only at
13 that moment or irateness with a spouse but at other times as
14 well.

15 So, all I'm talking about in terms of copayment -- I
16 hardly believe that \$5 or even \$25 is going to deter somebody
17 who truly wants to divorce one's spouse to change one's mind.
18 Now, it was simply a matter of instituting the copayment to
19 distinguish between those who truly want to divorce one's
20 spouse versus those who are irate at the time and, if you
21 will, threaten their spouse by, what, a phone call to Bexar
22 County Legal Aid.

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1 MR. WITTGRAF: Presumably the point of copayments,
2 if it's borne out, would not be to generate revenues, but
3 rather would be to more properly allocate the resources of the
4 legal services agency locally.

5 PROFESSOR COX: To reveal consumers' true
6 preferences, clients' true preferences, and thereby allocate
7 the resources in accordance with those revealed preferences.

8 MR. WITTGRAF: It seems to me that Mr. Gill's point
9 is a significant point. Beyond that, how would you respond to
10 the suggestion made by Professor Meeker that, as much as Ms.
11 Bellows indicated this morning, an hour on the bus with three
12 kids, or a half hour, or 45 minutes, or an hour spent waiting
13 in a busy legal services office are not also forms of
14 copayment that represent a sort of commitment which is the
15 kind of thing that you're looking for as it guides in the
16 allocation of resources?

17 PROFESSOR COX: Absolutely. Indeed it is a form of
18 price. It's the very reason why experimentation or research
19 or study, call it what you will, is needed in this area of
20 copayments. As long as I'm tossing out premises and so on,
21 it's my idea, it's my thought, that a monetary copayment will
22 actually reduce these other prices.

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1 Why? Because by reducing the volume of calls and
2 the volume of appointments made and the high no-show rate, the
3 clients who truly do call will have, what, a shorter wait at
4 the office.

5 MR. WITTGRAF: One final off-the-wall question: do
6 you have any idea, Professor, why or what the reasons for
7 Congressman McCollum's inclusion of either the old grants for
8 competition provision or the copayment provision were included
9 in his legislative proposals, either last year or now
10 particularly H.R.1345, the 1991 version? Do you know why?

11 PROFESSOR COX: No.

12 MR. WITTGRAF: Thank you.

13 CHAIRMAN UDDO: Any other questions from the
14 committee? Yes, sir, Professor Meeker?

15 PROFESSOR MEEKER: There was a comment made earlier
16 today. I think it was Mr. Wittgraf. You were asking somebody
17 what do you think we ought to do to study these things. I
18 think it was you. It may not have been.

19 MR. WITTGRAF: I was suggesting, I think when Mr.
20 Roodman was speaking, that let's not view competition or the
21 notion of -- the study of competition as a bad thing, not
22 black or white, not polar opposites, but let's view that as an

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1 opportunity for all of us during the next quarter century to
2 do a better job of delivering legal services to the poor.

3 So, I think I said to him, if we were going to try
4 some things, if we had some more money beyond basic grants
5 that exist today, what would we do with them? He had one
6 example in particular, dealing with massive numbers of evicted
7 tenants running through the Cook County court system, finding
8 a special way to deal with them. I think that's what you're
9 referring to.

10 PROFESSOR MEEKER: Right. I'd just like to make a
11 comment. I think before you get into actually studying
12 different models, I think this committee or a board or
13 somebody ought to make a committed effort to understand what
14 you mean by quality.

15 I mean, before you compare the efficiency of two
16 different systems, you need to know or have some sort of
17 agreement on what quality legal services are. There is very
18 little done out there empirically to understand that. Now,
19 you need to define it, you need to specify what its dimensions
20 are, come up with some sort of agreement.

21 You need to look at things like client input. I
22 know Professor Uddo and I think it was Mr. Hall and I had a

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1 lively exchange in Schaumburg over the validity of client
2 responses. But there are other things like peer review, which
3 Cox experimented with in San Antonio.

4 There are other things like community input as well
5 as the bar, but you need to have some sort of understanding at
6 first of how you are going to compare these different types of
7 delivery models before you even start getting the testing of
8 them. That needs substantial effort and research.

9 You also need to explore the different models, as I
10 talked about earlier, mix models, especially local versus
11 central control over these models. I think, given the
12 discussion that went on in San Francisco, some of the other
13 comments made about the San Antonio study, and Lonnie Powers
14 in Schaumburg, the problems associated with both San Antonio
15 and Orange County, and what was testified to earlier today
16 about some of the problems between the relationship between
17 staff models and the Board, at least historically, or Legal
18 Services Corporation, I think it might be a good idea to think
19 about whether or not you ought to push for these things to be
20 studied by some third agency, somebody like NSF, National
21 Science Foundation, or National Institute of Justice.

22 Perhaps if you all pushed through Congress or

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1 supported with them the implementation or use of some money to
2 effectively study these things -- because whatever you find in
3 terms of measuring quality is useful not only in the civil
4 system but would also be useful in the criminal system.

5 Again, comparing these different models in the
6 indigent criminal defense area, they've had severe problems
7 with coming up with effective ways of measuring quality also,
8 which hinders your ability to compare the different types of
9 models out there being employed.

10 So that would be my advice to you, is to at least,
11 before you get into studying models, come up with a coherent
12 rational way of defining what it is you mean by quality, and
13 that's acceptable not only to the Legal Services Corporation
14 but also to the legal community and political community as
15 well.

16 I think if you had a third party funding these
17 things and having outside evaluation and peer review among
18 scientists, you'd get away from this issue of political
19 second-guessing: well, the reason why they had that finding
20 is because it politically supported a particular group.

21 CHAIRMAN UDDO: I think it's a good suggestion. Any
22 questions from members of the Board?

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1 (No response.)

2 CHAIRMAN UDDO: Thank you, gentlemen, very much. I
3 think it was as enlightening and as helpful as I thought it
4 would be. I suspect the committee shares that view. It will
5 help us in our deliberations quite a bit, I think. Thank you.

6 Mr. Kenneth Howell is on our schedule and arrived
7 after I made my last announcement about where we were going
8 next. So, if Mr. Howell would come up now, and then we will,
9 probably after Mr. Howell, have Mr. Wootton and the two
10 gentlemen who asked to be added on, if we still have time.
11 Thank you, Mr. Howell.

12 PRESENTATION OF KENNETH HOWELL

13 MR. HOWELL: Mr. Chairman and members of the panel,
14 I am Kenneth Howell. I am a partner in the law firm of Sidley
15 and Austin here in Chicago. In another lifetime, 15, 20,
16 years ago, I was the executive director of the Legal
17 Assistance Foundation of Chicago, a job I held for about 9
18 years.

19 I would like to address the provisions of Section 12
20 of the McCollum-Stenholm Amendment. That's the section that
21 deals with legal fees, two provisions in that section, which I
22 believe would be a disservice to local legal services programs

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1 and to the people they serve.

2 As you know, one of the proposed amendments would
3 eliminate any payment of legal fees by nongovernmental
4 defendants even where there is a statute permitting the
5 recovery of such legal fees. I think that's a serious problem
6 and a provision that should not be adopted.

7 There are basically, I think, two reasons for having
8 a provision and a statute allowing for attorneys' fees,
9 collection of attorneys' fees from a losing defendant. One of
10 those, of course, is to more equalize the advocacy process so
11 that somebody will not be dissuaded from pursuing their legal
12 rights simply because of the cost of attorneys' fees. That's
13 not a policy that's applicable here, because I think we can
14 assume that legal services attorneys will pursue the rights of
15 their clients even if they don't get legal fees.

16 But there's another aspect of policy behind those
17 statutory provisions, and that is as a disincentive for people
18 to violate civil rights or to commit whatever the particular
19 wrong is that is governed by that statute. I think that is a
20 particularly important policy consideration when we're dealing
21 with the types of cases, or at least many types of the cases,
22 that are brought on behalf of legal services clients.

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1 There often is not enough money involved in such
2 cases where there's going to be any recovery, so that there's
3 no real incentive on the part of the person who has committed
4 the particular statutory prohibition. I'll give you an
5 example.

6 We used to do a lot of housing discrimination cases.
7 There's no money involved, and generally they're seeking
8 injunctive relief. They're trying to stop somebody from
9 refusing to rent an apartment or selling a house to somebody
10 because of their race, color, or creed -- get attorneys fees.

11 But if you didn't have that, you would have a
12 defendant who really has very little reason to accept what is
13 really the inevitable because why? The worse that's going to
14 happen is they pay some minor amount of compensation, and the
15 injunction goes into effect.

16 You need attorneys' fees. Attorneys' fees help in
17 these sorts of low-level cases. By low level, I'm talking
18 about only money because they are certainly important to
19 everybody involved. You need the possibility of attorneys'
20 fees as an additional disincentive for the defendants in those
21 cases to accept the reality and not to engage in the
22 particular conduct.

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1 The other provision that I'd like to say something
2 about is the one that would require a redistribution, turning
3 over to the Legal Services Corporation, attorneys' fees that
4 are received by local legal services programs. I think that
5 statutory amendment would also be a disservice to the clients
6 and to the local programs for several reasons.

7 One, I think it would be very disruptive of those
8 programs that rely to a significant extent for their funding
9 on legal fees. Continuity is extremely important. Continuity
10 and stability are extremely important, I think, to successful
11 delivery of legal services by local legal services programs.

12 I think in the case of the Legal Assistance
13 Foundation of Chicago, attorneys' fees, it represents
14 something like 20 percent of the money that he gets from the
15 Legal Services Corporation. If you take away that money from
16 the Legal Assistance Foundation of Chicago, it's going to make
17 a significant impact on the delivery of legal services.

18 It would be very disruptive. It would probably mean
19 closing a neighborhood office or two. I don't think that the
20 benefit of giving that to some other program would outweigh
21 the disservice that it would do here in Chicago.

22 Secondly, I think money such as this, which is

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1 generated by a wrong done in a local community, ought to have
2 the decision as to what sort of resources, what sort of
3 distribution, what sort of use ought to be made of those
4 monies, ought to be made locally where whatever the difficulty
5 was that arose that ultimately led to the attorneys' fees. It
6 should not be a decision.

7 The decision what to do about that money, where to
8 distribute, what sort of resources to put it in should not be
9 a matter decided in Washington. It ought to be a local
10 matter. It ought to be decided by the Board in the community
11 where the particular wrong took place.

