

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS MEETING

April 30, 1990  
Commences at 9:40 a.m.

The Old Colony Inn  
Ballroom D  
625 First Street  
Alexandria, Virginia 22314

Board Members Present:

George W. Wittgraf, Chairman  
John F. Collins  
Howard H. Dana, Jr.  
John N. Erlenborn  
Luis Guinot, Jr.  
J. Blakeley Hall  
Jo Betts Love  
Guy Vincent Molinari  
Penny L. Pullen  
Jeanine E. Wolbeck

Staff Present:

Terrance J. Wear, President  
Timothy Shea, General Counsel  
Maureen Bozell, Secretary  
David Richardson, Comptroller  
David Wilkinson, Inspector General

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1 MR. WITTGRAF: At this time, we'd like to call on  
2 Reverend Jeffrey Johnson to lead us in an invocation. Reverend  
3 Johnson.

4 (The invocation was given.)

5 MR. WITTGRAF: Good morning. At this time, the Chair,  
6 in looking to the Board, would like a motion for the approval of  
7 today's agenda.

8 M O T I O N

9 MR. COLLINS: So moved.

10 MR. ERLBORN: Second.

11 MR. WITTGRAF: It's been moved and seconded.

12 Discussion?

13 (No response.)

14 MR. WITTGRAF: All those in favor of adoption, please  
15 signify by saying aye.

16 (A chorus of ayes.)

17 MR. WITTGRAF: Those opposed, nay.

18 (No response.)

19 MR. WITTGRAF: The ayes appear to have it. The ayes  
20 do have it.

21 Next we move to the minutes of our meeting of March 26  
22 and March 27 of 1990. The Chair is prepared to receive a motion

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1 for the adoption of the minutes.

2 M O T I O N

3 MR. MOLINARI: So moved.

4 MR. COLLINS: Second.

5 MR. WITTGRAF: We have a motion and a second. Is  
6 there a discussion?

7 (No response.)

8 MR. WITTGRAF: Hearing none, we'll proceed to the  
9 question. Those in favor of the motion, which is for the  
10 adoption of the minutes as drafted, please signify by saying  
11 aye.

12 (A chorus of ayes.)

13 MR. WITTGRAF: Opposed, nay?

14 (No response.)

15 MR. WITTGRAF: The ayes appear to have it. The ayes  
16 do have it. The minutes are approved.

17 At this point, the Chairman will take just a moment to  
18 make a few remarks. First, as indicated by Maureen Bozell in  
19 some of the materials she sent to us in recent weeks, John  
20 Erlenborn, as the vice chairman of the Board, and I have  
21 appeared since our last meeting before both the House and Senate  
22 Appropriations Subcommittees that deal with our budget request.

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1           We, of course, presented the request. It was adopted  
2 by the Board on March 27. I think it's fair to say that both  
3 subcommittees on the House side and on the Senate side received  
4 us quite warmly, perhaps hopefully. I think we'll get quite  
5 favorable consideration to our budgetary request.

6           I'd hate to predict what a final number might be, but  
7 my sense at least, and I'll ask John in a moment for his  
8 comments, but my sense was that both subcommittees looked  
9 favorably upon our request for an increased budget. The other  
10 question that came up in both subcommittees was regarding  
11 confirmation.

12           We, of course, had to indicate that before we can get  
13 the confirmation, we have to get the nomination. What I  
14 indicated a week ago to Senators Rudman and Hollings in the  
15 Senate Appropriations Subcommittee was that, to the best of my  
16 knowledge and belief, our nominations will be made by the White  
17 House by early June if all goes well.

18           We're still all in the process of being checked into  
19 by the Federal Bureau of Investigation and otherwise. As I  
20 think some of you know, at least, and as I think Mr. Hall has  
21 had some personal experience with already, once we are  
22 nominated, in turn the Senate Labor and Human Resources

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1 Committee will probably send us comparable materials to complete  
2 for their purposes.

3 So I hope that in completing your FBI materials,  
4 you've kept at least one good copy that you'll be able to refer  
5 to again. There did seem to be a great deal of interest also in  
6 both subcommittees and particularly so on the House side with  
7 the matter of authorization or reauthorization.

8 When we appeared before the House Appropriations  
9 Subcommittee on March 28th, we did not know, but we have just  
10 learned now in recent days, that the House Judiciary  
11 Subcommittee chaired by Congressman Frank that deals with the  
12 matter of reauthorization has set hearings. There had been two  
13 hearings in March and July of 1989. Hearings have been  
14 scheduled tentatively for May, next month, May 9th and May 23rd.

15 The subcommittee will want to hear from the Board and  
16 have agreed tentatively to have us appear on May 23rd. You'll  
17 recall, perhaps, from our last meeting that we have a Board  
18 meeting scheduled tentatively for Monday, May 21st. It would be  
19 helpful for those of us who are travelling across part of the  
20 country anyway to be able, perhaps, to combine the  
21 reauthorization hearing with the Board meeting, which would mean  
22 the possibility of a Board meeting on the 22nd instead of the

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1 21st, a Tuesday instead of a Monday, and then appearance before  
2 Congress on the 23rd.

3 So, as we go through the morning and particularly by  
4 noon time, if you could give either me or Maureen Bozell your  
5 thoughts or your availability for a Board meeting on Tuesday,  
6 May 22nd, it will be very helpful. We'll look tentatively in  
7 that direction.

8 Our May 21st or May 22nd meeting will give us the  
9 opportunity to discuss in some more detail where we're at in the  
10 presidential search and selection process. But, even as of  
11 today, I think we've made quite a bit of progress since we  
12 started down that path a month ago.

13 Maureen has given you a memorandum this morning which  
14 she prepared just yesterday. I've asked her to summarize it  
15 briefly. I think she's even got a little information that's  
16 current as of this morning that wasn't in yesterday's  
17 memorandum.

18 Maureen.

19 MS. BOZELL: Good morning. We've posted the position  
20 of the president. We did that about three weeks ago and have  
21 advertised extensively in the Wall Street Journal, the  
22 Washington Post, the New York Times, the National Law Journal

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1 and roll call. To date, I've received about 130 resumes.

2 I've been advised by the General counsel's office that  
3 the three Board members who were named by Mr. Wittgraf at the  
4 last meeting, Mr. Wittgraf himself, Mr. Dana and Mr. Molinari  
5 are, for the purposes of our regulation, considered a committee.  
6 As such, they will have to, a majority of them -- when a  
7 majority meets -- that is, when even two of them meet -- there  
8 will have to be a meeting. That meeting will have to be  
9 noticed. That should be taken into consideration by the Board.

10 Following the practice of the past, it's possible that  
11 the Board would like to entertain discussion of a questionnaire  
12 which might be used to elicit more information from the  
13 applicants. Secondly, just the procedure of the presidential  
14 search you might want to discuss.

15 Finally, the question of qualifications. In the past,  
16 again, the Board has chosen certain qualifications that they  
17 would like the presidential applicants to have. Whether you  
18 want to adopt those of the past board -- the last time this was  
19 done five years ago -- or do it yourself, that would have to  
20 take place in a meeting.

21 MR. WITTGRAF: Am I correct in my understanding,  
22 Maureen, that of the roughly 130 resumes that you've received so

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1 far, some of them or many of them have come directly from  
2 persons who were interested but additionally some have come from  
3 persons who were nominating others who should be interested.  
4 There are nominations as well as direct applications?

5 MS. BOZELL: I've received, by and large, direct  
6 applications. There are very few nominations.

7 MR. WITTGRAF: On the question of the questionnaire,  
8 what would be point four in Maureen's memorandum of yesterday,  
9 at this point the materials we've been getting are self-  
10 descriptive materials, resumes prepared by the individuals who  
11 are interested or the individuals who are nominating the people  
12 they believe should be interested.

13 At least in some occasions in the past, there has been  
14 a standardized questionnaire to give us standardized  
15 information. My hope would be that by the next Board meeting,  
16 we'd be able to review such a questionnaire with the Board. We  
17 would then, immediately following the Board meeting, the Board  
18 meeting coming just after the close of the submission of resumes  
19 or applications, that date being May 15th, we would then be able  
20 to send the questionnaires to the candidates and be able to get  
21 that material back in short order so that we can keep on the  
22 fast schedule, hopefully, that we projected in our meeting last

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1 month.

2 Does anyone have any questions for Maureen about the  
3 response we've received to date?

4 (No response.)

5 MR. WITTGRAF: I guess I for one am heartened that it  
6 seems to be a substantial and enthusiastic response that there  
7 is apparently a great deal of interest.

8 MS. BOZELL: Correct.

9 MR. WITTGRAF: Mr. Dana?

10 MR. DANA: Mr. Chairman, Maureen, if someone were to  
11 nominate someone or if there were to be a communication from a  
12 member of the public recommending that we ask someone to apply,  
13 do we have a procedure for doing that?

14 MS. BOZELL: I can draft a letter. There's not a  
15 procedure set as such.

16 MR. DANA: It seems to me we ought to have a procedure  
17 so that if there are people out there who people in the audience  
18 or in the public think we should consider, we should have a  
19 system for inviting their resume. I think we ought to adopt  
20 that and encourage you to put some such system in place.

21 MS. BOZELL: Certainly.

22 MR. WITTGRAF: If any board members have received

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1 either oral or written inquiries -- and I think I've received  
2 two myself -- from people who are interested, please forward  
3 whatever materials or note of whatever oral inquiry you received  
4 to Maureen so that we will be sure that that man or woman is  
5 included in the process.

6 We want to make sure that if somebody is contacting 1  
7 of the 11 of us directly that he or she doesn't get left out.  
8 The proper way, obviously, is to send the materials to the post  
9 office box that has been advertised in the posting and in the  
10 newspaper ads. If for some reason somebody doesn't follow that  
11 procedure and is counting on one of us to carry his or her  
12 water, please make sure that the water gets to Maureen.

13 Further questions for Maureen?

14 (No response.)

15 MR. WITTGRAF: Thank you.

16 MR. MOLINARI: One point I'd like to make, Mr.  
17 Chairman, is those of us that -- the three of us that are on  
18 that screening committee, if we could get copies of those  
19 resumes as early as possible -- obviously, it's going to be  
20 large numbers. So it's going to take a lot of review on our  
21 part. I think the earlier we can receive them, the more help it  
22 will be.

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1 MS. BOZELL: Mr. Molinari, that might take a meeting.