12 Lastly, I want to say the human nature, being what
13 it is, I think if you take away from the local legal services
14 programs the right to use those attorneys' fees, you will not
15 as an aggressive approach to recovery of attorneys' fees than
16 you otherwise would.

17 I think, from what I said before about the fact that
18 attorneys' fees serving as a disincentive for defendants to
19 commit a particular statutory prohibition, you want to make
20 sure that the local programs do vigorously pursue attorneys'
21 fees when there is a statutory provision providing for those
22 fees.

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1 I'm going to be mercifully short. If you have any
2 questions, I'd be glad to answer them.

3 CHAIRMAN UDDO: I appreciate that. Thank you, Mr.
4 Howell. I only have one member of my committee left, Mr.
5 Wittgraf.

6 MR. WITTGRAF: Were you Mr. Roodman's predecessor?

7 MR. HOWELL: I was indeed.

8 MR. WITTGRAF: His immediate predecessor.

9 MR. HOWELL: Yes. He was the deputy director when I
10 was the executive director.

11 MR. WITTGRAF: You joined another large law firm
12 then.

13 MR. HOWELL: A little bit larger.

14 MR. WITTGRAF: I'm just curious, would you be able
15 to make a couple of generalizations about how the mission of
16 the Legal Aid Foundation of Chicago has evolved from your tour
17 of duty now to Mr. Roodman's?

18 MR. HOWELL: Well, I would hazard some guesses, if
19 you have a specific question. But I must say most of my
20 information is 15 to 20 years after date, out of date. I did
21 stay on the Board for a while after I left the Foundation, but
22 I really haven't have any immediate contact with the

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1 Foundation.

2 MR. WITTGRAF: I guess where I'm headed in my mind,
3 at least, is that the challenges of poverty law probably are
4 different today than they were 10, 15, 20, years ago.
5 Likewise, that could have some impact on what's included in
6 reauthorization legislation, going beyond Section 12 of
7 proposed H.R.1345, just to the reauthorization legislation
8 generally, whether your experience both on the inside and the
9 outside causes you to see anything that should be in the
10 statute that perhaps has not been previously.

11 MR. HOWELL: Well, I guess I could repeat a theme
12 I'm sure you've heard over and over again.

13 MR. WITTGRAF: Well, we're good on repetition.

14 MR. HOWELL: More money.

15 MR. WITTGRAF: More money. We've been seeking some
16 more, probably not as much more, but I guess we've tried to
17 balance reality between reality and need. There was a little
18 bit more in fiscal 1991, the current fiscal year, and I do
19 think there will be some more in fiscal 1992.

20 I really think, as I said in part when Mr. Woodman
21 was at the table this morning, that the sooner that we can all
22 help reauthorization be reality, the sooner we're going to get

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1 the members of the Senate and House Appropriations
2 Subcommittees and the full committees to take a more serious
3 look at funding for federal civil legal services.

4 I think more money will come more easily with
5 reauthorization.

6 CHAIRMAN UDDO: Thank you, Mr. Wittgraf. Any
7 questions from members of the Board?

8 (No response.)

9 CHAIRMAN UDDO: Mr. Howell, I appreciate your coming
10 very much.

11 MR. HOWELL: Thank you.

12 CHAIRMAN UDDO: We're going to take a five-minute
13 recess before we get to Mr. Wootton. It gives the court
14 reporter a break.

15 (A brief recess was taken.)

16 CHAIRMAN UDDO: Mr. Wootton is here, also by
17 invitation, specifically for purposes of addressing the
18 McCollum-Stenholm bill as one who is familiar with it. We
19 have not, over the course of these hearings, had much
20 testimony in support of it. So we felt that it would be
21 helpful to have thoughts from someone who was involved with
22 it.

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1 I think Mr. Wootton is familiar to most of you as a
2 former employee of the Corporation, and currently a contract
3 consultant to the Corporation. So, if you would, Mr. Wootton,
4 any comments you have to start, and then we'll turn it over to
5 the committee for questions.

6 PRESENTATION OF JAMES WOOTTON

7 MR. WOOTTON: Thank you, Mr. Chairman. I appreciate
8 the invitation. It's nice to be back with you again so soon.
9 I wasn't sure I would be out here. I want to make some
10 comments, but I want to, in fairness to Professor Cox, rather
11 than hold him up for the whole time, as you alluded during
12 their testimony, that perhaps his reading of McCollum-Stenholm
13 was not an accurate reading about what was contemplated in
14 terms of multiple providers within a geographic area.

15 I don't know what you all have in way of a version
16 of McCollum-Stenholm. Do you have the most recent one?

17 MR. WITTGRAF: H.R.1345.

18 MR. WOOTTON: You have the print. I don't have a
19 committee print.

20 MR. WITTGRAF: Ken's got one there I'm sure you can
21 use.

22 MR. WOOTTON: Page 63 is what we, I guess, have

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1 taken to calling the modified McCollum amendment.

2 MR. DANA: Section what of the bill?

3 MR. WOOTTON: It's Section --

4 MR. DANA: 11B?

5 MR. WOOTTON: It's Section 11(b)(3)B -- all the way
6 at the end is the important part, but the way it would be read
7 is that the Corporation shows its recipient as either a
8 private attorney or a qualified nonprofit. The majority of
9 the directors or other governing body of which is comprised of
10 attorneys who are admitted to practicing one of the states and
11 are approved to serve on such Board or body by the governor
12 who bodies a state, county, or municipal bar association, the
13 membership for which represents a majority of attorneys
14 practicing law in the locality, in the case of the National
15 Support Center, a locality where the organization maintains
16 its personal headquarters.

17 The important thing to note there is that it used to
18 say appointed by that bar association. It now says approved
19 by that bar association. Then on line 6 on page 64 it says,
20 "The approval described in subparagraph (b)(2) may be given to
21 more than one group of directors," read with the
22 understanding that attorney or attorneys are not in any way

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1 limited in who can be contracted within a given geographic
2 area and that the approval of the only monopoly creating
3 organization in a geographic area can be given to more than
4 one group of directors.

5 It's fairly clear to me that that means that more
6 than one organization could be given a grant in that area.
7 I've just had a conversation with Professor Cox. He can speak
8 for himself, but I think he is persuaded that that is at least
9 a plausible reading of that, and that maybe his objection
10 would be overcome by that reading of that.

11 The giving of the contracts, he would contemplate
12 that even in the creation of what he would consider to be a
13 multiple organization provider model in a given geographic
14 area, that the creation of the initial contract with them
15 would be done with competition.

16 So, what's called for here is a system of
17 competitive bidding. Multiple parties, I think, are allowed.
18 I don't think that Professor Cox's objections are sustainable
19 on a closer reading of the statute.

20 MR. WITTGRAF: You are familiar, Mr. Wootton with
21 Section 11, of course. Go back, if you would, in that draft
22 that you were just using, to page 61. At the bottom of the

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1 page, then, under A.1 there is reference to "all grants and
2 contracts awarded by the Corporation shall be awarded under a
3 competitive bidding system." Do you see that?

4 MR. WOOTTON: Yes.

5 MR. WITTGRAF: I guess, maybe before you start your
6 remarks, in light of what you were saying about your reaction
7 to Professor Cox's remarks, it seems to me that a case
8 probably can be made that under the history of the Legal
9 Services program, both as part of the Economic Opportunity Act
10 and then the Legal Services Corporation and then as
11 reauthorized and then the annual funding that's been provided
12 by Congress, that there is presumptive refunding.

13 Is it your understanding that in making this
14 provision, whoever actually drafted this, and I'll assume for
15 the moment -- we'll have to assume Congressman Stenholm and
16 Congressman McCollum -- that they were not contemplating
17 presumptive funding and really meant all existing grants, all,
18 roughly, \$300 million or that they were essentially looking at
19 all grants beyond those who could be considered to be the
20 beneficiaries of presumptive funding, which would be the
21 existing grantees?

22 MR. WOOTTON: Well, if you'll look at the top of

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1 page 62, rights under Section 107(a)(9) and (10)(11), "shall
2 not apply to termination or denial of financial assistance
3 under this title as a result of the competitive award. That
4 is specifically meant to say that there would be, for the
5 purposes of competitive bidding system, there would be no
6 presumptive refunding.

7 In other words, presumptive refunding is a term of
8 art that's grown up out of the rights that are contained in
9 these sections. Those have been specifically accepted for the
10 purposes of a competitive bidding system.

11 MR. WITTGRAF: It's your belief that Section 2 is an
12 effort to eliminate any notion or any argument of presumptive
13 refunding?

14 MR. WOOTTON: Yes.

15 MR. DANA: Jim, I thought I understood Professor Cox
16 to say he did not favor the concept of moving from one
17 monopoly to another.

18 MR. WOOTTON: That's right.

19 MR. DANA: But does favor the concept of creating
20 constant competition between a variety of models. I would
21 agree with you that this proposal permits multiple models. It
22 does not require it.

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1 MR. WOOTTON: Yes.

2 MR. DANA: So, what we've got is sort of a blank
3 check to do anything we wanted to. But what is very clear is
4 that everybody who is providing legal services under this bill
5 would have no right to continue that after the end of their
6 contract. It would have to be competed again; would it not?

7 MR. WOOTTON: Yes.

8 MR. DANA: So you combine sort of the threat of
9 defunding, whatever benefit that gives, with the theoretical
10 possibility of constant competition should whoever makes this
11 decision decide to fund two or more programs in the same area.
12 We understood Professor Cox to say this, that he did not view
13 the threat of defunding as a particularly healthy competitive
14 benefit.

15 When he thinks of competition, he thinks of the
16 competition between as opposed to the competition from the guy
17 just waiting for you to make a mistake.

18 MR. WOOTTON: Well, I didn't hear him say that. I
19 mean, he's here and I guess he can defend that. I don't know
20 plausibly how if you're having competition in the multiple
21 sense. At some point somebody might lose that competition,
22 and somebody else might be brought in who will better compete

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1 in that geographic area.

2 In other words, it may be that a program gives such
3 poor service nobody goes there.

4 MR. DANA: Do you know of one example where
5 competition in either the criminal defense or in civil
6 provision of civil legal service has generally worked?

7 MR. WOOTTON: I'm vaguely familiar with the
8 literature on it. I'm not an expert on it. I wouldn't be the
9 right person to ask about that.

10 MR. DANA: One of the difficulties is, no one has
11 been able to point to anything that works except a lot of the
12 people up here have a general feeling that competition can't
13 be all bad since it's a free society and the competition is a
14 part of our economic culture.

15 But this legislation would impose it without any
16 example of it ever having worked anywhere. I just wondered
17 why you think that is not a very radical approach. In other
18 words, is there -- see what I mean?

19 MR. WOOTTON: Well, I understand that. I can
20 understand why -- I had a chat with somebody that works in a
21 program at lunch. The idea that was proposed there, and it's
22 not one to which I'm unsympathetic, particularly as I see it

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1 here today, and that is the lack of economic security when you
2 take a job in nonprofit.

3 It's based on the lack of knowledge of what the
4 level of funding is going to be. That can be at the margin,
5 or it can be for the whole thing. You know, it can be the
6 additional five attorneys who depend on IOLTA, or depend on
7 United Way, or depend on whatever, or it could be the
8 possibility that the federal source of funding might, through
9 some source of scheme of competition or through defunding --
10 You know, I've gotten the sense from the field that they've
11 felt that they've been under the threat of defunding for 10
12 years, and that that's created a sense of anxiety that hasn't
13 been productive and has diminished morale and lacks a sense of
14 the potential for continuity.

15 So, I'm not unsympathetic to that. The alternatives
16 aren't real attractive, however, and that is to say that
17 programs, through whatever system got funded in a particular
18 time period, by virtue of having been funded, now have a
19 nearly impenetrable lock on funding.

20 I'll share two anecdotes. I was at the Justice
21 Department in a program that was very ideologically charged.
22 It used to be that it was all discretionary funding. Whoever

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1 was the head of the program could give it to whoever they
2 wanted to.

3 Then, with the Reagan Administration, the idea was
4 that maybe people would start giving that to people who hadn't
5 been getting it in the past. Therefore, the staffs on the
6 Hill, who were protective of the people who had had the funds,
7 passed a law requiring competition, just like that.

8 We went from a discretionary environment to a
9 competitive environment. That's politics and that was
10 accepted. By the way, I think that's been very positive for
11 that program. Some of the biggest mistakes that were made by
12 my boss and myself would have been obviated by competition,
13 just being forced to go through a process.

14 There's a lot of on-the-job training in government
15 agencies. So, systems, I think, are very positive.

16 MR. WITTGRAF: Let me ask you just about that
17 example. Would those have been entities that were getting
18 funds, entities which had existed for 15, 20, and 25, years,
19 or in the case, of course, of some legal services grantees,
20 they've existed for 50 to 75 years, or are we talking about
21 people who are just doing something supplemental to what they
22 normally did?

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1 MR. WOOTTON: Well, I mean, the first people that we
2 defunded was the National Center for Youth Law, as an example,
3 all right.

4 MR. WITTGRAF: He's at the Justice Department.

5 MR. WOOTTON: At the Justice Department.

6 MR. WITTGRAF: So you're defunding them from the
7 Justice Department with something incidental to what they did
8 principally, which was serving as a national support center
9 funded principally by the Legal Services Corporation?

10 MR. WOOTTON: I did not know that at the time. I
11 mean, I now subsequently understand that, and I think you
12 point is well taken.

13 MR. WITTGRAF: I'm concerned, the anecdote is, to
14 use your words, something off the margins for some projects or
15 agencies. Whereas, with most of the projects we're talking
16 about here, the legal services funds are something between
17 half, two-thirds, to three-quarters of their funding. They
18 are really, obviously, the life blood of their funding and
19 jeopardize the very existence of the agency rather than taking
20 something off the margin.

21 MR. WOOTTON: I don't disagree with that. I mean,
22 then it's just a question of does the length of, you know,

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1 getting the government money have some kind of other level of
2 presumption that they're going to get refunded, and should
3 that be? That's a policy question. I can't answer that.

4 But there were lots of people who were very
5 dependent on the grants from our office who were forced to go
6 through a competitive process to continue getting those funds,
7 including people that we funded who were doing very laudable,
8 positive things.

9 MR. WITTGRAF: I think you had another anecdote. I
10 didn't mean to cut you off from your other anecdote. But
11 after you go to that, would you give what rationale you
12 understand there to be for the need to put all of the grants
13 up for competition, other than just -- there aren't many
14 examples, at least that you're aware of, and that we aren't
15 aware of at the moment, of successful competitive models, as
16 you and Mr. Dana discussed.

17 We're not aware of glaring problems, except with a
18 handful of agencies, the kinds of agencies that Emelia DiSanto
19 said earlier this afternoon, trying to work with one way or
20 another. So, why is it that somebody is proposing that we do
21 this? Why are we throwing out the system -- we're throwing up
22 the system. What's the rationale as far as you understand

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1 it?

2 MR. WOOTTON: Well, for one thing, I think
3 competition would work on the margin. I think that the vast
4 majority of programs would have a significant leg up in
5 competing for the money. If they had been doing what I take
6 it to be that they are doing, it's going to be very difficult
7 for someone to come in and make the case that they're not
8 doing a good job.

9 But there's a very important rationale, and that is,
10 if you don't -- it's human nature. If you don't have some
11 possibility that you're going to lose something, your
12 performance degrades. I think that a lot of people think that
13 Doug Besharov is a friend of legal services. He's done a
14 study that's shown --

15 Now, it could be this threat of defunding that's
16 caused the degradation, but his view is that the lack of
17 competition has caused the degradation, that there has been
18 not as effective rendering, an efficient rendering, of legal
19 services during the last 10 years as you would expect if
20 altruism was all that it took to get people to do their best
21 job.

22 I'd say something else in this regard. I don't know

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1 whether this fractional accounting is something of which I'm
2 not particularly familiar. It may be that it's an appropriate
3 alternative to timekeeping. But right now I think we have a
4 very hard time of measuring what's going on.

5 You know, if we've got a program that, say, takes
6 four lawyer hours -- and I don't know whether these, on the
7 order of magnitude, make any sense at all -- but four lawyer
8 hours for an uncontested divorce. In another program, it
9 takes 16 lawyer hours for an uncontested divorce. That would
10 be information, it seems to me, that you would want to take
11 into consideration during a competition.

12 If a program is coming in in the top percentiles on
13 all of the efficiency measures and the measurements of quality
14 and other measures that you can have, I think that they would
15 be a shoe-in to get refunded. You know, in other words, I
16 understand why people see it as a threat, but I don't --

17 I guess I'm not persuaded that -- it's certainly not
18 anything that they would welcome, but I don't think it's
19 something with which they could not very adequately deal.

20 MR. WITTGRAF: I guess I would share Professor Cox's
21 notion rather than if it ain't broke, don't fix it, instead if
22 we can do better, if we can make it perfect, let's yet try to.

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1 But the reality is that the Congress, going back to 1965, has
2 created a national system of law offices for the poor. I'd
3 presume the intent of Congress is to maintain a system of
4 national law offices for the poor.

5 So, as we look at trying the kinds of things that
6 both Professor Cox and Professor Meeker and others have
7 described, aren't we really looking at taking the monies
8 beyond the roughly \$300 million that go now to legal services
9 grantees, getting some money beyond that, another \$10, \$20,
10 \$30, \$40, \$50 million from the Congress and experimenting
11 along the lines they've described with those monies rather
12 than jumping in and saying okay, you more or less 300
13 grantees, we're going to put all of your existence up for
14 debate.

15 I'm not sure, except in a kind of philosophical way
16 as you mentioned, what purpose that serves. I guess I wonder
17 about destroying or jeopardizing more seriously than the
18 notion of defunding that's existed for 10 years, as you say,
19 really putting in jeopardy an entire national legal system for
20 the poor that has evolved, and I think generally well, over
21 the last 15 to 25 years.

22 I mean, I guess I don't see the reason for that and

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1 in my mind would prefer instead, again, to work on the margin
2 with some more monies to try some things beyond the monies,
3 the roughly \$300 million that are presently available for
4 those grantees.

5 MR. WOOTTON: That's an approach, but I would say
6 that you've got a real problem. It's the fundamental
7 accountability problem here. It's been wrestled with with
8 lots of iterations about how to deal with the accountability
9 problem.

10 That is, if you've got a program that consistently
11 does not abide by the restrictions that Congress has placed on
12 legal services -- I'll take as an example abortion -- if they
13 are involving themselves in abortion activities on a
14 consistent basis, to the point where you would rather not have
15 to deal with them on a regular basis because it involves
16 litigation, it involves a lot of detraction from the principal
17 mission of legal services, that you're not going to defund
18 them.

19 I don't think there's a federal judge in the country
20 who will defund them and create a vacuum, okay. I just don't
21 think it's going to happen. I think they are going to say,
22 hey look, this is marginal stuff at best, and there's going to

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1 be arguments about whether or not it falls within whatever the
2 very narrow strict interpretations of our rules.

3 The result is going to be that you are going to keep
4 funding the same program. They will know that there is no
5 effective sanction for not abiding by what Congress' intent
6 has been. If you can't come up with an alternative, that
7 judge is not going to rule with you. I think that's a
8 practical reality.

9 So, why not, on a regular basis, as is done in lots
10 of other settings -- and I know it's not exactly the same
11 setting, but there are lots of other settings in which it is
12 done -- ask people to say, gee, we're doing an awful good job.
13 Here are our numbers. Here are our people. Here are the
14 resumes.

15 MR. WITGRAF: You don't think we do that already
16 through the annual either audit process, or the annual
17 reapplication process, or the monitoring process every two
18 years? It bothers me a little bit that you take a
19 hypothetical example about somebody perhaps violating the law
20 regarding the use of monies for nontherapeutic abortions.
21 That may or may not exist somewhere.

22 MR. WOOTTON: Well, it certainly exists at CRLA. I

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1 mean, we've just been through that situation at CRLA.

2 MR. WITTGRAF: Well, let's say that it did exist in
3 CRLA. Even that's debatable, but let's say arguendo that it
4 existed. That's one out of more or less 300 grantees.

5 MR. WOOTTON: Exactly.

6 MR. WITTGRAF: So, from that one example, if it's a
7 valid example, we're going to suggest that all grants and
8 contracts awarded by the Corporation shall be awarded under a
9 competitive bidding system? I mean, is that the logic? Am I
10 following that?