2 MR. MOLINARI: Procedurally, you mean?

3 MS. BOZELL: I believe so. I'm not the one to address  
4 that.

5 MR. WITTGRAF: Mr. Wear?

6 MR. WEAR: Mr. Chairman, under the Corporation's  
7 rules, any such meeting that would be held, first of all, could  
8 be closed and presumably would be since it discusses personnel  
9 matters. So the fact that we would notice a meeting and then  
10 close it, I don't know that it would have that much of an impact  
11 on what happens.

12 There's no requirement that precludes Board members  
13 from getting copies of resumes or anything else that they ask  
14 for. Obviously, they would need to prepare for any closed  
15 meeting that you may subsequently have.

16 MR. WITTGRAF: Further questions for Ms. Bozell?

17 (No response.)

18 MR. WITTGRAF: Thank you. Mr. Erlenborn, would you  
19 like to say anything about our trips to Capitol Hill?

20 MR. ERLENBORN: Mr. Chairman, I really wouldn't have  
21 anything to add. I would agree with your assessments that we  
22 were well received and the Corporation's proposed budget was

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1 well received by both of the subcommittees. As to what might  
2 happen with the reauthorization process, I think it's really  
3 impossible to say at this point; although it was observed, I  
4 think correctly so, that that process will probably take longer  
5 than the appropriation process.

6 So, the reauthorization, if it should occur, would  
7 occur early this year or maybe would not even occur this year.  
8 Other than that, I have nothing to add.

9 MR. WITTGRAF: Thank you, Mr. Erlenborn. At this  
10 time, the Chair calls on the president for his report. Mr.  
11 Wear.

12 PRESIDENT'S REPORT

13 MR. WEAR: Thank you, Mr. Chairman. Just a few things  
14 to cover this morning, Mr. Chairman. As Board members know, we  
15 have discussed the Declination of Service Report form. That  
16 form has been subject to informal comment from a number of  
17 programs and other interested individuals. A number of  
18 revisions were made in it. That report form has now been  
19 distributed together with the software that goes with it.

20 When the report was distributed, I instructed the  
21 staff to make the first reporting month, that is the month of  
22 May, a practice month. We had initially planned to have April

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1 be the practice month because of some changes that were made to  
2 the form in response to comments. We've moved it back a month.  
3 May is now the practice month and we'll begin collecting the  
4 data in earnest on this for the month of June.

5 Also, Mr. Chairman, the Corporation has received a  
6 number of applications from various law schools in connection  
7 with the Law School Grant Program. As you may know, the  
8 Corporation makes these grants on a competitive basis and has  
9 been administering this program for approximately -- I believe  
10 this is our fourth year.

11 Each year the Corporation makes between 15 and 20  
12 grants. This year we have received 39 applications for those  
13 grants. Those grants are made for a one-year period. The  
14 institution may or may not apply for subsequent grants.

15 Also, Mr. Chairman, the drug report that the  
16 Corporation will be making to the two appropriations committees  
17 on Capitol Hill has been prepared in draft form. I'm reviewing  
18 it now and anticipate that we will be submitting it to the Hill  
19 in the next day or so.

20 The last point, and it really follows up on that drug  
21 report, Mr. Chairman, is the representation of drug dealers in  
22 public housing by our legal services programs. The report that

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1 we have gotten from the field indicates that drug-related cases  
2 are not a particular priority.

3 But it appears that when those cases are undertaken,  
4 they are undertaken for the benefit of the drug dealer or the  
5 distributor or people who are cohabitating with that individual  
6 or proceeding against the housing authority or the people who  
7 are trying to remove those dealers from the housing project.

8 We've had cases in Alexandria, in Broward County and  
9 in the Boston area dealing with this. In Broward County, I'm  
10 advised that the local police say that they can expect to spend  
11 five to six hours in depositions over these cases. That is for  
12 each particular defendant that is being evicted. It is eating  
13 up their time and effort into this.

14 I should say, Mr. Chairman, that as best I can tell,  
15 there is no legal impediment to our legal services programs in  
16 taking these cases. The issue, rather, is whether or not it's a  
17 good use of our resources. We know from our experience that  
18 resources are limited. There are cases that are going by the  
19 boards. There are women seeking child support that aren't being  
20 served. Yet, these sorts of cases are taken.

21 Also, Mr. Chairman, it has become an issue on the  
22 Hill. There are a number of people on the Hill that have

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1 expressed concerns about it. One of the latest concerns was  
2 expressed by Congressman Chester Atkins. He referred to these  
3 cases as "nutbag cases and nutbag activity" on the part of our  
4 programs.

5 Now, the Legal Services program is in jeopardy. Our  
6 funding is going to be reduced if there is a significant number  
7 of people in Congress that have problems with the program. We  
8 need, Mr. Chairman, to move on to cases that aren't  
9 controversial, things like child support. It will get us out of  
10 the controversy that we've had in the past and into delivering  
11 nuts and bolts legal services for poor people.

12 Congressman Atkins is a strong supporter of this  
13 program or has been, but he is upset about this. He is not  
14 alone. There is a significant number of people in the House  
15 that have concerns about this kind of activity. It seems to me  
16 that we need to admonish our programs to use their resources for  
17 cases other than this particular type.

18 It is clear that this sort of activity does not help  
19 the other poor people that live in these housing areas. It is  
20 clear that there are a number of cases that are going by the  
21 boards in the area of child support and others that aren't  
22 being served. Mr. Chairman, I think that this is something that

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1 we need to be very much concerned about and that this  
2 Corporation will have to deal with as we move down the road.

3 Mr. Chairman, I think that concludes my report. I'll  
4 be glad to answer any questions that anybody may have.

5 MR. WITTGRAF: Mr. Wear, would you go back to your  
6 third point a moment again about the graft of the drug-related  
7 activity report. In broad terms, realizing the report is only  
8 in draft stage, in broad terms, what are the findings or  
9 conclusions that would be contained in the report?

10 MR. WEAR: Mr. Chairman, if I may, I would like to  
11 call on Ken Boehm of our staff who has been directly involved in  
12 that and ask him to step forward at this time and to summarize  
13 in about 100 words what the report says.

14 MR. BOEHM: Good morning. My name is Ken Boehm. I'm  
15 director of Policy Development Legal Services. We finished  
16 tabulating last week all of the surveys that we had put out in  
17 response to language in the conference report last fall.  
18 Congress basically wanted two types of information.

19 They wanted to know if the program would, as part of  
20 their priority-setting process under the Act Section 1007, each  
21 year each program evaluates their priorities. They want them to  
22 know if the programs were to reevaluate in the normal course of

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1 business, their priority is to see if working to rid their  
2 communities of drug-related activities wasn't a worthwhile  
3 project within their individual communities.

4 That was a compromise from previous language that some  
5 members of the Senate had urged which was to earmark  
6 approximately \$5 million, I believe it was, for antidrug  
7 activities.

8 The second type of information that they were  
9 interested in were examples of current ongoing and planned  
10 activities by our program and with relation to these  
11 drug-related activities. So we surveyed each program. We sent  
12 out a form to each executive director and each chairman and sent  
13 a reminder for them as well.

14 The overall results are -- and you all will receive a  
15 copy of this report -- that less than one percent of the cases  
16 involved drugs in any way, shape or form, pro or con, defendant  
17 or plaintiff. They tended to be --

18 MR. WITTGRAF: Just a second. Would that include the  
19 kind of so-called nutbag cases to which apparently Congressman  
20 Atkins had referenced?

21 MR. BOEHM: Yes, it would.

22 MR. WITTGRAF: When you say one percent or less drug

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1 related, that includes the protection of so-called rights of  
2 drug dealers and housing and elsewhere?

3 MR. BOEHM: Yes. There's no way to tell without more  
4 examination what amount of resources, because a case could be  
5 somebody calling in for a little bit of advice or it could be  
6 something that requires three attorneys, hundreds of hours at  
7 times. So, you know, numbers of cases alone can't be the  
8 determinant. In any case, it was less than one percent.

9 MR. GUINOT: Excuse me. Less than one percent of the  
10 programs that you examined or less than one percent of all  
11 programs in the United States?

12 MR. BOEHM: Of all the programs, all the programs in  
13 the United States because we polled every program. Not every  
14 program responded, but we got approximately 90 percent response.

15 MR. GUINOT: You didn't get numbers? What does that  
16 relate to?

17 MR. BOEHM: We have a printout that has every category  
18 and so forth. I just didn't bring it with me, but we'll have  
19 that within the next day or so. We were completing it up to the  
20 very last hour because the number of programs had gotten in  
21 late. We wanted to be as all inclusive. There's on way to know  
22 for sure exactly how detailed.

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1           In a couple of the examples, Broward County is one,  
2 they listed only one housing case that involved drugs. Through  
3 total serendipity, it was brought to our attention there was at  
4 least one other case that involved a convicted drug dealer, a  
5 felon who they were trying to get back into the projects in the  
6 same time period, that wasn't reported.

7           So I don't know what you can say about the accuracy.  
8 Northern Virginia Legal Services said that it wasn't much of a  
9 priority and they do much cases and they didn't respond with the  
10 report as we had asked them to. There was some controversy this  
11 past month or so where they were representing a person who had  
12 cocaine in their apartment in federal court.

13           So we just know what they voluntarily gave back to us.  
14 We do have it broken down. As for how accurate in terms of  
15 hours and so forth, we didn't get that detailed. As a priority,  
16 it's not a priority with very many of the programs, at least  
17 insofar as their stated priorities go.

18           In fairness, a lot of programs were not reevaluating  
19 their priorities in the first quarter of this year. A lot of  
20 them do it in the remainder of the year. So in response to the  
21 congressional encouragement that they make it a priority, some  
22 of them just haven't gotten to that point yet in their year, the

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1 local Boards of Directors of the program.

2 But of the ones that did examine it in the first  
3 quarter, it wasn't much of a priority, although many did say  
4 that where they could be useful they tried to get involved in  
5 those cases. As I say, we have a report that is in draft form.  
6 It's being prepared for Congress and will be out this week.

7 MR. WITTGRAF: Any more questions for Mr. Boehm? Mr.  
8 Hall?

9 MR. HALL: Ken, can you give me an example of one of  
10 these nutbag cases? Do they involve a guy who is convicted of  
11 drugs?

12 MR. BOEHM: In some cases.

13 MR. HALL: And he comes to Legal Services and says,  
14 "Hey, what's the facts?"

15 MR. BOEHM: I'll give you the one that I know the most  
16 about because I got an earful from the Housing Authority folks  
17 down in Ft. Lauderdale area. This was an individual who, having  
18 a previous record of vehicular manslaughter, had run into his  
19 girlfriend who was going to turn him in for cocaine.