11 MR. WOOTTON: Well, no. But, I mean, you're going
12 from one argument to another and then isolating that argument
13 as though that's the only argument. That is an argument,
14 okay. I think it's a compelling argument. There are the
15 arguments --

16 MR. WITTGRAF: A compelling argument to put all
17 grants and contracts up for competitive bid?

18 MR. WOOTTON: Well, I mean, it depends on what kind
19 of world you want to live in. Do you want to be sure as the
20 stewards of \$300-and-some million that are supposed to make
21 sure that poor people get the maximum amount of access to
22 justice that they're going to get, that you're going to want

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1 to be able to say that a program that doesn't use that money
2 very efficiently has to be refunded.

3 I'll just take the Frank language as an example.
4 You have to go through such a process. Now it costs us, I
5 think, \$350 to \$500 thousand to go through a defunding action.
6 I don't know what it would be under the Frank proposal, but it
7 would add considerable time and considerable cost.

8 We don't have that kind of money to do on a regular
9 basis, unless it is a systematized review that allows people
10 to pit the various capabilities against each other. Again,
11 the existing program, if they don't have a leg up, if they
12 aren't way out in front just by virtue of knowing the
13 territory, knowing the needs, doing what they're doing, if
14 they aren't the ones who ought to win --

15 And this is an enforceable right in court which I
16 think the current president recognizes, if there is a
17 competitive process, that there will be litigation about
18 whether or not the system that's devised is fair, whether or
19 not the various considerations have been adequately weighted
20 and considered. It's enforceable then.

21 I don't see the jeopardy that the good programs are
22 going to be in under a competitive system to be this afraid of

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1 them.

2 MR. WITTGRAF: I don't see the need for it to begin
3 with. Maybe that's where we're -- you apparently feel the
4 need. From what I've learned over the last 15 months or so, I
5 don't see the need. Let me go one step farther because I'm
6 not sure we're going to agree here.

7 Have you thought at all, has anybody that you're
8 aware of thought at all, about the FCC licensure-type model
9 where you have a license that's an ongoing license, subject to
10 renewal based upon certain criteria, and is a way to keep, in
11 that instance, radio and TV stations on their toes and
12 responsive to the community?

13 MR. WOOTTON: Well, the problem I see with the FCC
14 license model is that it creates a property right. Licenses
15 are saleable commodities.

16 MR. WITTGRAF: Forget that we're creating a property
17 right. Let's follow that kind of example. I don't think we
18 want to say that any nonprofit corporation that receives LSC
19 funds has a property right to receive them. If licensure is a
20 word that's going to throw us off because of property rights,
21 let's simply say a renewal requirement similar to that
22 employed by the FCC.

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1 MR. WOOTTON: Well, again you've got the same
2 problem. What's the alternative? If you're renewing a
3 license to someone and there isn't really a good alternative
4 in the renewal --

5 MR. WITTGRAF: I guess I'm seeing that as something
6 easier and cheaper than the defunding that you've expressed a
7 concern with.

8 MR. WOOTTON: Well, I guess what you -- under that
9 model, I assume that the sequence of events would be that
10 you'd have a renewal process. It would be time for renewal.
11 They would make application. You'd have some kind of
12 standards by which you judge the application. They would
13 either meet those standards or wouldn't meet those standards.
14 You would then go through probably some litigation about
15 whether they met those standards or didn't meet those
16 standards.

17 So that would take about two years. But time frames
18 aside, having done that, it seems to me then you are still
19 thrown into the problem of who takes over the license or the
20 right in that geographic area. Then you've got to go through
21 a competitive process.

22 MR. WITTGRAF: I agree.

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1 MR. WOOTTON: So you're probably talking -- and I'm
2 not saying all these time frames will be completely obviated
3 by a competitive process, because I don't think they will be
4 in the early stages particularly. You know, you're probably
5 talking about a three-year period, over which you would still
6 not take their license while you were competing for the next,
7 you know, potential license holder.

8 Then, would you have them coming into court and
9 pleading changed circumstances? They cleaned up their act.
10 They got rid of their Board. They got rid of their executive
11 director.

12 MR. WITTGRAF: I think the law on that is pretty
13 clear, that it has to be something that you've done previously
14 and it can't be something that you say you're going to do in
15 the future. It has to be as done not as promised.

16 MR. WOOTTON: No, I know. But having done that,
17 what I'm saying is it seems to me you get into all kinds of
18 equities. We'll get you back into court and people will
19 argue, look, yeah, we weren't doing a very good job, you know,
20 two years ago when we went up for our license renewal, but
21 we're doing a lot better job now. We got a person. These are
22 the credentials.

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1 You bring in the clients who have been well served.
2 You're going to have another lawsuit. My guess is you're
3 going to have another lawsuit because they're going to use
4 your money to sue you. You're going to have another lawsuit
5 about whether or not they are going to be defunded.

6 I think you are much better off systematizing,
7 getting some case law developed, because that's what it's
8 going to take. We're an odd duck. You know, we're sort of
9 neither fish nor fowl. You're going to have to develop some
10 case laws specific to the legal services world. You're going
11 to probably have to refine how you go about it.

12 This is a point I would make in response to the
13 whole notion of study. Competition will be a study. It's
14 absolutely guaranteed that as you go through -- first of all,
15 you're going to go through the regulatory process. Say the
16 law is passed tomorrow, okay. You're going to go through a
17 regulatory process as a Board.

18 You're going to have Professor Cox coming in here
19 giving you his ideas about multiple use. You'll have other
20 people tell you maybe you shouldn't do that. You're going to
21 have to make some decisions about how that ought to be done.
22 So that may get litigated; it may not.

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1 You know, there are no silver bullets in all this.
2 You're going to have some experience. Some of the experience
3 is going to be good. Some of the experience is going to be
4 bad. You're going to have places where you only have one
5 person apply.

6 You know, Professor Cox, out in the hall, said it
7 ought to say in the law that there must be multiple providers,
8 and then he recanted because he realized there's going to be
9 places there won't be multiple providers because you're only
10 going to have one person apply. So you're going to have to
11 look at that kind of situation.

12 So, one size will not fit all. I don't think this
13 language requires one size fit all. I think what it allows
14 you to do as a Board is to take into consideration all your
15 concerns. I think a lot of those concerns can be legitimately
16 met and still allow for enough accountability to improve the
17 system.

18 CHAIRMAN UDDO: Mr. Wootton, let me ask you a couple
19 questions. Your CRLA example, isn't there an alternative to
20 defunding with a 10 percent reduction, permanent reduction, in
21 the grant? Couldn't that have been done in the CRLA case?

22 MR. WOOTTON: Well, it could have. I happen to be

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1 on the wrong side of this one, Mr. Chairman, because I happen
2 to think we were talking about being too Draconian with CRLA.
3 I urge that we come up with the solution that we ultimately
4 came up with, what some people have deemed to be not adequate.

5 But my purpose and my understanding of what the
6 purpose of what we were doing in CRLA was prospective not
7 retrospective. It had settled the law.

8 CHAIRMAN UDDO: That's not the point of my question.
9 You use that as an example for why defunding is not an
10 effective way to deal with grantees who don't follow
11 regulations.

12 MR. WOOTTON: Right.

13 CHAIRMAN UDDO: I'm just trying to establish on the
14 record that there is an alternative less drastic and less
15 difficult than defunding that's a pretty significant sting.
16 In the CRLA case, maybe, what, \$400 thousand? Couldn't it
17 have been a \$400 thousand permanent reduction in their grant?
18 Wouldn't that be an alternative to defunding?

19 MR. WOOTTON: I know, but I'll tell you why I don't
20 like that.

21 CHAIRMAN UDDO: Well, I'm less concerned about why
22 you don't like it than why it's not an adequate alternative to

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1 defunding.

2 MR. WOOTTON: Well, that's another way of my saying
3 why it's not an adequate alternative. It's a little bit like
4 when you have the death penalty for narcotics. In New York,
5 you get a lot of policemen getting killed. You know, you can
6 make your sanctions so Draconian that it won't be used and
7 therefore won't be effective, or you'll -- and that's not a
8 good example, New York. Drunk driving is a better example.
9 You know, juries won't convict. You're going to have the same
10 problem in that particular sanction. You're taking \$400
11 thousand away from poor people, okay. Our mission is to make
12 sure poor people are served, not to take money away from them,
13 okay.

14 If you've got a program that is not abiding by the
15 rules, it seems to me you ought to be finding a way to get
16 them to abide by the rules, to feel some accountability, to
17 listen when Congress speaks and to know that if they don't,
18 that two years down the road, one year, three years down the
19 road, that that's going to be in the book when they come up
20 for refunding.

21 When you've got your team of peer reviewers in
22 there, they're going to take that into consideration. It

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1 seems to me that's more effective and better for the poor in
2 the area than taking \$400 away from them.

3 MR. WITTGRAF: Isn't it possible, though, to take
4 that \$400 thousand and to give it to someone else in the area
5 to provide legal services?

6 MR. WOOTTON: Yes.

7 MR. WITTGRAF: I mean, we're not locked into just
8 one. There would be a good example of the need to get
9 somebody else into the marketplace to use that \$400 thousand.

10 MR. WOOTTON: Conceivably, you could whittle
11 somebody away to the point they didn't exist anymore, that
12 every time they sort of crossed the line, you took \$400, and
13 then the next time you take another \$400 and you give it to
14 somebody else. You know, I don't know how efficient that is.
15 I certainly prefer that to the Corporation taking it and not
16 giving it back to the area that it came from.

17 CHAIRMAN UDDO: So, I take it, then, that the answer
18 is there is an alternative to the complexity of defunding that
19 might be a workable way of dealing with grantees that don't
20 abide by the regulations.

21 MR. WOOTTON: Sure, if that's the answer you're
22 trying to elicit.

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1 MS. PULLEN: Can I make a comment?

2 CHAIRMAN UDDO: Excuse me just a second. I have a
3 couple more questions.

4 MS. PULLEN: What I have to say relates to that.

5 CHAIRMAN UDDO: Okay. Let me just finish what his
6 last comment was. The answer I'm trying to elicit is your
7 answer. Is that your answer?

8 MR. WOOTTON: I don't like that sanction. I've
9 tried to say that as plainly as I can, and you're saying --

10 CHAIRMAN UDDO: But objectively it is an alternative
11 to defunding, whether you like it or not?

12 MR. WOOTTON: Well, I would say objectively not
13 because it hasn't been used to what I would say at the levels
14 that would have any real deterrence value, and it will not
15 likely be used at the levels that will have real deterrence
16 value. I would say no.

17 Is it there? Is it a practical alternative? Can
18 you try it? Sure, absolutely.

19 CHAIRMAN UDDO: Fine.

20 MS. PULLEN: I just wanted to point out, and
21 disagree with me if you like, that when presidents of the
22 Corporation in recent times have looked at using that

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1 mechanism, some very vocal members of this Board have jumped
2 on their heads to the point of tremendous public pain. That
3 has caused that sanction to be as underused or unrealistic as
4 an alternative as defunding itself.

5 MR. WITTGRAF: The sanction exists, though. It was
6 utilized this last year in the case of TRLA, and we're being
7 sued over notice rights, hearing rights, that they had. We
8 used it. We supported then-president Wear in his use of it
9 last May.

10 MS. PULLEN: I didn't have the impression there was
11 overwhelming support from some members of the Board for that,
12 though.

13 MR. WOOTTON: Well, the sanction went from being--
14 I don't know what the number was exactly, 10 percent of their
15 grant --

16 MR. WITTGRAF: Roughly \$450 thousand down to \$150
17 thousand. It was Mr. Wear's recommendation and the Board--
18 there was some discussion about reducing it below even \$150,
19 but the Board supported Mr. Wear. It went for \$150. TRLA has
20 since sued the Corporation.

21 MR. WOOTTON: Right. So I don't know.

22 CHAIRMAN UDDO: That's another question because you

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1 seem to suggest that competition will somehow avoid lawsuits.

2 MR. WOOTTON: No. I said specifically I thought it
3 would lead to a lot of litigation and establish case law and
4 it would take a long time.

5 CHAIRMAN UDDO: Even if you establish case law -- I
6 mean, you're familiar with public bidding of contracts. I
7 mean, there's hardly a public bid of a significant contract
8 that goes by that doesn't result in lawsuits. No matter what
9 the case law is, someone is always aggrieved or has some
10 complaint or suggests that they had the best bid. That's not
11 something the case law can really solve. It's fact bound, and
12 you've got to figure out --

13 MR. WOOTTON: Well, you start getting summary
14 judgement at some point, I would hope.

15 CHAIRMAN UDDO: Maybe you will, but I don't think
16 that you can really make a case for competition on it
17 producing fewer lawsuits, certainly in the foreseeable future.
18 A day may come when that's possible, but certainly not in the
19 foreseeable future.

20 MR. WOOTTON: I agree.

21 CHAIRMAN UDDO: My other question is, I think the
22 Board is sensitive to their responsibility as stewards of

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1 federal money. I think it would be very helpful to our record
2 if you could give us some of the indications or information or
3 evidence that the current system is inefficient and not
4 working very well.

5 MR. WOOTTON: Well, I would say the evidence is that
6 there's no evidence. You know, we don't know. I defy anybody
7 in this room to come forward and say that program X is doing
8 as well or better than the next program, program Y.

9 CHAIRMAN UDDO: You've been at the Corporation some
10 time now. Could you give us maybe a list of the complaints
11 that suggest that they're not doing a very good job?

12 MR. WOOTTON: Well, I'll give you one anecdote, and
13 that's the defunding --

14 CHAIRMAN UDDO: I really would rather some facts.

15 MR. WOOTTON: Well, then, you'll have to ask
16 somebody else then.

17 CHAIRMAN UDDO: So you don't know of any?

18 MR. WOOTTON: Well, I'm trying to be responsive to
19 the question.

20 CHAIRMAN UDDO: I know, but I did this in San
21 Francisco with someone who was off on a different tangent than
22 the one that we're trying to get information on. So, don't

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1 take it personally. We're trying to find out because I think
2 it would be very helpful for this committee to know is there a
3 factual basis for saying that the current system is not doing
4 a good job?

5 If it's not doing a good job and there's evidence
6 somewhere in the halls of the Corporation or elsewhere, we
7 really need to have that because it has a tremendous impact on
8 what I think the committee recommends to the Board.

9 MR. WOOTTON: Well, there is evidence. I think you
10 could ask the people in policy to come forward with a study on
11 the amount of time that goes into individual cases and the
12 disparity that you find. That, as someone who has at least
13 undergraduate training in economics, would suggest that you
14 don't have a competitive system.

15 If you've got a competitive system, it tends to
16 operate all around the same basic cost. This we would measure
17 by the amount of time people were given at different cases.
18 We have a wide disparity. That, it seems to me, is pretty
19 strong evidence that competition might get the less productive
20 programs into a more productive area of the envelope.

21 The one defunding that I'm particularly familiar
22 with, although I wasn't personally involved, is explained to

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1 me that they were defunded, social science, not because they
2 were doing things that violated congressional intent; it's
3 that when they started keeping time, the judge was able to say
4 that they weren't doing what two graduate students would do
5 part time or something.

6 In other words, we don't know what we will find when
7 we get the data in on what they're spending their time on. We
8 don't have that data now. Those are two indicators, and the
9 Besharov study on the degradation of efficiency, those are
10 three pretty strong indicators that this is a problem.

11 If you add to that the Cox study, the Cox study that
12 was talked about here wasn't very salutary about the staff
13 attorney model, which is the predominant model. He didn't see
14 that as being very effective and efficient. Now, there are
15 answers to that. I'm not trying to say that you can't have a
16 debate about what that meant, that he found that, but he found
17 it. So I think there is evidence out there.

18 I didn't get to finish what somebody said to me when
19 I was at Justice. I was very, you know, interested in getting
20 different things done when I was over there. The comptroller
21 who was a long, about a 25-year, career guy came and talked to
22 me one day about the issue of competition.

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1 He said, Jim, I know you're in a hurry. I know that
2 all political appointees want to accomplish what they want to
3 accomplish because they know they're not going to be there
4 forever, but you need to consider one thing I don't think
5 you're considering. That is, when you don't compete a grant,
6 that you, as a steward of government money, are preventing
7 other American citizens who ought to have a right to compete
8 for that money from competing for that money.

9 You may have found somebody that you think can do
10 the job. You may have found somebody that you agree with
11 ideologically. You may have found somebody that is qualified
12 in every way. But there might be other people out there. In
13 our system, they ought to have a right to compete for that
14 money. I've got to tell you, I find this argument very
15 compelling. I find that argument very compelling in this
16 situation.

17 CHAIRMAN UDDO: What Justice Department?

18 MR. WOOTTON: The Office of Juvenile Justice and
19 Delinquency Prevention.

20 CHAIRMAN UDDO: Any other questions from the
21 committee? Mr. Dana?

22 A PARTICIPANT: May I interrupt for just one second?

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1 CHAIRMAN UDDO: Come up to the table.

2 A PARTICIPANT: I'm going to be real quick.

3 CHAIRMAN UDDO: For the tape recorder to hear you,
4 you have to come back up here.

5 A PARTICIPANT: You asked for evidence of
6 ineffectiveness. The findings reported in the San Antonio
7 study, as released by the ABA, I think, are extremely damaging
8 of the way in which Bexar County Legal Aid is handling or did
9 handle the -- let me be very specific on this.

10 The findings of the ABA-released report are very
11 damaging on the way in which Bexar County Legal Aid handled
12 the divorce cases referred to it by the San Antonio study.
13 Very limited evidence on ineffectiveness of the current
14 system, I agree. Nevertheless, the evidence, however limited,
15 does exist in that spot.

16 CHAIRMAN UDDO: Thank you. Mr. Dana?

17 MR. DANA: Jim, I understand, and let's accept as a
18 premise that presumptive refunding presents a problem for the
19 Corporation because in an unguarded moment everybody in this
20 room who knows anything about legal services would tell you
21 that there are some poor programs out there. Short of
22 spending the \$400 or \$500 thousand, there's no way to get rid

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1 of them with a presumptive refunding.

2 I heard you say, and I think it is correct, that
3 competition is a way of getting around presumptive refunding.
4 What I heard Basile say is there are other ways. I'm not sure
5 his example was a particularly good one, neither, I gather,
6 are you.

7 What if we were to, hypothetically, in those, say,
8 15 or 20 examples, the worse programs in the country, go in
9 and take some money and fund another program in the same area
10 while we're funding the existing one and let them compete, in
11 Professor Cox's sense of the word, for a couple of years, and
12 then basically defund one and permit so that, in effect, we
13 grow the competition from ground up in a really bad situation?

14 Assuming we could get congressional authorization
15 for that, and I understand we don't have it, why isn't that a
16 more responsible way of dealing with the presumptive refunding
17 problem that I think Boards have struggled with for a long,
18 long time?

19 MR. WOOTTON: Sure. Well, it certainly would be
20 better than not doing anything. I've sat in on various task
21 forces where we talked about competition of the Corporation.
22 There are a lot of issues that have to be resolved, even if

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1 you decide to go ahead with competition.

2 One of the issues is, who do you compete first?
3 There is a feeling that the thing to do is to compete first
4 those programs that are the weakest for two reasons. One,
5 you'll have the strongest case, and you're more likely to have
6 somebody that's going to do a better job.

7 My reaction to that is, if you're going to do the
8 whole system, and this isn't exactly responsive, but I'll get
9 back to you, if you're going to do the whole system, you ought
10 to do it randomly. You shouldn't pick them out.

11 MR. WITTGRAF: Jim, when last you and I talked, I
12 thought that you agreed with me that there was no example
13 where this has worked or where you could point to any example
14 where competition in legal service has worked. Your view is
15 we haven't tried it. There's no evidence. So we don't know if
16 we could improve it. So why not go for it.

17 I characterize that as a radical solution to a
18 problem, because we had a lot of very good programs out there.
19 All of them would have to be -- in order to solve the
20 presumptive refunding problem that we have for a relatively
21 few programs, you are proposing what I regard as a radical
22 solution that is untested, unproved. So I'm not sure --

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1 MR. WOOTTON: Let me be as responsive as I can and
2 directly. Number one, we do compete. We have defunded
3 programs. The question was, systematically have we competed
4 areas? No, we haven't, but yes we have competed in particular
5 areas. We have run competition in the law school clinic area
6 successfully without complaint.

7 Two, I'm not proposing this. Obviously, I am a
8 proponent of it. But this is being proposed by members of
9 Congress and with various people who support them. The
10 Congress has passed now, I guess four or five times, something
11 that seems to indicate that they'd like to see competition.

12 Now, there has continued to be resistance to that,
13 so is that not your understanding of the appropriations
14 language regarding competition?

15 MR. WITTGRAF: Well, there's a rider dealing with
16 it, assuming a Board ever gets confirmed by the Senate. Is
17 that what you meant?