20 Apparently the girl did not want to testify. That was  
21 a part of his double felony conviction. His conviction was  
22 cocaine, which he had in the car, and concealed weapons, which

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1 he had in the car. He was duly evicted from the Ft. Lauderdale  
2 Housing Authority, did his time, pled guilty to the two charges,  
3 did his time, came back in and tried to reapply.

4 Well, the Housing Authority, like a lot of them around  
5 the country, have a rule that if you are evicted for something  
6 like that, you can't reapply. Well, you can't be admitted back  
7 in for a five-year period. However, they did not give him the  
8 application on the theory that it was pointless because he  
9 couldn't be admitted back in.

10 The Legal Aid Service of Broward County made the point  
11 it was a technical legal point, but it was entirely correct  
12 procedurally that he should have at least been given the  
13 application to fill out and then they should have turned him  
14 down. So there was a lot of correspondence back and forth  
15 starting last year, going into this year, complaint letters to  
16 the HUD administrator in Jacksonville, Florida.

17 A lot of acrimony between the Housing Authority and  
18 the Legal Aid Service of Broward County about this particular  
19 case because he was a convicted drug dealer they were trying to  
20 get back into the projects, knowing that he wouldn't get back  
21 in.

22 Their point of view is, of course, they are protecting

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1 the procedural integrity. Everyone, no matter how unqualified,  
2 should at least be allowed to fill out the application and then,  
3 say, it's a 10-year-old child or somebody who wasn't qualified  
4 for some other reason should at least be allowed to fill out the  
5 application.

6 So that was the nature of the case in Broward County.  
7 The Northern Virginia case, as you may know, Alexandria has had  
8 problems in public housing. That was one of the reasons that  
9 Secretary Kemp had instituted his expedited evictions. In this  
10 particular case, it was federal housing where a percentage of  
11 the rent was paid by the federal government to indigent  
12 individuals.

13 In this particular case, they stopped paying that  
14 portion after police search of an apartment unit or housing unit  
15 showed cocaine, drug paraphernalia, et cetera. In that case,  
16 the Northern Virginia Legal Services was making the point well,  
17 they didn't like the procedures. They thought that the  
18 procedures were a violation of the person's rights.

19 It wasn't so much the drugs as the individual  
20 question, but the procedure. They were representing the  
21 individual of Ms. Tanya Nash in that particular case. That was  
22 written up in the local Alexandria Journal. Again, it involved

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1 drugs and public housing.

2 MR. HALL: Of this less than one percent, it's  
3 probably an even lower figure than that where the person in the  
4 program knows that they are in it. A guy was kicked out because  
5 of drugs and that's why they are in it.

6 MR. BOEHM: That's true because a lot of the cases,  
7 for example, were custody cases where it's a charge back and  
8 forth.

9 MR. HALL: They probably didn't know if there were  
10 drugs in it or not. Maybe they found out after they got into  
11 it.

12 MR. BOEHM: Well, in the Northern Virginia case and in  
13 the Florida case, they knew from the get go it was drugs. But  
14 in other cases, yes, it could have been. For example, a lot of  
15 the cases by category, and you'll see when you get the printout,  
16 are in divorce-related cases where it comes up.

17 The reason it's gotten so much attention in these  
18 local communities is it becomes an issue in the press.  
19 Congressman Atkins up in Massachusetts, we've received numerous  
20 article from his local papers that his staff has sent over to  
21 us.

22 In Alexandria it's an issue because the reason that

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1 Secretary Kemp had wanted these expedited proceedings is  
2 because there was a killing of a police officer in a public  
3 housing unit. That's when the issue came to the floor that why  
4 are we -- it's one thing to provide somebody with a legal  
5 defender in a criminal case, but in a civil case, is this a wise  
6 use of funds?

7 The Mayor of Alexandria and the city officials were on  
8 an across-the-board crackdown on this sort of thing. So, even  
9 though as a percentage it is quite small, yes, in terms of -- as  
10 an issue, as a public issue in some of these local communities,  
11 it's quite a hot issue, as you might imagine.

12 Along with the report, although it wasn't made part of  
13 the report, I'd be happy to send the Board the newspaper  
14 articles that were brought to our attention.

15 MR. WITTGRAF: Mr. Collins?

16 MR. COLLINS: Mr. Chairman, I have a clipping here  
17 from the very case that Mr. Atkins did describe as a nutbag  
18 case. I quote briefly from it, if you'd like, "The Lawrence  
19 Housing Authority has won a court battle to evict an accused  
20 drug dealer and her family from public housing. But Merrimac  
21 Valley Legal Services is threatening to appeal, according to  
22 Lawrence Housing Authority Executive Director Donald O'Neill.

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1           "The eviction of Mario Occasio, 47 Sullivan Avenue,  
2 was ordered yesterday by Salem Superior Court Judge John Rowlan,  
3 one year after Mr. Occasio's arrest on charges of possession of  
4 cocaine, marijuana and hypodermic needles, all with intent to  
5 distribute.

6           "The judge found in our favor on both counts, one for  
7 nonpayment of rent and the other that the family was involved in  
8 dealing narcotics out of a city housing apartment," et cetera.  
9 Congressman Atkins is quote here extensively as saying that he  
10 is a liberal, as indeed he is. He is also chairman of the  
11 Democratic State Committee in Massachusetts. He supported LSC  
12 100 percent, but he is very, very much disturbed by this. I can  
13 give this to you if you like.

14           MR. MOLINARI: I guess what we're talking about is the  
15 possible position for LSC to take, Mr. Chairman. I suppose if  
16 there was enough money to represent everybody out there, I  
17 wouldn't be very concerned about the fact that some grantees  
18 might be, in fact, representing drug dealers.

19           I was involved in a project a little over a year ago  
20 of a federally subsidized HUD project. There were 22 drug  
21 dealers in a very large housing complex. One hundred percent  
22 minorities occupied that complex. They made life very miserable

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1 for the people. With the cooperation of HUD and a whole bunch  
2 of other people, 17 of the dealers were evicted. It was  
3 immeasurably better for everybody living there. They couldn't  
4 believe that things were so well.

5 I would hate to think that with limited funds LSC  
6 lawyers would be on the other side. If there's any place that I  
7 would love to see LSC lawyers be active in it would be involved  
8 in the eviction of drug dealers. So I'm posing the question as  
9 a question of public policy, whether this corporation should be  
10 funding grantees who are, in fact, representing drug dealers  
11 when we don't have enough funds to represent all the indigent  
12 out there.

13 MS. PULLEN: Mr. Boehm, were there any cases reported  
14 on the survey where the Legal Services grantee provided services  
15 for indigent people who were seeking to get drug dealers out of  
16 their neighborhoods?

17 MR. BOEHM: Yes, there were. We know of several such  
18 cases. There is an article that appeared in May 1989  
19 Clearinghouse where an attorney in Connecticut was handling his  
20 first eviction case from the standpoint of getting somebody out  
21 as opposed to keeping somebody in.

22 There are other programs around the country that have

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1 expressed an interest. One of them, and this is ironically,  
2 that expressed an interest in helping tenants' associations was  
3 Northern Virginia Legal Services, which it had the case of  
4 keeping the drug dealer in.

5 They didn't report any because, as I said, they didn't  
6 fill out the specific report with cases. They said they wanted  
7 to help and were interested in helping these tenants'  
8 associations but didn't give a specific example in that case.  
9 There are some.

10 Increasingly around the country, attorneys either  
11 doing pro bono work because the bar association, who has now  
12 changed their position and is very interested in getting in the  
13 war on drugs, have encouraged people to use the eviction  
14 process. You don't have to represent the landlord to do it.

15 There are sufficient local ordinances where, if you  
16 can show that a particular person represents a threat to the  
17 health and safety of the community, on behalf of the local  
18 neighbors who would have standing under those types of  
19 ordinances, you can then take legal action to have them evicted.

20 So the possibility is there. It's starting to become  
21 more popular. There were several cases reported. It was not a  
22 big percentage of even that small percentage, less than one

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1 percent of the cases reported. Most of the cases reported were  
2 in other categories of law, custody and so forth.

3 MS. PULLEN: Is your office considering at all means  
4 by which those programs that are doing this kind of work on the  
5 good guys' side could be recognized in order to encourage that  
6 kind of activity as opposed to the abuse?

7 MR. BOEHM: Yes. In fact, that's what we want to do.  
8 We had circulated to the programs examples of what they could do  
9 through cases, through some articles and so forth. On top of  
10 that, we had several lengthy phone conversations and a meeting  
11 in our office with a representative of the ADA's antidrug  
12 program to see what types of training and information they were  
13 distributing.

14 Now their situation is they are just in the beginning  
15 of this. Their House of Delegates took an antidrug position at  
16 their most recent meeting, and they are just starting to get  
17 involved. What they want to do is get networks of attorneys  
18 working pro bono in each community to offer their services to  
19 help people rid their communities of the effects of drugs.

20 Now that's part of it. The other part is drug  
21 education. I thought if -- I didn't want to reinvent the wheel  
22 if they had some good specific materials. Now they don't have

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1 that yet. They have a training program scheduled for September  
2 of this year.

3 We've stayed in touch after our meeting, and whatever  
4 training materials they put together, we are going to make  
5 available to each program that goes specifically, check list  
6 fashion, as to how to use these local ordinances to get rid of  
7 drug dealers in the community.

8 Other attorneys are getting involved in pro bono work  
9 in ways that some of our programs could or couldn't do in terms  
10 of eviction policies from school, locker searches. There are  
11 all sorts of ways that attorneys that have an interest in  
12 dedicating those services to the war on drugs could become  
13 active.

14 Right now, and you'll see from the figures, it's a  
15 minority of a minority in a sense that it's less than one  
16 percent of the cases are drug related. Within that, an even  
17 smaller percentage are helping people rid their communities of  
18 drugs. It seems like something that is catching on.

19 MS. PULLEN: Has there been any involvement by the  
20 local program boards in decisions and taking cases such as  
21 defending drug dealers?

22 MR. BOEHM: Some programs -- executive directors

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1 expressed to me that they did not, as a policy matter, do it.  
2 The reason they didn't do it is the reason I think we'd all want  
3 them to express which is, there's a limited amount of  
4 resources.

5 They've got people lined up at their door for  
6 law-abiding citizens who need legal services, who are indigent.  
7 Why take cases of drug dealers? There's a practical matter that  
8 goes beyond that. A lot of these drug dealers, well, may be  
9 poor in terms of what their 1040 shows for the last year, but in  
10 practice are not poor.

11 As everyone knows who has been following this issue,  
12 drug dealing is sometimes a very lucrative business. That's why  
13 they don't take them.

14 MS. PULLEN: In the cases where the programs have  
15 taken the case for the drug dealer, were the local program  
16 boards involved in the decisions about taking those cases? Is  
17 there community support for that kind of activity?

18 MR. BOEHM: I haven't seen any evidence of community  
19 support, but I haven't seen any evidence that the boards voted  
20 on that particular case. I mean, it seems as though it was done  
21 in the normal course of events. That is, that the program  
22 attorneys decided on the case.

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1           The case in Northern Virginia, the letter that was  
2 written to us saying they didn't do much in the way of this and  
3 they were really antidrug and wanted to do more to help and work  
4 with the Tenants' Association was signed by their executive  
5 director at the same time it was in the public press.

6           I certainly read it in the local paper, the Journal,  
7 that they were involved in that case. The Board had to know.  
8 It was clearly a major policy issue because it became the basis  
9 for Secretary Kemp to issue his order. So there's no way in the  
10 Northern Virginia case that their Board could not have known  
11 what their attorneys were doing.

12           MS. PULLEN: After the fact.

13           MR. BOEHM: Well, see, the case that Kemp based his  
14 decision on took place awhile ago, over a year ago, I believe,  
15 versus this more recent case that just took place within the  
16 last month. So they knew what the previous rules were. They  
17 apparently, at least in terms of what they wrote us, didn't have  
18 any policy, written policy against doing this.

19           They just seemed to minimize it wasn't much that they  
20 did and they were really antidrug and they wanted to help folks.  
21 At the same time, their attorneys were representing a case that  
22 was widely viewed as a test case in federal court here in

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1 Alexandria before Judge Bryant trying to keep this person  
2 continuing to get their federal subsidy by the fact they had  
3 found cocaine in the apartment or in the housing unit.

4 MS. PULLEN: Thank you.

5 MR. WITTGRAF: Thank you, Ms. Pullen.

6 MR. DANA: Mr. Boehm, how many cases, roughly, do  
7 legal services programs in this country handle annually?

8 MR. BOEHM: It's something like 1.4 million. Of that,  
9 less than -- it was several thousand -- we calculated out and it  
10 was less than one percent involved in drugs in any way, shape or  
11 form.

12 MR. DANA: How many cases have you identified of the  
13 1.4 million where a legal services program has been representing  
14 a drug dealer as distinguished from someone living in an  
15 apartment that is allegedly occupied by a drug dealer?

16 MR. BOEHM: We didn't ask that question specifically.

17 MR. DANA: How many cases do you know of where that  
18 has occurred?

19 MR. BOEHM: Probably about a dozen documented. We  
20 would have asked except Congress didn't ask us for that  
21 information. We didn't want to go too far beyond what our  
22 request was from Congress. We do have all the drug-related

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1 cases by program, so I'm sure we could go back and say were  
2 these cases of alleged drug dealers or drug users. It's a  
3 minority of a minority for sure.

4 MR. DANA: Did I understand you to say that the  
5 universe of representing a member of the household, drug dealer  
6 or nondrug dealer, is how many? How many actual cases of that  
7 kind of representation of the 1.4 million that we do every year?

8 MR. BOEHM: Well, all drug cases combined is less than  
9 one percent. That alone would be a minority less than half --

10 MR. DANA: Do you know how many cases?

11 MR. BOEHM: No, because we couldn't ask them were they  
12 representing an alleged drug dealer or an alleged drug user. In  
13 some cases, they provided that information gratuitously, but  
14 Congress was more interested in the other side of the coin.  
15 They wanted to know what our programs were doing positively. We  
16 asked the question plaintiff or defendant, but we didn't ask it  
17 specifically, "Were you an alleged drug user or an alleged drug  
18 dealer?"

19 If we did, I could give you an exact figure but we  
20 didn't solicit that. So, the cases we found out were where they  
21 give us a narrative describing a little bit about what happened  
22 in a case. We have all those available, but we didn't ask it as

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1 a specific yes/no question. We don't have the exact number.

2 MR. DANA: So, in a divorce matter, if the issue of  
3 drugs came up on one side or the other, that would be included  
4 in this number which you describe is less than one percent?

5 MR. BOEHM: If it was an issue in the case. If it  
6 became an issue in the case, that was the test as to whether it  
7 should be listed. But that's correct, yes.

8 MR. DANA: You don't know as a matter of fact how many  
9 cases of the 1.4 million that Senator Atkins and the Boston  
10 Herald is talking about?

11 MR. BOEHM: No.

12 MR. DANA: Do you know of one or two or three or four?

13 MR. BOEHM: Of just the ones we've cited, I would  
14 guess I know about a dozen or so.

15 MR. DANA: In those dozen cases, do we know if our  
16 programs were representing the accused drug dealer as  
17 distinguished from a member of the household?

18 MR. BOEHM: Well, since we don't know if they were  
19 accused drug dealers, we don't, but the 1.4 million is a little  
20 -- the problem that we have with it is we were only surveying  
21 for the first quarter of the year. That figure is based on last  
22 year's full caseload. So it would be more like 350,000. The

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1 one percent figure was less than one percent of 350,000 as an  
2 average.

3 MR. DANA: A dozen is less than one percent.

4 MR. BOEHM: Oh, yes.

5 MR. DANA: We're up here once a month charged with  
6 making national policy for this program. I understand you to  
7 say that you know of about a dozen cases in which one of our  
8 programs is representing either an accused drug dealer who they  
9 are trying to kick out of a home, of public housing, or  
10 representing another member of the apartment household of  
11 someone else who is a drug dealer. You don't know which is --

12 MR. BOEHM: Again, because we didn't ask that specific  
13 question. It wasn't what we were asking for. We can go back  
14 and ask those programs that did the larger -- some programs did  
15 several hundred cases involving drugs in the first quarter. I  
16 suspect that a certain percentage of those would fall in this  
17 category. Because we didn't ask it specifically, I don't to  
18 just idly speculate what percentage was what.

19 As I said, in some cases, program on their own  
20 volunteered this additional information or we handled the  
21 complaints from the Hill or read the local press and through  
22 these other methods had found some of these other cases.

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1 MR. DANA: The point is you're supposed to help us  
2 make policy not mislead us.

3 MR. BOEHM: No, I'm trying. That's why I don't want  
4 to speculate on the number of drug dealers.

5 MR. DANA: You're using a number of less than one  
6 percent. We talking about 1.4 million cases.

7 MR. BOEHM: A year.

8 MR. DANA: So, other people can do the math. What I  
9 want to be sure that I understand is that you only know of 12  
10 cases where public housing and where something close to the  
11 nutbag situation is clearly involved. In some of those cases,  
12 it is possible that we are representing not the accused felon  
13 but his or her grandmother.

14 MR. BOEHM: That's entirely possible.

15 MR. WITTGRAF: Thank you very much, Mr. Boehm.

16 At this time, the Chairman would like to ask Paul  
17 McNulty and Tom Polgar to come forward to the witness table if  
18 they would. As they are coming forward, the Chairman wants to  
19 make a couple of comments by way of introduction.

20 We did on March 26th and briefly on the morning of  
21 March 27th hear from some 40 speakers talking all about the  
22 history of the background of the status of and to a lesser

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1 extent the future of Legal Services Corporation and Legal  
2 Services programs and grantees.

3 I've asked these two gentlemen who, I think it's fair  
4 to say, are among a handful of legislative experts on the Legal  
5 Services Corporation, Legal Services programs, Legal Services  
6 grantees, to spend what I think they've been generous enough to  
7 indicate to be a couple of hours with us this morning for our,  
8 meaning the Board's but also everyone else's education.

9 I've asked them to make what introductory, historical  
10 and prospective comments they would like to. Then I would like  
11 to go with them through a list that I drew up which is, by no  
12 means, all inclusive but does touch on 15 or so reform proposals  
13 that I've been aware of coming out of either the  
14 McCollum-Stenholm context or out of other contexts or as were  
15 presented to us last March, to ask them to give their views on  
16 those proposals.

17 I'm hoping that after they have had the opportunity to  
18 share their introductory remarks with us, that we will be able  
19 to have a relatively informal give and take for the benefit of  
20 all of us, both to help us all get to the same point in terms of  
21 where we've been coming from and where we are today, as well as  
22 to help us explore what we might be doing down the road, what

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1 the future for the Corporation, for the programs and for the  
2 grantees might be.

3 At this point, I'll ask Mr. McNulty and Mr. Polgar to  
4 introduce themselves a little bit, particularly in terms of what  
5 their experience has been with the Legal Services Corporation  
6 and with Legal Services programs, so that we all can appreciate  
7 where they are coming from, and then to make their introductory  
8 remarks. Then we'll move from that into a broader discussion.

9 Mr. Polgar, as we face him, is to our right; Mr.  
10 McNulty to our left. They could be backwards, I don't know, but  
11 maybe it's just as well to make things obvious. Which of you  
12 gentlemen would care to begin? Mr. McNulty?

13 PRESENTATION OF PAUL McNULTY AND TOM POLGAR

14 MR. McNULTY: Well, I'll just introduce myself and  
15 then let Tom begin, actually, his formal presentation. I just  
16 leaned over to Tom and whispered to him, "Do you want me to be  
17 a potted plant for you?" He and I have sat on the other side of  
18 these tables writing questions for members many, many times.

19 One of the most memorable ones for Tom, I'm sure, was  
20 his time in the Iran-contra Committee. So I just looked at him  
21 and realized this was an unusual situation for he and I to be on  
22 this side of the table, but we'll do our best.

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1 Briefly, I have been working on the Hill for, coming  
2 up, seven or eight years. In 1985, I left the House Ethics  
3 Committee where I was counsel and came to the Legal Services  
4 Corporation to serve in the area of government affairs. That's  
5 when I first developed a relationship with Tom Polgar, working  
6 with Senator Rudman and many others who are in this room today  
7 and who serve on the Hill.

8 I spent two years at the Corporation working on the  
9 variety of matters that pertain to Congress. In that period of  
10 time, the House Judiciary Committee marked up H.R. 2468, which  
11 was the 1985 authorization bill. I left in 1987, thinking that  
12 I had put Legal Services Corporation behind me forever.

13 Lo and behold, I went to work for the House Judiciary  
14 Committee to do crime work as the counsel for the Crime  
15 Committee, Crime Subcommittee. Who would be the ranking member  
16 but Bill McCollum? Since Bill McCollum is so interested in  
17 Legal Services Corporation, and has been from the beginning, the  
18 Legal Services Corporation became sort of a hobby for me at that  
19 point.