18 MR. WOOTTON: But that's been now tailored to say
19 that it's --

20 MR. WITTGRAF: Yes, '89, 90, 91.

21 MR. WOOTTON: Yes, but it also got passed again
22 during the summer involving an emergency appropriation bill.

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1 I mean, Congress has, three or four times at least, said that
2 they intend that there will be competition. The current
3 language says there will be competition but not before October
4 1, 1991, okay. So, whatever that means, it seems to me there
5 are a lot of people who think that there ought to be
6 competition.

7 As to your first question, could you do it among the
8 first 15, or 20, or whatever might be the marginal programs,
9 yes, you could. Is that preferable? In my view, no, because
10 I think that -- again, I don't think that the good programs
11 are in the level of jeopardy that the resistance would
12 indicate that they are in.

13 I think the good programs would go through that
14 process. I think they would be refunded. I think that better
15 -- I think the result, frankly, would be that a lot more of
16 the poor would be served, and people would find it was a very
17 workable system.

18 We're in a time where people are seeing -- they are
19 having to buy into the unknown. They are saying we don't want
20 to go into the unknown. That's not surprising.

21 MR. WITTGRAF: Mr. Chairman, we spent the whole time
22 talking about competition.

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1 CHAIRMAN UDDO: I know, and unfortunately we're out
2 of time. I've got three more people and not much time to get
3 them in.

4 MR. WITTGRAF: Mr. Wootton, you indicated there's a
5 lot of support for the competition study, a lot of support in
6 Congress. I'm not sure I agree with you on that. But, be
7 that as it may, we have the McCollum-Stenholm H.R.1345. Ms.
8 DiSanto, if you heard her presentation earlier this afternoon,
9 had some very specific concerns about the evaluation
10 monitoring process and the wording.

11 She spoke particularly of the Frank draft, be it the
12 Frank draft or the McCollum-Stenholm draft. We've had an
13 opportunity not only to visit some with Congressman Frank but
14 also with Paul Drolet the chief counsel for the administrative
15 law subcommittee.

16 Do you know, is there someone who is comparable in
17 the process with whom we can visit, with whom even Ms. DiSanto
18 can visit, about her specific concerns as to the drafting of
19 either H.R.1345 or more likely the drafting of amendments that
20 will come up in subcommittee, committee, or on the floor of
21 the House later this year? With whom should we be working, if
22 you know?

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1 MR. WOOTTON: You mean in the McCollum-Stenholm
2 world?

3 MR. WITTGRAF: Yes, sir.

4 MR. WOOTTON: As opposed to the Frank world?

5 MR. WITTGRAF: Who would be the counterpart to Paul
6 Drolet?

7 MR. WOOTTON: Well, the counterpart to Paul Drolet
8 would be close to Don Morrissey who is the legislative director
9 for Bill McCollum. But the person who is the counterpart to
10 Paul McNulty, who is more the person who was involved in the
11 substance of it and who was on the judiciary committee, for
12 Bill McCollum is Carmel Fisk.

13 MR. WITTGRAF: Carmel?

14 MR. WOOTTON: Carmel. It's a lady, Carmel Fisk.
15 She's on the immigration subcommittee, but she has been asked
16 by Congressman McCollum to be on the substance.

17 MR. WITTGRAF: So she would be the one who would
18 really be into the wording, the language of proposals, good.
19 Thank you.

20 CHAIRMAN UDDO: Thank you, Mr. Wootton.

21 Mr. David Yoder, is Mr. Yoder here? I'm going to
22 have to ask you to be brief, Mr. Yoder.

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PRESENTATION OF DAVID YODER

1
2 MR. YODER: Thank you, Mr. Chairman. My
3 participation this afternoon really arises out of the meeting
4 that Mr. Martin called yesterday with project directors from
5 the area. Mr. Martin asked that I consider sharing some
6 comments that I made yesterday with the Board today, and
7 that's why I'm here.

8 To give you just a very quick and small background
9 as to who I am, I'm Dave Yoder, the director of the legal
10 services program in Gary, Indiana, legal services of northwest
11 Indiana. I've been in legal services for 16 years. I've
12 practiced in a very suburban and fairly wealthy community of
13 Midland, Michigan, and practiced in the north woods of
14 Michigan, an extremely rural community, before coming to the
15 very urban northwest Indiana.

16 The one thing that I found distinguished me in my
17 early practice in the north woods of Michigan was that while
18 we all tended to call ourselves small, simple, country
19 lawyers, I was the one who felt compelled not to be able to
20 accept chickens, eggs, and baked goods in compensation. I
21 dearly missed the baked goods, believe me.

22 There's a number of minor points that I would like

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1 to comment on today. One that I feel very strongly about is
2 the issue of copayments. I believe strongly about my position
3 on this issue because it comes from the clients that I work
4 with and spend a great deal of time with, both during the day
5 and evening and weekend hours.

6 I think it's important for you, and some of this has
7 been alluded to already, but I think it's extremely important
8 that you recognize what our clients do in fact commit to
9 obtain so-called free legal services. My program, as I said,
10 is an urban program. Yet, we have no regional transportation.

11 The local transportation in the City of Gary is
12 sporadic, unreliable. Our clients beg, I won't say steal,
13 borrow, from neighbors to get transportation. We have
14 clients, and this is hard to believe in an urban area, who we
15 know have walked 15 or 16 miles, something you think of in
16 rural areas, to get to our office to be seen.

17 Our Gary office sees people on a first-come,
18 first-served basis, beginning at 9:00 o'clock in the morning.
19 I'm not going to tell you that's the best way to do intake;
20 it's the way that's worked best for us. We don't spend time
21 twiddling our thumbs. Our clients understand it, and it's
22 known in the community, and it works for us.

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1 These people will get there, and they will find that
2 people have begun to arrive in our building at 7:00 o'clock in
3 the morning, when the building opens, and they will join 30 to
4 40 people sometimes for services when we begin at 9:00
5 o'clock.

6 Being the only state in the union that does not have
7 IOLTA, we are probably the least well-funded. So we aren't
8 providing maybe the quantity of available hours that are
9 available some other places. These people make that trip.
10 Sometimes they have to come back again in order to be seen.
11 They have to make all kinds of arrangements to get there.

12 For us to say that they don't have sufficient
13 contribution to their legal services, I think, is unfair.
14 Quite frankly, I think it's outrageous. For us to tell these
15 people that they have to reach in their pockets, take money
16 from food, clothing, shelter, for their children in order to
17 copay for these legal services, is inappropriate.

18 In the State of Indiana, where AFDC parents receive
19 an amount of money equal to 34 percent of poverty, tell them
20 that they have to pay for this service, is an outrage. I
21 sincerely request that you do everything in your power to see
22 that this concept does not enter into legal services. They've

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1 made their commitment.

2 Other issues would include the issue of lobbying.
3 The question was raised as an example, what about the area of
4 landlord and tenant laws. I'll speak merely to that as one
5 example. In Indiana, we do not have a landlord and tenant
6 act. We, in fact, don't recognize a right to habitability in
7 Indiana.

8 There are three groups of people that would very
9 much like to see legal services take a very proactive and up
10 front and leadership role in the issue of creating a landlord
11 and tenant act. Some of those are current clients. We
12 understand what we can do for current clients under the
13 current regulations. We also understand what we could not do
14 if the proposed amendments were adopted.

15 Some of those people are current clients. Their
16 concerns are that the housing in northwest Indiana is in
17 terrible condition, that they are paying and our public
18 agencies are paying rather outrageous prices for housing that
19 should, in fact, be condemned.

20 We have clients who not only have to suffer with
21 rats and insects and death in their neighborhoods but have to
22 contend with landlords that demand sexual favors in order to

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1 get "competitive rates." They want us involved in this
2 issue.

3 Another surprising group of people are landlords.
4 There are good landlords out there. They would like us
5 involved, those small landlords, because, quite frankly, they
6 tell us they don't know what they're supposed to do in dealing
7 with tenants and in complying with the law. They would like
8 to see a comprehensive state landlord and tenant act that
9 would give them direction. They can't afford to hire lawyers
10 to lobby to create that.

11 The third group you might be surprised at is the
12 legislators. The legislators in Lake County, Indiana, right
13 now are in a 61-day session. That's all there is for 1991.
14 What they will tell me at social functions and other community
15 functions is that unfortunately the issues for them this year
16 is whether or not there should be casino gambling in the City
17 of Gary, whether or not we should abandon the merit selection
18 of judges and move back to an elective process, whether or not
19 we should eliminate the change of venue statute in Indiana
20 that allows you to move a case just because you got up on the
21 wrong side of the bed in the morning.

22 They have told me that they would like to deal with

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1 many human services issues and poverty law issues, and they
2 would like to deal with the issue of landlord-tenant act,
3 reform, in Indiana. But they don't have the time. They have
4 other political pressures that they have to respond to.

5 If we would like, and if we were able, to draft an
6 entirely fresh bill and provide all of the resources that they
7 would need to consider it, they would love to have us do that.
8 Quite frankly, we're not able nor probably are we capable of
9 doing that, given the resources that we have. But we could be
10 of help to them. Don't take that opportunity away from us.

11 I wear a number of hats in Lake County. One of
12 those is that I'm president-elect for the Lake County Bar
13 Association, the second largest local bar in the State of
14 Indiana. Another one of those is Paul Arnold, the president
15 of state bar, has appointed me cochair of the state bar's new
16 pro bono committee.

17 But in my capacity as president-elect of the bar
18 association, let me say to you that when the issue of Board
19 approval of class action litigation comes up, my bar
20 association becomes very concerned. I shield myself from the
21 appointive process to my Board, but I know of the discussions
22 and the concerns that go on.

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1 My Board of Directors has attorneys who represent
2 the major power company, who represent municipal governments,
3 and other defendants of our program. The Lake County Bar
4 Association and my Board members do not want to be placed in
5 the situation of conflict where they have to begin deciding
6 what cases we accept and don't accept.

7 My bar association does not want to be in a position
8 where it's being lobbied over who should be appointed to my
9 Board of Directors based on what decisions might be made on
10 class action lawsuits. My bar association wants to be as far
11 from that process as it can possibly be. There's a number of
12 reasons why.

13 One is because, quite frankly, my bar association
14 thinks that we do a heck of a good job in dealing with those
15 issues. Secondly, those of you who are familiar with the
16 history of Lake County, Indiana, understand that we have come
17 to a painful understanding of what the implementation of
18 politics and the interjection of politics and all of those
19 things can have on programming and services on competitive
20 bidding.