20 Even though I'm responsible for crime legislation in  
21 the House as the counsel for the subcommittee where Bill  
22 McCollum is the ranking member, I'm available to provide him

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1 counsel in a variety of subjects if he would like it. He likes  
2 it when it comes to legal services.

3 I continue to serve him on that issue. That has been  
4 three years now. So I have been working with Mr. McCollum, as  
5 you can imagine, very closely on his amendment and continue to  
6 work closely with the Corporation. So that's my background on  
7 this subject.

8 I'll turn it over to Tom.

9 MR. POLGAR: Good morning. My name is Tom Polgar. I'm  
10 legislative director for Senator Warren Rudman. I've served in  
11 that capacity for him since mid-1984. I worked for him for  
12 another three-and-a-half years beyond that as a legislative  
13 assistant. It was in 1981 when I first went to work with him  
14 that I first started working on matters pertaining to the Legal  
15 Services Corporation.

16 I got into that because I was given responsibility to  
17 assist him on all matters pertaining to the Commerce, Justice,  
18 State and related agencies appropriations bill. Never did I  
19 dream that in the ensuing 10 years, I would probably spend more  
20 time on the Corporation than I did on all matters pertaining to  
21 the Justice or Commerce Departments, maybe even combined.

22 Certainly, in terms of Senate floor time and

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1 conference committee time in the appropriations process, this  
2 has been the most time-consuming and difficult and, periodically  
3 not every year, most controversial agency that we've had to deal  
4 with.

5 The way I'm going to structure this this morning is  
6 I'm going to -- Paul and I talked about it just before the  
7 meeting. I'm going to talk and focus in on the appropriations  
8 process, which is what I'm most familiar with and which is where  
9 most of the legislative action has been.

10 At that point, I'll shut up. Paul is going to talk  
11 about the legislative process. I presume he's going to say  
12 something about McCollum-Stenholm. In any event, I'll give him  
13 first crack at it. Then we'll throw it open for questions.

14 In terms of the Senate Appropriations Committee, the  
15 Legal Services Corporation has basically gone through three  
16 phases. There is a phase that ran from 1981, when I got into  
17 it, through calendar year 1983; the second phase also lasted  
18 about three years; and then the current phase that we're in now.

19 The initial phase was, when I started working on this  
20 in 1981, the agency was very, very controversial because various  
21 grantees had engaged in a number of activities that were  
22 political in nature and the kind of things that tend to irritate

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1 members of Congress a great deal.

2           The congressmen I worked for, prior to Senator  
3 Rudman, just about had a stroke one day when the Legal Services  
4 grantee in his state sent out a newsletter which very strongly  
5 criticized an amendment which he was working on which had  
6 nothing to do with legal services. It was that kind of stuff  
7 that got other people in trouble.

8           In 1980, in another very famous classic example, a  
9 grantee in California applied for a special, one-time \$90,000  
10 grant to lobby against the Ballard initiative referendum. It  
11 said it right on the face that that's what it was for. The  
12 Corporation approved the grant and gave it to them.

13           Those kinds of things led Senator Rudman and Senator  
14 Chiles of Florida to get together in 1981 and decide that we're  
15 going to try to craft a package of amendments that will put an  
16 end to this stuff. We started working on it in mid-summer,  
17 which came shortly after the House of Representatives had  
18 completed debate and, in fact, passed a Legal Services  
19 Corporation reauthorization bill.

20           That reauthorization bill had not come up from the  
21 Senate. We went and looked through the House bill and pulled  
22 out the elements that we thought were the most important and put

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1 together a series of four amendments, a series of four riders.

2 Those four riders provided that bar associations will  
3 name a majority of the members of the local boards, which we  
4 thought made a lot of sense because it gave them more  
5 establishment control of the local boards; restricted lobbying;  
6 prohibited class-action suits except in accordance with  
7 policies adopted by the local Board of Directors; and restricted  
8 the representation of aliens except for certain specified  
9 classes that were delineated in the statute.

10 The first of those, the bar association amendment,  
11 actually was a proposal that had been offered on the House floor  
12 by Congressman McCollum and it carries his name to this day.  
13 The Senate passed the four-piece provision in 1981. We lost it  
14 in conference. We offered it again in 1982. It became law in  
15 December of 1982 as part of the FY 1983 continuing resolution.

16 The following year, in 1983, we started coming under a  
17 great deal of pressure from a number of Senators who thought  
18 that the lobbying provision, in particular, was excessive and  
19 that we had restricted legislative advocacy in certain instances  
20 where it was perfectly appropriate to have such; for example,  
21 private relief bills as a good example.

22 As a result, the Appropriations Committee with the

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1 concurrence of Senator Rudman and Chiles, although it wasn't  
2 their proposal, rewrote the lobbying provision. That provoked a  
3 reaction from a number of senators, including Senator Hatch of  
4 Utah, Senator Denton of Alabama, Senator Helms, President Wear's  
5 former employer.

6 We ended up in a series of very intense negotiations  
7 to try and craft a provision, legal services appropriations  
8 restrictions, that would put the issue behind the Senate once  
9 and for all. The negotiations involved about 10 or 11 senators  
10 directly.

11 When they hammered out their agreement -- and I should  
12 say they threw all the staff out of the room when they did that,  
13 so it really was their agreement -- I was drafted along with  
14 Senator Hatch, who was then chief counsel on the Labor and Human  
15 Resources Committee, to go into a room and write it. That took  
16 us a full day which included a number of going back to the  
17 members to verify what, in fact, they had agreed to, since none  
18 of us were witnesses to it.

19 We ended up with a package that, with some grumbling  
20 from some of the more liberal members of the committee because  
21 it was too restrictive and some grumbling from some of the more  
22 conservative members of the Senate that it was not restrictive

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1 enough, passed the Senate on a voice vote, went through  
2 conference and set in place the basic structure of the  
3 appropriations rider that exists to this day.

4           The next period in the history of the Senate's actions  
5 on this stuff was over the next three years, which was a little  
6 quieter. In 1984, Senator Hatch thought of a few more things  
7 that he wanted added to the appropriations language. They  
8 weren't major in nature, but they were significant to him,  
9 things like forcing programs to spend prior-year appropriated  
10 funds before they could dip into their newly-appropriated funds  
11 to make sure that the money that was not covered by the  
12 restrictive rider was spent and out of the system.

13           In the meantime, Senator Rudman was having the first  
14 of what became a recurrent series of disputes with the  
15 Corporation as to what the lobbying prohibition in the  
16 appropriations measure actually meant. Therefore, we wanted to  
17 take some action with respect to a proposed regulation that had  
18 been issued by the Corporation.

19           So we made some minor adjustments and kept making some  
20 minor adjustments in the appropriations language, some things  
21 at the request of Senator Hatch, some things for us. There were  
22 a few things even for the Corporation, including a revision in

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1 the defunding procedure.

2 Things actually went in the '84 to '86 time frame  
3 pretty quietly. I think we had no floor votes in either the  
4 Senate or the House during that period with respect to  
5 legislation covering the Corporation at all. There were some  
6 votes in both bodies relating to the amount of money that should  
7 be appropriated.

8 The kinds of complaints that we had been getting in  
9 the late 70s and in the 1980-81 time frame had died down. Most  
10 people in the Senate came to the conclusion that the package of  
11 riders by Senators Rudman and Chiles, along with the  
12 modifications, had done the trick. Things were pretty quiet.

13 During that period, we did have one vote on whether or  
14 not to eliminate funding for the Corporation. It got over 75  
15 votes. The funding provision got over 75 votes, so it seemed  
16 like in the Senate, at least, the issue was over.

17 Starting in 1987, we entered into a new phase which  
18 consisted of -- and some people here will disagree with the  
19 characterization of this, but basically it consisted of, from my  
20 perspective, the Corporation trying to do a lot of things that  
21 Congress had previously considered and decided they couldn't do.  
22 Therefore, we decided that we were going to uphold our agreement

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1 and we were just going to stop the Corporation from doing them.

2 This led to a series of legislative prohibitions which  
3 were aimed directly at the Corporation itself as opposed to  
4 governing the conditions under which the grantees operated. The  
5 first of these occurred in 1986, actually, but it just flat out  
6 overturned the lobbying regulation issued by the Corporation.  
7 It just, by statuted, decreed the regulation null and void.

8 MR. COLLINS: I missed one word, sir. You overturned  
9 what?

10 MR. POLGAR: The Corporation had issued a lobbying  
11 regulation that we disagreed with and we just cited the page  
12 number, the date in the Federal Register and decreed the  
13 regulation was null and void.

14 We got into a series of others in succeeding years,  
15 one that was not of particular concern to Senator Rudman, but  
16 there was a dispute over how to count migrant workers that  
17 would have led to a massive funding shift among the programs  
18 that have migrant components. The funding formula was  
19 overturned. There were a couple of others.

20 In the meantime, the Corporation, which now, I think,  
21 had at least a stable board for a two or three year period,  
22 stable at least in -- by stable, I don't mean everything was

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1 quite and peaceful up here, but it was the same group of  
2 individuals.

3 They started to get more sure of themselves as to  
4 where they were going. They also started to retain a staff for  
5 some period of time. The Corporation, in 1981 through 1987,  
6 almost underwent annual major staff turnovers, creating a  
7 situation where usually the opposite of what was true.

8 The only historical memory as to what was occurring at  
9 the Corporation at that point lay in the Congress. There was  
10 none in the Agency. Usually in this town it's the exact other  
11 way around. It's Congress that has no historical memory of what  
12 it did three years ago, but the agencies have a very good  
13 memory.

14 In any event, an agenda of their own was developed,  
15 including such proposals as competitive bidding, the timekeeping  
16 and so forth. The battle lines were drawn. On the one hand,  
17 the Corporation and some groups that had agreed with them had  
18 their legislative initiatives; we had ours. We had some very,  
19 very bloody fights, particular on the floor of the House, not  
20 so much in the Senate where the old 75-25 division still stood.  
21 It led to a whole new series of grant restrictions.

22 At this point, I'll turn it over to Paul to pick up

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1 where it was. I haven't gone into each provision in tremendous  
2 detail. What I did instead, and it was handed out a little  
3 while ago, was gave a 7-page summary of each of the 25 riders in  
4 the appropriations bill. It is intended to be a historically  
5 correct document not a polemic in support of the various  
6 provisions. I think most people would agree with that.

7 MR. WITTGRAF: Mr. Polgar, before we go to Mr.  
8 McNulty, would you summarize your view of where things stand  
9 today in terms of what regulations can and cannot be enacted by  
10 the Board and how that plays with the nomination and  
11 confirmation process, just for the benefit of the people to know  
12 essentially what the Congress feels the people here have the  
13 authority to do and not to do?

14 MR. POLGAR: As of this moment -- and this was a  
15 provision that was enacted into law last year before I'd ever  
16 heard of most of you, before I knew that any of you were going  
17 to even be on the Board. We enacted a provision in the law, the  
18 Senate having finally gotten tired of the policy disputes, which  
19 says that the Corporation may not implement any regulation  
20 adopted by the Board unless it is approved by a confirmed Board  
21 or prior to October 1, 1990.

22 In other words, the Board can adopt the regulation,

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1 but the effective date has to be after October 1, 1990.  
2 Alternatively, if the White House ever figures out how to get  
3 the FBI to do security clearances, they will send your  
4 nominations up here and you get confirmed. Then you can proceed  
5 as you wish. That's basically where we are on that.

6 MR. WITTGRAF: So, effectively at the moment, if this  
7 Board was inclined to make any regulatory changes or initiate  
8 any new regulations, they would be ineffective or noneffective  
9 until such time as this Board or some Board is nominated and  
10 confirmed?

11 MR. POLGAR: Or until October 1st, whichever is later.  
12 In other words, the theory was that --

13 MR. WITTGRAF: You're saying October 1, 1989?

14 MR. POLGAR: 1990.

15 MR. WITTGRAF: 1990, okay. I think it was once you  
16 said 1989. So October 1, 1990, is also a watershed point  
17 regarding the regulatory process?

18 MR. POLGAR: That's correct. The theory on that was  
19 that by then there would be another appropriations bill. I  
20 wouldn't hold out on that, by the way, hold me to that. If the  
21 Board adopted regulations, Congress could have the chance to  
22 review them and take whatever action it wanted. If it decided

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1 not to do anything, the regulation could go in effect.

2 MR. McNULTY: First of all, Mr. Chairman, Tom gave me  
3 a fresh insight on the heat of this issue, because according to  
4 his remarks, I was the director of Congressional affairs during  
5 the quiet period. If that was the quiet period, I haven't a  
6 sense for how hot it's been since and before.

7 What I'd like to do very briefly is go over the  
8 authorization side of things from the House perspective,  
9 particularly because that's where the action has been on the  
10 authorization bills. To begin with that, I'd like to talk about  
11 1981.

12 The '74 Act and the '77 reauthorization are long  
13 before my time. What little reading I've done in the  
14 legislative history of the '77 reauthorization, I should say,  
15 seem to be relatively quiet. There may be those in the room who  
16 would contradict that and that may be true. Again, I just  
17 missed it by a long shot, so my knowledge is only related to the  
18 reading.

19 I wasn't here, of course, in '81 either, but I had to  
20 learn quite a bit about that bill since it was so relevant to  
21 the process of authorization that I was involved in in '85. I  
22 think that we'll see throughout the 80s the story of

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1 authorization is really the story of different people, as it is  
2 on any issue.

3           The kinds of consensus that can be put together and  
4 the kind of consensus sometimes that can't be established.  
5 That's very true about this issue in the 1980s. In 1981, you  
6 had a very positive, I think, effort between Congressman  
7 Kastenmeier, who was the chairman of the subcommittee of the  
8 House Judiciary Committee that dealt with Legal Services  
9 Corporation, and Congressman Caldwell Butler, who was the  
10 ranking minority member.

11           I think that the work that they did together had a  
12 great deal to do with the success of that reauthorization  
13 effort. I say success only in a legislative process context.  
14 Some would see it as being a setback because there were a lot of  
15 amendments agreed to in that '81 bill that were restrictive.

16           What I think the tone was in '81 -- well, the tone was  
17 one of trying to move forward between Mr. Butler and Mr.  
18 Kastenmeier. That was within the context of opposition to Legal  
19 Services program. This was the new Reagan administration at a  
20 time when Legal Services was certainly in danger, I think most  
21 people would say.

22           So the commitment between Kastenmeier and Butler to

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1 try to push a bill through, I think had a lot to do with the  
2 fact that the bill went to the House floor and did pass. Of  
3 course, on the way to the House floor and on the House floor,  
4 there were many amendments that were restrictive in nature  
5 adopted.

6 So there was a confrontational, I suppose, nature in  
7 that sense. It was also a very time-consuming process. I think  
8 the memory of that time-consuming nature -- and Mr. Erlenborn  
9 and Mr. Molinari may remember that process, but relatively  
10 speaking, it consumed a great deal of House floor time. As I,  
11 again, have been working in the House a long time or at least  
12 for awhile, it's not often that you have a bill that takes as  
13 much time on the floor as that bill did. It was a tremendous  
14 effort.

15 Of course, then it was a big disappointment, too, when  
16 the effort appeared to have been wasted in one sense because the  
17 Senate authorization process really didn't go along very well, I  
18 suppose. I want to be careful here when I try to speculate as  
19 to reasons for things, but I suppose that Senator Hatch at that  
20 time -- was it 1980 that Senator Hatch became chairman of Labor  
21 and Human Resources? -- was opposed to moving reauthorization,  
22 it may be fair to say.

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1           Again, if I'm wrong with that, please forgive me, but  
2 that was the impression I had. So, therefore, authorization  
3 wasn't on a fast track on the Senate side. That bill just died.  
4 Now, of course, it wasn't completely a waste because as Tom has  
5 just said, some of the provisions from that effort were picked  
6 up in the appropriation bills.

7           From Mr. McCollum's standpoint, that was a fine result  
8 because his amendment, which was one of the first amendments he  
9 offered in the Congress as a freshman member, became a part of  
10 the appropriations bill, the governing board bar involvement  
11 amendment.

12           In 1983, the authorization bill was less time-  
13 consuming. The memory of that 1981 fight, I think, was still  
14 fresh in most people's minds and also that sense of futility, I  
15 think, did lurk in the background. This bill was, I think, a  
16 simpler bill as compared to the '81 bill as it finished up after  
17 the House floor amendments.

18           The '83 bill made it through committee, but that's as  
19 far as it went. Again, I think there was probably a sense on  
20 the part of Mr. Kastenmeier and Chairman Rodino and the speaker  
21 that if there was no Senate action, to take the time-consuming  
22 confrontational effort on the House floor for no reason didn't

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1 make any sense. Certainly, that's understandable.

2           Then in 1985 -- I think there is one factor we should  
3 note at this point in '85 and that's with the election of  
4 Congressman Bruce Morrison. Again, as I said, personalities  
5 loom large in these matters. Mr. Morrison from Connecticut was  
6 a legal services program director, very knowledgeable, as you  
7 can imagine, with the legal services program and a very bright  
8 lawyer and very capable in terms of the authorization bill.

9           His presence on the Judiciary Committee then certainly  
10 was a big influence in the way in which the '85 authorization  
11 bill played out. As I remember that authorization bill, I would  
12 describe it as one -- it was a lot more complex in nature than  
13 the '81 and '83 bills.

14           That is to say, rather than dealing with specific  
15 issues like lobbying or class action lawsuits, the '85 bill  
16 tried to deal with what was perceived as problems within the  
17 legal services management in terms of monitoring and defunding  
18 actions and try to restructure much of that activity in terms of  
19 oversight by the Corporation.

20           That made the bill number one, hard to understand from  
21 a committee perspective -- that is, the members were dealing  
22 with a pretty complex piece of legislation -- and number two,

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1 even more controversial because by that time, '85, some of those  
2 consensus builders on the Judiciary Committee were gone,  
3 Caldwell Butler, Railsback, maybe one or two others.

4 The Judiciary Committee as a whole, I think most of  
5 the people would say, was fairly split in a partisan way by '85.  
6 When you combine that with the increased level of expertise on  
7 the majority side in the person of Mr. Morrison, and certainly  
8 Mr. Frank has certainly been very knowledgeable on the subject,  
9 and Mr. Kastenmeier continued to be even more experienced at  
10 that point, that bill became a very partisan activity.

11 I think there were over 20 amendments that were  
12 offered by Republicans that failed on what is a party-line vote  
13 essentially on our committee, which is 21 to 14. There may have  
14 been some exceptions to those votes, but for the most part, they  
15 were very partisan votes.

16 I think what that did was it reinforced that message  
17 that an authorization bill is a very, very difficult thing to  
18 achieve, that there was no real consensus and that if there was  
19 going to be changes to the Legal Services Corporation's program,  
20 it would have to be through the appropriations process; that  
21 the authorization thing had just bogged down over controversy  
22 and over, again, that idea of where is the Senate going to go

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1 ultimately?

2           In addition to that, which really makes it complex, is  
3 would the president veto the bill anyway? I remember many  
4 people -- in fact, I recall the hearings of when the board  
5 members at that time had come before the House Judiciary  
6 Committee. I, of course, was sitting behind the witnesses from  
7 the Corporation.

8           One of the questions that I remember very clearly  
9 being put to the Legal Services Board members was, what are you  
10 going to do about getting the president to sign this bill? Are  
11 you going to go to the White House for us if we produce an  
12 authorization bill? Talk about a lot of answers with words but  
13 not much said, those were the answers given. There was a lot of  
14 hedging by those board members because they knew they were in a  
15 very awkward situation.

16           So, that '85 bill was one that was very complex. It  
17 had a lot of new and different kinds of provisions in it. I  
18 recall the one that had to do with giving any grantee that was  
19 found to have violated a provision an opportunity to correct  
20 that prior to the defunding action of going forward. That was  
21 very controversial to the minority members of the committee.

22           There were just lots of amendments to try to strike

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1 things from the bill and to try to add, again, the old standard  
2 kind of restrictions. Well, then the 100th Congress came along.  
3 At that point, I was working for the Judiciary Committee. The  
4 100th Congress, I think, was -- based upon everything I've said  
5 to you so far, nothing even came out of subcommittee.

6 Well, I'm sorry, I should correct that. There may  
7 have been -- and someone here in the room or maybe even Tom  
8 remembers -- I know that Chairman Kastenmeier did have a funding  
9 bill. That bill may have been reported out. I just don't  
10 remember at this moment. In any event, certainly nothing was  
11 passed by the full committee. That was during the 100th  
12 Congress.

13 At that point, too, I think it's important to add that  
14 the judiciary majority had a great deal of frustration. The  
15 frustration level had been building with the Board of LSC. By  
16 '87, '88, the 100th Congress, that frustration level was very  
17 high.