21 A number of former county commissioners and public
22 officials who are currently residents of the federal penal

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1 system is legendary. My bar association does not want to be
2 in any way associated with a situation that puts them in that
3 kind of decision-making position. They don't want it.

4 On the issue of competitive bidding, I may be unique
5 in that I happened to have come into a program as director
6 where there was a form of competitive bidding in existence.
7 In 1982, there were two legal aid programs in Lake County,
8 Indiana. I wish Mr. Kirk were still here because he has
9 apparently some similar history.

10 We had a nonfederally-funded legal aid program
11 operating in Lake County, Indiana. We had a federally-funded
12 legal services program that I direct. Both of those were
13 United Way-funded legal services programs. Today we have one
14 legal services program, and that is ours.

15 The reasons why are numerous. One of the biggest
16 reasons why is that the United Way got very tired and
17 frustrated of funding two administrative bodies. They got
18 tired of funding two project directors, two accountant clerks.
19 It was ineffective, and it was inefficient.

20 Other reasons that that happened was because the
21 other program did not have the same kinds of federally
22 mandated supervision, reporting requirements, and so forth,

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1 that you require of us. They had no way of telling, in fact,
2 what this other organization was truly doing.

3 What they found after about three years of rather
4 intense conflict with the other United Way was that we, in
5 fact, were doing by far the best job of representing poor
6 people, not only in terms of quality of representation but in
7 terms of cost of representation. That's why we are the only
8 legal services right now in Lake County, Indiana.

9 There's been some suggestion that legal services
10 programs are afraid of competitive bidding. I can put that to
11 rest for you with respect to our program. Many of you are
12 familiar with Indiana through basketball, and I think Indiana
13 was the first state to clearly demonstrate that basketball is,
14 in fact, not a noncontact sport. We approach many things in
15 the same way.

16 There is a part of me that would love to see a
17 competitive bidding regulation, would love to enter into that
18 kind of a fray. I'm convinced that we would win that hands
19 down, and you would continue to fund us. I'm also convinced
20 that it would be a phenomenal waste of all of our energies and
21 time and take away energy and time from serving those 80,000
22 clients that we're responsible for.

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1 I know, because I know my community, and my bar
2 association knows because it knows my community, in fact, who
3 would likely apply, who you would end up having to evaluate in
4 that process. Some of those people have applied for jobs with
5 our program back in 1984, the last time we had funding to hire
6 somebody new. We turned them down because they weren't
7 competent.

8 Others are marginal practitioners in a county that
9 has lost 20 percent of its population, and that being
10 primarily the employable population, but has seen a 10 percent
11 increase in the number of lawyers in the last 10 years, people
12 who are not making it. Folks, they are not making it because
13 they're the best out there, I'm sorry to say. We're all going
14 to waste a lot of time and energy, and it's not going to
15 improve the services to poor people. Many poor people are
16 going to pay in the process.

17 CHAIRMAN UDDO: I've got to get you to wrap up, Mr.
18 Yoder. I've got two other people.

19 MR. YODER: I just had one other comment. With
20 regards to restrictions or recoupment of attorney fees, again
21 I would ask you not to go down this path. The reason is very
22 simple. Some of you may go back far enough to remember the

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1 old song about the greatest lie that's told, and that is, "I'm
2 here from the government, and I'm here to help you."

3 Legal services dealt with that many years ago.
4 Field programs dealt with that. In my State of Indiana, there
5 is still a very strong belief that if federal money is
6 involved, if federal ties are involved, then we don't want to
7 deal with any of it. Therefore, we're going to turn it all
8 down. We don't have an AFDCUP program in Indiana for that
9 very reason.

10 The funding sources that I have, in several
11 instances, would withdraw funding one, if they knew they were
12 going to be controlled by LSC regulations and two, would be
13 very, very concerned about money that we might win, be
14 reimbursed for is my view, in litigation if that money were
15 going to go on then to the Legal Service Corporation.

16 I'll share just one example. We just, last week,
17 completed a case, a show cause involving a local government
18 entity. We will receive some small amount of attorney fees on
19 that, stipulated judgment, not a tremendous number of hours
20 involved but a small amount.

21 It's an entity that we've had to sue in the past.
22 In those final discussions, counsel made reference to the fact

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1 that there probably were going to be some more attorney fees.
2 Having glanced through some of this material, I said to him,
3 well, if McCollum-Stenholm have their way, you don't have to
4 worry about staying here. It will go on to Washington.

5 His response was as much as our ego hates to pay you
6 guys attorney fees, at least we know they stay in the
7 community and serve our people. Don't let that money get
8 yanked from this community and sent on to Washington to what
9 he referred to as a "black hole." You're not going to score
10 points in local communities by doing that.

11 I thank you for giving me the opportunity.

12 CHAIRMAN UDDO: Thank you. I appreciate it. We
13 don't have time for questions for these last witnesses who
14 were add-ons. Committee members and Board members can
15 certainly speak to you after we finish.

16 Brent Haynes?

17 PRESENTATION OF BRENT HAYNES

18 MR. HAYNES: Thank you for hearing me here. I
19 actually thought I was on the schedule, so I'm as surprised by
20 this late appearance as you are. My name is Brent Haynes.
21 I'm not a member of any legal advocacy group. I'm not here to
22 advocate any special interest. I did work for the Legal

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1 Services Corporation for two years in Washington, D.C., at the
2 headquarters, obviously, and here in Chicago in the regional
3 office.

4 Aside from my brief employment at LSC, I feel it's
5 appropriate for me to speak here today because I do know what
6 it's like to be poor. I'd like to address what I think the
7 general purpose of the Corporation should be and some of the
8 specific topics in which you've been discussing earlier.

9 I think the essential proposition --

10 CHAIRMAN UDDO: Mr. Haynes, let me ask you a
11 question. Is that your whole statement, because it's longer
12 than I've got time for, to be perfectly honest with you.

13 MR. HAYNES: They are just notes.

14 CHAIRMAN UDDO: If it is typed, I would appreciate
15 having it distributed to the committee. Not to stop you from
16 talking, but if you do have a typed version, we can get it
17 copied and distributed to the committee.

18 MR. HAYNES: Well, as I think some of the other
19 speakers have done, I've already altered this somewhat just
20 sitting here.

21 CHAIRMAN UDDO: We've got the room for about another
22 12 minutes, and I've got one more person coming after you.

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1 MR. HAYNES: Essentially, I want to advocate the
2 legal services focus in providing for the basic legal needs of
3 individual poor people. I don't think it's appropriate for
4 the legal services funds to go for social or legal or
5 political causes. I don't think it's appropriate for legal
6 services funds to be used for any broad lobbying or any
7 similar purposes.

8 That is contrary to the long-held dictum that it is
9 for the government to compel a citizen to furnish funds for a
10 political cause in which he does not believe is tyranny. The
11 Frank amendments regarding this would allow that a resourceful
12 recipient can get around whatever prohibitions the Frank
13 amendment allows. So I encourage you to endorse the
14 McCollum-Stenholm amendments in that area.

15 On the issue of competition, which you were
16 discussing so interestedly earlier, you know, I'd like to ask
17 you to consider what is it that makes so many people think
18 that the legal services in this nation and that the lawyers
19 are different from everyone else? I mean, does anybody
20 honestly believe that?

21 Almost any other service and product that is
22 provided in this nation, the consumers in this nation almost

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1 always benefitted in other areas where there's competition for
2 the provision of services and products. It doesn't matter
3 whether it's medical services in which there is a heated
4 competition for clients and patients here in Chicago, or
5 whether it's products such as cars that come out of Detroit.

6 Nobody thought the big three auto makers needed any
7 competition 20 or 30 years ago. Now they can barely stay in
8 business because somebody else is providing a better service.
9 What little evidence does exist suggests that competition
10 could be very beneficial.

11 When I worked at the Corporation in Washington,
12 D.C., my major job was to manage all of the raw data that came
13 in on the private law firm contracts and on the law school
14 clinics on the elder law clinics. There is substantial data
15 there that could be analyzed, and, certainly, some conclusions
16 could be drawn from that.

17 By and large, from my own recollection of the data
18 as I saw it, the people who were served in those experimental
19 projects were very satisfied. I just think that it's rather
20 specious to say that there's no evidence that exists now or if
21 it's not broke, don't fix it.

22 MR. WITTGRAF: What projects are you referring to?

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1 MR. HAYNES: I'm referring to, in part, I did some
2 of the initial work on San Antonio project. I'm referring to
3 all of the other projects which LSC contracted with private
4 attorneys to provide specific legal services such as
5 uncontested divorces, bankruptcies, wills, any type of legal
6 service in which they were able to define it sufficiently to
7 solicit contract bids from private attorneys.

8 MR. WITTGRAF: I think there are 11 such projects.
9 You're saying you tabulated some of the data, and you found
10 comments of satisfaction from some of the clients; is that
11 what you're saying?

12 MR. HAYNES: There were significant levels of
13 satisfaction. I don't recall any of the projects or any of
14 the attorneys having a disproportionate number of dissatisfied
15 clients. I don't know what's happened to that data today, if
16 anybody is doing anything with it.

17 I urge you to reconsider and support copayments. I
18 quite understand the comments which were made by the previous
19 speaker about the hardships of the poor people. You know,
20 there are a lot of things I go without. The fact that I'm
21 sitting here in front of you today in a nice suit, which is
22 actually several years old, shouldn't deceive you.

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1 I know what it's like to go without. I feel for
2 those people. I am, essentially, one of them. I am from West
3 Virginia, which is one of the poorest states in the nation.
4 What poor people need, certainly, are solving their -- access
5 to a lawyer to help them solve their basic legal problems.

6 Insofar as copayments help to set priorities for a
7 grantee, I don't see how that is in any way undesirable. I
8 mean, God forbid that the client should be setting priorities
9 for our grantees.

10 The other point is that it certainly helps to
11 preserve the self-respect and dignity of a client, and it
12 makes them more of a paying client when they put up even
13 something as little as a dollar, rather than having them come
14 in and receive legal assistance like a charity case, which is
15 essentially the system we have now.

16 I just want to address one final point and do this
17 with some trepidation, since I'm not a lawyer. That is on the
18 definition of attorney-client privilege, whether or not there
19 have been any major violations in the last year or two, and
20 certainly I don't know who is no longer employed by the
21 Corporation.