18 So, that impacted the authorization process as well.  
19 Not only did the committee itself have its own problems of lack  
20 of consensus, but then when you talk about giving new  
21 authorities to a board that is so disliked by the committee,  
22 obviously that affects it greatly as well. So you have a very

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1 complex situation.

2           Then we get to this Congress. Of course, one of the  
3 big differences in this Congress was the shift of jurisdiction.  
4 Mr. Kastenmeier had been responsible for the Legal Services  
5 Corporation and his subcommittee on courts with the beginning of  
6 Chairman Brooks' administration of the committee. The Legal  
7 Services Corporation was shifted to the subcommittee of  
8 administrative law chaired by Congressman Barney Frank.

9           That's where it sits. I think there may be some  
10 observations I can offer at this point about where it stands and  
11 why it may not go forward, but I'd say very briefly that Mr.  
12 Frank, I think, was also struggling with that same question the  
13 first session of this Congress with regard to the Board  
14 relationship.

15           As he and Mr. McCollum have discussed on a couple of  
16 occasions about reauthorization, that issue has come up each  
17 time. It's difficult to imagine having an authorization bill  
18 when you don't know who the Board of Directors would be. That  
19 really was conversations that took place prior to the president  
20 naming those of you here today.

21           As it stands now, we know that Mr. Frank does have  
22 authorization hearings scheduled. I think there is a great deal

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1 of sincerity and genuineness on his part to want to move an  
2 authorization bill. We have a very limited number of days left  
3 in this 101st Congress. It shocks me sometimes when I look at  
4 the calendar and I realize how tight the schedule really is  
5 going to be.

6 We have these appropriation bills, 13 bills that  
7 haven't even come to the floor yet. We have an election year,  
8 one that Congress is going to hope to recess or adjourn sometime  
9 in mid-October.

10 Tom Polgar and I will see each other again over the  
11 issue of drugs. He and I were up all hours of the night for the  
12 last week of the 100th Congress writing the Omnibus Drug Bill.  
13 Tom, I'm frightened and concerned to say that I think that's the  
14 schedule on drugs again as well this year that we're going to  
15 probably be doing another drug bill late in the 101st Congress.

16 So there are a lot of things on the plate. The  
17 Judiciary Committee is very full. We have lots of legislation  
18 dealing with drugs and firearms and other matters that Chairman  
19 Brooks needs to attend to, as well as matters relating to  
20 antitrust and so forth.

21 So, even if Mr. Frank could muster up the consensus on  
22 subcommittee and then move a bill through full committee, which

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1 is a tremendous effort given the number of amendments, the  
2 partisan nature of the Judiciary Committee, the strong feelings  
3 that are felt. You have many members like Mr. McCollum and Mr.  
4 Hyde who are very familiar with the program and would be very  
5 active on an authorization bill.

6 It doesn't look likely that an authorization bill is  
7 going to be passing this session. Again, I may be wrong. It's  
8 just my speculation. Finally, let me say a couple things about  
9 this issue of the disappointment and frustration. I think  
10 that's something you really have to have a feel forward as you  
11 move forward in any regulatory manner.

12 Tom mentioned about the lobbying regulation and how  
13 there was a provision in the appropriations bill to basically  
14 make that regulation null and void. That's something that I did  
15 work on while I was here as far as the relationship with the  
16 Senate and the approval of that regulation.

17 That came at a time when there was an effort on the  
18 part of the Board to try to see if it was possible -- and I know  
19 it sounds a little naive, but possible to build some kind of  
20 consensus. As much as there was a very fundamental difference  
21 between, say, someone like Chairman Mike Wallace and those in  
22 the Legal Services program, advocates for the grantees,

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1 nevertheless, I think those advocates would admit that Chairman  
2 Wallace had a desire at times to try to build some consensus if  
3 at all possible.

4           The lobbying regulation, I thought, was the result of  
5 some very hard work and work in very good faith between, for  
6 example, Mr. Houseman -- I'll probably get him in trouble for  
7 saying how well he worked with us -- and at that time we had a  
8 counsel named Tom Bevard. The two of them worked very hard to  
9 try to see if there was a way to have a meeting of the minds on  
10 language in the lobbying regulation.

11           They came very, very close to doing that. They worked  
12 very hard; a lot of goodwill there. I think there was a  
13 provision or two -- it might have been the Private Funds issue,  
14 actually, that knocked that regulation down. When it got to Tom  
15 Polgar and to the Senate Judiciary Committee, Senator Rudman  
16 looked at that and going back to that agreement that had been  
17 reached in '83 or '84 on those riders, that issue of applying  
18 the restrictions on lobbying to the private funds was death for  
19 that regulation.

20           It created a very large amount of frustration on the  
21 part of the Board, particularly Mike Wallace who at that time  
22 was chairing a committee of the Board that was dealing with

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1 regulations, a tremendous amount of frustration. You know, when  
2 you're in a regulatory or you're in an agency role, there's  
3 always this question of, do you walk closely with Congress and  
4 try to work out everything, or do you try to stand back and  
5 develop an independence from Congress and, thereby, say things  
6 like well, if it's not in the legislative language, if it's only  
7 in report language, we'll ignore it?

8 Of course, when you do something like that, it's a  
9 very confrontational thing. It creates difficult relationships  
10 with the Hill; the failure of the lobbying regulation to make it  
11 through and timekeeping would be the other subject I'd point to.  
12 Tom and I worked very hard on talking about timekeeping, even  
13 going back as far as '86 and maybe '85.

14 Tom will recall when we had meetings on the Senate  
15 side where we brought in GAO and we brought in Corporation  
16 people and we brought in other advocates of the Legal Services  
17 program to try to see if there was any way of having a  
18 timekeeping program. It was also tied to this case service  
19 reporting issue.

20 Tom tried to genuinely negotiate something there. At  
21 times we became very hopeful that we thought something would  
22 pass, something that would establish or find the consensus or

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1 approval. That, too, never made it for, I'm sure, good reasons  
2 on both sides.

3 The point I'm making is simply that to understand  
4 where we are today, you need to understand that there was a lot  
5 of disappointment and frustration. When that happened, I think  
6 it encouraged a more confrontational nature. The Corporation  
7 leadership -- again, I'm speaking for others and not for myself  
8 -- I think their attitude was, we've tried to work with  
9 Congress; we didn't get it. Let's try to do this now through  
10 our authority that we have under law.

11 That, of course, is something that didn't go over big  
12 on the Senate Appropriations Committee. When you look at the  
13 riders today, you see the results of that disapproval by the  
14 Senate. So, here we are today. As you can see, it's a very  
15 complex world that you find yourselves in in terms of  
16 legislation.

17 That's all I really wanted to say, Mr. Chairman. I'd  
18 be happy to answer your questions.

19 MR. WITTGRAF: Thank you both very much. Let me try  
20 to get a couple of background questions, perhaps, with my  
21 enlightenment and that of the other members of the Board before  
22 we become a little more specific.

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1           Looking both at the appropriations process and  
2 particularly at the House judiciary and, to a lesser extent I  
3 guess, the Senate Labor and Human Resource perspectives as they  
4 pertain to reauthorization, who, at least in this Congress, the  
5 101st Congress, are the people principally involved?

6           How does their involvement play out with either what  
7 is apt to happen in the appropriation process if reauthorization  
8 isn't possible? Even if reauthorization is not possible, what  
9 is the point, as best either of you can see, of going through  
10 the reauthorization hearings, two hearings in 1989 and at least  
11 two scheduled for 1990?

12           Who are the players and what is going to happen in the  
13 appropriations process and the reauthorization process in your  
14 respective judgments this year?

15           MR. McNULTY: Well, I'll start with the House and say  
16 this, I think there is a very good reason for going through it  
17 and I'll explain that as I mention the players. Mr. Frank, of  
18 course, is chairman of the subcommittee. Craig James is the  
19 ranking member of that subcommittee and he's a freshman member.

20           This is an issue that he doesn't have a great deal of  
21 experience on. He gets along very well with Mr. McCollum. They  
22 are both in Florida. Mr. McCollum doesn't sit on that

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1 subcommittee and that certainly is something of importance to  
2 note.

3 That subcommittee on the minority side tends to be  
4 one that is composed of freshman members. I think that Mr.  
5 Douglas from New Hampshire is on that subcommittee as well as  
6 Mr. Campbell from California. I think maybe Lamar Smith from  
7 Texas who is a second-term member.

8 So it's a committee that, on the minority side, tends  
9 to be of little legislative experience, but I think if you know  
10 much about Mr. Campbell, you knows he's a very bright man. So  
11 are the others. Mr. Douglas is a former Chief Justice of the  
12 New Hampshire Supreme Court, very knowledgeable. So, there's a  
13 lot of ability there; don't get me wrong. It's just the  
14 experience on this issue.

15 Although on the majority side, you have some of the  
16 players who have been very knowledgeable. I think Mr. Morrison  
17 is on that. Of course, he's going to be very busy this year  
18 with his race for Governor of Connecticut. I think Mr. Burma  
19 may be on that as well and Mr. Staggers; 6 to 4 subcommittee.

20 Clearly, Mr. Frank, Mr. Morrison, to the extent Mr.  
21 Morrison is available this year -- there's a gubernatorial  
22 election -- are the key Democratic players. Mr. Burma has

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1 always been very involved, very knowledgeable. Mr. Kastenmeier  
2 will still continue to play a role at full committee level.

3 On the minority side, Mr. McCollum, I suppose, is the  
4 man of lead interest, but certainly, if we move down the line,  
5 you can see that Mr. Fish, the ranking Republican on the full  
6 committee, has been around a long time and knows this issue well  
7 for that reason. Mr. Moorhead was the ranking member of the  
8 subcommittee, dealt with Legal Services as the court  
9 subcommittee for some time. He was there in 1985 as the ranking  
10 member there. So he knows the issue and Mr. Hyde and Mr.  
11 Sensenbrenner.

12 On the Appropriations Committee, Mr. Smith has been  
13 there quite some time, Neil Smith. That's something that we  
14 left out. I think it kind of fell in between the cracks between  
15 Tom and I, since he was doing appropriations and I was doing  
16 House authorization.

17 The reason why, of course, as you all probably know,  
18 the Senate Appropriations Committee is so active and the Legal  
19 Services issue is one real big reason, Mr. Smith never puts  
20 money in the bill for Legal Services Corporation, or at least  
21 the last three years has not done so.

22 This is because of Legal Services being unauthorized.

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1 Mr. Smith, from a matter of principle, believes that his bill  
2 will not have any funding in it for unauthorized programs.  
3 That's true with the entire Department of Justice, which is  
4 unauthorized.