22 We know that there have been violations in the past.

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1 We know that at least one grantee tried to keep press
2 clippings from being seen by monitors and claimed that they
3 were privileged. It's clear that in those cases, these
4 attorneys are not interested in protecting their clients.
5 These attorneys are hiding behind the sacred trust of
6 attorney-client privilege in order to prevent the monitors
7 from doing their jobs, in order to prevent Legal Services
8 Corporation from fulfilling its fiduciary and legal
9 responsibilities as a steward for federal funds.

10 I'll conclude with that point.

11 CHAIRMAN UDDO: Thank you, Mr. Haynes. As I said,
12 because we're running out of time, we can't allow questions.

13 The last witness we have is Mr. Joseph Morris from
14 the Lincoln Legal Foundation. The note I have here says you
15 only want five minutes. That's just about what you've got.

16 PRESENTATION OF JOSEPH MORRIS

17 MR. MORRIS: I ask and I receive. Thank you, Mr.
18 Chairman. Thank you all very much for the courtesy of being
19 heard today.

20 Let me begin by disclosing a conflict of interest.
21 I had the privilege a few years ago of being the general
22 counsel of the United States Office of Personnel Management at

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1 the time that the president of Legal Services Corporation,
2 David Martin, was director of the Office of Government Ethics.

3 At that time, the Office of Government Ethics was a
4 component of the Office of Personnel Management. As you are
5 aware, each agency of the United States Government has a
6 designated agency ethics official who is responsible for
7 reviewing the ethics disclosure statements of the officers of
8 his agency.

9 I found myself in the remarkable position of being
10 the officer of the United States Government responsible for
11 reviewing the ethics disclosures of the governor of the ethics
12 office. Mr. Martin's secrets will go with me to my grave.
13 But I do want you to know I get telephone calls daily from
14 Kitty Kelly.

15 I am here today in my capacity as the president of
16 the Lincoln Legal Foundation, which is a public interest law
17 center headquartered here in Chicago and serving seven of the
18 heartland states of the midwest, including my native State of
19 Indiana.

20 Unlike probably many of the witnesses whom you hear
21 and exercise such as this, including this exercise, I am
22 perfectly willing to be candid enough to tell you that I have

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1 ideological axes to grind. My public interest law center
2 decidedly has a philosophical trajectory. We are pegged as
3 pro-free market, pro-free enterprise, pro-private property,
4 pro-common law.

5 Mr. Yoder, to whom I will return in a moment, spoke
6 to you a few moments ago about Indiana's lack of a landlord-
7 tenant statute. As a Hoosier native, this is an object of
8 some pride for me. Indiana stands on the common law, and
9 there are a lot of virtues in common-law precepts. Our
10 foundation has an ax to grind in defense of that.

11 Let me turn for a moment to Mr. Yoder's statement,
12 if I may. I'm a native of Indiana which, as you've heard, is
13 a remarkable place. My father, who started practicing law in
14 Gary around 1930, he was one of the founders of Mr. Yoder's
15 organization. In fact, about 20 years ago, shortly before his
16 death, he was the chairman of Mr. Yoder's Board.

17 My father's commitment and my commitment to pro bono
18 activities run deep, and we care a lot about the provision of
19 legal services to people who otherwise don't have access to
20 them. Mr. Yoder's statement was a moving one, and
21 particularly moving to me because I have a great deal of
22 personal knowledge about the problems of that community.

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1 His organization does a remarkable job. It does a
2 remarkable job with very little, frankly, in the way of
3 resources in light of the needs of that community. I cannot
4 help but note a crucial point emerging from his statement on
5 which I have to take issue with the general philosophy toward
6 the provision of legal services, including under the umbrella
7 of LSC that Mr. Yoder's statement represented.

8 That was his reflection on the appear to him by
9 members of the Indiana General Assembly to provide assistance.
10 His example was the need for a landlord-tenant statute in
11 Indiana. Legal Services Corporation should not be supplying
12 funds to provide auxiliary services to state general
13 assemblies.

14 If states can't manage their public policy
15 operations, that's probably the states. Legal Services
16 Corporation was not created to cure problems of that
17 magnitude. This Corporation was created to supply funding to
18 provide ordinary legal services to people who by dint of
19 poverty otherwise don't have access to them.

20 It is that mission, and not a mission of curing
21 systemic problems on which the eyes of the committee, the
22 Board, and, frankly, the Congress should be focused. That

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1 goes, frankly, to the nub of the written statement, which I
2 have prepared and in multiple copies and will give to your
3 clerk to supply to you.

4 In this written statement, I appeal to you to take
5 into account three general principles as you evaluate
6 proposals for changing reform in the reauthorization process.
7 The first of those principles is that the subsidization of
8 ideological ax grinding, including lobbying, but ideological
9 ax grinding in the form of the courts, is not what LSC is
10 about.

11 That's what the Lincoln Legal Foundation is about.
12 That's what the ACLU is about. That's what the NAACP Legal
13 Defense and Education Fund and the National Resources Defense
14 Council are for. Our donor who invest in our organizations do
15 so knowing that they are working for change of the law and for
16 reform of legal structures.

17 Your donors, that is to say the taxpayers of the
18 United States, who don't have much choice in the matter, are
19 giving money to you not to change the law, not to change legal
20 structures, but to provide access for poor people who
21 otherwise wouldn't have lawyers getting into the legal system
22 as it is.

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1 Help those people in the legal system as it is, and
2 leave it to the rest of us, right and left, who openly
3 acknowledge our philosophical orientations to work on the
4 questions of change, whether it's in the courts or lobbying or
5 otherwise. That's a key principle I hope that you and,
6 ultimately, Congress keep your eye on.

7 The second thing I urge you is take with a grain of
8 salt what representatives of the organized bar tell you,
9 myself included, for one important reason. All too often I
10 find that the organized bar -- you heard, for example, today
11 from the American Bar Association, the Illinois State Bar
12 Association, the Chicago Bar Association. I'm a member of
13 every one of them, and I've got my membership cards in my
14 pocket.

15 What you need to remember is that all too often in
16 the real world, where the rubber meets the road for the
17 private bar, LSC and the entities that you fund and entities
18 like them are all too often taken for granted by the private
19 bar as nice and jolly and convenient substitutes for our
20 obligation as lawyers to render pro bono legal services to our
21 communities.

22 All too often the bars hide behind public financing

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1 of legal services for the indigent to avoid their obligations.
2 I want you to know that the members of the Lincoln Legal
3 Foundation work through a pro bono network of now several
4 scores of lawyers in the midwest.

5 In addition to our commitments to the Lincoln Legal
6 Foundation, we all undertake services for the indigent. I,
7 myself, was in court yesterday defending an attempted murder
8 charge, pro bono with no ideological ax to grind, but it's an
9 important part of the integrity of the bar and our private
10 devotion to the ethics of the profession that we not hide
11 behind public funding.

12 I ask you to consider some of the testimony that I
13 know you've heard in this round and in earlier proceedings in
14 that light.

15 The final point that I hope that you will take into
16 account as you evaluate the reform proposals that are before
17 you, and I know you have more than just the McCollum-Stenholm
18 proposal, is the proposition someone has got to be accountable
19 for what's done with your money or, I should say our money
20 under your umbrella.

21 That's the nub of the problem, and that's the
22 problem we've had now for more than a decade. The presumptive

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1 refunding apparatus that has taken the place of considered
2 judgment now for a decade or so is on a font to a democratic
3 society.

4 Now, I don't hold Dave Martin or his predecessors or
5 this Board or your predecessors necessarily responsible for
6 that. The fundamental abdication of responsibility has been
7 on the part of Congress. I hope that your report, the report
8 of this committee to your Board, the Board's public
9 pronouncements to be taken into account by Congress, notes
10 that whatever other decisions are made, that can't go on.

11 Someone has got to be responsible for decisions that
12 are made with public funds. It is just not enough to hide
13 behind the smoke screen of the presumptive refunding that is
14 sort of autopilot that has characterized the legal services
15 universe for more than 10 years now.

16 There has simply been no responsiveness at all to
17 the debate that's gone on for a decade and more. That alone
18 is a scandal, the lack of responsiveness and accountability.
19 That alone is a scandal. So my plea is simply that those
20 three broad points play some role in informing your
21 deliberations and those of the larger Board, and ultimately,
22 one hopes that the presentations that we'll all be making in

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1 due course to Congress.

2 Thank you very much for your courtesy at the end of
3 a long, long day.

4 CHAIRMAN UDDO: Thank you, Mr. Morris. That was a
5 long five minutes.

6 MR. MORRIS: You knew I was a lawyer.

7 CHAIRMAN UDDO: You knew how to get on the panel
8 without having to actually disclose how long you thought you
9 were going to take. It was well worth it. I appreciate your
10 comments.

11 MR. MORRIS: Thank you.

12 CHAIRMAN UDDO: We have one other written statement
13 from a Dr. Charles Kyle of Triton College of River Grove,
14 Illinois, which we will put into the record. He was here and
15 couldn't stay. He was an add-on. So his statement will go
16 into the record. Mr. Morris' statement will go into the
17 record.

18 That concludes our business for today. We are not
19 going to adjourn. We are going to recess because we will
20 commence these proceedings again in the morning. We are
21 scheduled for 9:00 o'clock. Frankly, I think it's going to be
22 9:30 before we start tomorrow morning, but we will start

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1 filtering in about 9:00, to start at 9:30.

2 I'm consulting with the chairman about whether we
3 should, since it's a Saturday, be casual in our dress
4 tomorrow. He says he's got his jeans, but I'll leave that to
5 each individual member's discretion. If you'd like to come
6 somewhat more casual because it's a Saturday, it's okay with
7 me.

8 There's no more testimony tomorrow. We will
9 deliberate as a committee tomorrow and we hope make some
10 decisions about what recommendations the committee will make
11 to the Board. Mr. Kirk will not be here tomorrow. We will
12 visit with him on the phone first thing in the morning, just
13 to get his general thoughts. He has to take a deposition in
14 Phoenix, so he won't be able to participate with us. To my
15 knowledge, the rest of the committee will be here, and other
16 Board members.

17 I don't know when we'll end. We've got the room
18 until 5:30. If we got lucky and really zipped through
19 everything we had to do, we could get out much earlier. But I
20 just don't know right now. If you're trying to make travel
21 plans, I just don't know when we'll finish.

22 With that, I'll entertain a motion to recess, if

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