5 So, when the Commerce, Justice, State appropriation  
6 bill comes to the House floor, there is no money in it for  
7 Legal Services. You have the strange situation that if Mr.  
8 McCollum wanted to offer his amendment, he and Mr. Stenholm to  
9 offer their amendment on the House floor the first time the bill  
10 came through, it would actually be objected to by the proponents  
11 of the Legal Services program because it's appropriation on an  
12 unauthorized program.

13 There is no waiver of that point of order on the House  
14 floor because there's no money in the bill for unauthorized  
15 programs. That's why Mr. McCollum and Mr. Stenholm have to  
16 offer their amendment after conference on the bill because it's  
17 the first opportunity that you have on the House side to offer  
18 an amendment on the House floor dealing with Legal Services  
19 Corporation; that is, the last few years.

20 So, Mr. Smith and Mr. Rogers, Hal Rogers from  
21 Kentucky, are the key individuals on the appropriations of the  
22 House side.

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1 MR. WITTGRAF: What is to be gained and what should we  
2 as a board be looking toward as far as the reauthorization  
3 hearings? What's to be gained from the process and what is the  
4 significance as you see it of our input?

5 MR. McNULTY: Well, I think that Mr. Frank has the  
6 responsibility, and I think he recognizes that to not only want  
7 to continue his authorization and oversight or in some ways a  
8 fiction, because when you get there and you're answering  
9 questions, the two blend with regard to the nature of the  
10 hearing. So, certainly the hearings that are coming up serve,  
11 if nothing else, as oversight hearings.

12 In addition to that, I think that Mr. Frank knows that  
13 on the House floor there is always that question raised. Mr.  
14 Stenholm, being a member of his own party, has, I'm sure,  
15 discussed this with Mr. Frank about the need to have an  
16 authorization bill. So Mr. Frank, I think, feels the need to  
17 make an effort and to go as far as it will be able to go.

18 Again, I speculate as to how far I thought it would  
19 go, but I may very well be wrong. It may somehow make it  
20 through this what I would consider some significant obstacles.  
21 So you can't hope for or even say later on we tried if you  
22 don't try.

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1           So I think he has to schedule his authorization  
2 hearings as to move forward on the issues, keeps his committee  
3 fresh on the subjects that are involving legal services. If the  
4 possibility exists that some consensus could be reached--  
5 because I think for a bill to succeed, it really has to have  
6 some consensus. There has to be some consensus established.

7           If a consensus could be reached in his subcommittee or  
8 full committee, then perhaps he will have laid the foundation  
9 with these hearings for that. In June or July, we could all be  
10 surprised by that. That's why he has to move forward.

11           MR. POLGAR: In terms of the statutory product, I  
12 think the clock has run out on the authorizing process this  
13 year. However, I would note that the effort to enact  
14 authorization bills frequently goes over several years. The  
15 legislative record built in the one Congress will carry over to  
16 another one. Bills can't carry over, but people's memories and  
17 transcripts and historical work does.

18           Secondly, the legislative record built in the  
19 authorizing process can affect the appropriations bill. So the  
20 series of hearings that Congressman Frank has make a difference  
21 in what happens within the Appropriations Committee.

22           Third, there is a program that is in need of

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1 examination. It is Legal Services. What has happened in the  
2 last 10 years is the battle line has been, in effect, drawn  
3 between two opposing camps from -- well, our authorizing  
4 committee is just not bothered with the program at all. They  
5 have sort of taken the attitude since at least prior to 1989,  
6 since the president wouldn't sign the bill, there's no point in  
7 us working on it.

8 But we've been worried about stopping what we  
9 perceived in the last five years were abuses by the  
10 Corporation. The Corporation is sitting there worried about  
11 stopping what they perceived to be abuses by the local programs.  
12 What nobody has really done is looked at the way the program  
13 should be structured and run.

14 There has been no -- even the Corporation's monitoring  
15 effort has been focused entirely on looking for rules and  
16 regulations that the programs may have broken, but nobody has  
17 said how do we run a more effective program? How do we get a  
18 better product or the same product more efficiently out to the  
19 public?

20 From that standpoint, any oversight hearing and  
21 authorizing committee is a good thing. So, appropriations  
22 committee won't do them. They don't have time for them.

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1 MR. WITTGRAF: Who then, as we look at either the  
2 Senate Appropriations Committee or the Senate House and Labor  
3 Committee, which would be the committee to deal with an  
4 authorization bill as well as the committee to deal with any  
5 nominations made to this board by the White House, who, as we  
6 look at those two committees, do we need to appreciate as being  
7 particularly interested and are knowledgeable about the Legal  
8 Services Corporation, the Legal Services program?

9 MR. POLGAR: Of course, if I cite two members, I'll  
10 insult the other 14. The most interested and knowledgeable --

11 MR. WITTGRAF: Some may be complimented by being left  
12 out.

13 MR. POLGAR: On the Labor Committee, both Senator  
14 Kennedy and Senator Hatch, who are the chairman and ranking  
15 member, are very familiar, are probably the two members on each  
16 side of the aisle who are most familiar with and been most  
17 involved with the program over the years.

18 MR. WITTGRAF: As it pertains to appropriations,  
19 Senator Rudman and anybody else you want to cite?

20 MR. POLGAR: Senator Hollings has got an interest in.  
21 Senator Bumpers is very interested. It's hard to say in any  
22 given instance who would be most active. I think another

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1 senator to look out for who could become very active, at least  
2 in the nonappropriations context, is Senator Danforth from  
3 Missouri who has an ongoing abiding interest in this issue.

4 MR. WITTGRAF: I'm trying to pin the two of you down a  
5 little bit only because you've each made the point, I think a  
6 couple of times, especially as we look at the last decade, of  
7 the significance of the individuals who happen to be in the  
8 House or in the Senate, the responsibilities they have and any  
9 involvement they have in the process.

10 As we look ahead to 1990, 1991, 1992, it helps us, I  
11 think, to understand who particularly on each side has a strong  
12 interest.

13 MR. POLGAR: There hasn't been that kind of a turnover  
14 in the Senate. It's been the same members of the Senate for the  
15 entire 10-year time frame with the exception of two, one who was  
16 beaten and one who retired. In terms of even, in terms of  
17 senior staff, both Senator Hatch's guy, then chief counsel, now  
18 he's his administrative assistant, and I are still around.

19 We haven't had the same personnel turnover on this  
20 issue either. The knowledge is -- the institutional memory in  
21 the Senate runs very deep on this stuff. Senator Cranston is  
22 another senator who is very interested, the same staff person

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1 they had in 1981.

2 MR. WITTGRAF: Before we open us, could you indulge me  
3 in taking the list -- you both have a copy of the list of 15  
4 areas. As I indicated earlier, it's by no means an exhausted  
5 list but rather an effort to touch on some of the things that  
6 have been brought to our collective attention over the last  
7 couple of months.

8 Is it possible for the two of you to go down that list  
9 fairly quickly and point/counterpoint, or whatever you want to  
10 characterize it as, to comment on your views? Again, this is  
11 awkward putting the two of you as key staff members in the  
12 position of having views or taking positions.

13 Give us just a couple of comments in terms of what you  
14 see as pros and cons and also where these matters sit presently  
15 in terms of statute regulation or the need for neither or the  
16 existence of neither. I want to throw a couple more on the end  
17 when we get through the 15, but if you could do that.

18 MR. POLGAR: All right. I'll be glad to do that. The  
19 first one is sort of -- that's the \$64 million question,  
20 limiting the use of private funds received by LSC grantees.  
21 That is an area where the Senate Appropriations Committee in any  
22 event is staked out and in a very big way. The answer is that

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1 we're opposed to it.

2           It's a nut issue we have for, largely in part, first  
3 amendment reasons but not exclusively. We have a great deal of  
4 hostility to the concept that a private entity which receives  
5 private funds should have its otherwise lawful activities  
6 impinged on by that receipt of federal funds.

7           If we were going to start going down that road, quite  
8 frankly the first amendment on my list would be that farmers who  
9 receive federal assistance can't use their own money to  
10 contribute to endeavors to change the Legal Services Corporation  
11 Act.

12           It's a very tricky area once you get into it, so we  
13 would be strongly opposed to any kind of greater regulation over  
14 private funds than now even exist.

15           MR. WITTGRAF: Mr. McNulty?

16           MR. McNULTY: Well, the basis for this, of course, is  
17 the act itself, 1010C. If 1010C didn't exist, that would throw  
18 a whole different spin on this subject. We'd be looking at this  
19 from a framework that would be much different to this debate in  
20 other areas where our private organizations, such as Planned  
21 Parenthood or something like that, are receiving funds.

22           The question of how to use other funds rises, which I

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1 think is one step removed from this because we have this  
2 provision in 1010C which does restrict, under the Legal Services  
3 Act, the use of private funds for purposes prohibited by the Act  
4 itself.

5 I think, really, the story on the private funds issue  
6 goes back to that compromise in the Senate Appropriations  
7 Committee on the restrictiveness of the riders. It's one thing  
8 -- Tom can respond -- for the Act to prohibit certain things and  
9 for private funds to be so restricted, particularly when the Act  
10 may not be so restrictive itself.

11 It's another thing when you add to the nature of those  
12 restrictions to make them more limiting on the program's  
13 activities and then carry the private funds restriction along  
14 with it. Now I think that's what was more troubling because of  
15 the increased restriction of the grantees after those riders.  
16 That's what was particularly troubling for advocates of the  
17 programs on the use of private funds.

18 So, from a principled standpoint in terms of private  
19 funds being restricted, Mr. McCollum and Mr. Stenholm certainly  
20 don't have any problem obviously in their amendment. I think  
21 that the precedent is certainly there by the fact that it's in  
22 the Act and because of the pragmatics of the issue.

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1           The fact is, if you have an entity receiving federal  
2 funds and the restrictions on those funds that says you can't do  
3 these 20 things or these 10 things with the monies you receive  
4 from the federal government -- but that's okay if you want to  
5 split your day in half and go ahead and do things the second  
6 half of the day or the second half hour of any given hour on  
7 other activities that you're going to say, from a bookkeeping  
8 standpoint, are funded by private funds.

9           We find that on the House side at least on the author  
10 of this amendment, Mr. McCollum, to be unworkable, an  
11 unworkable situation, that pragmatically doesn't work out well.  
12 Therefore, the 1010C wisdom should carry with regard to all  
13 restrictions that ever applied to the grantees. Limit the  
14 private funds so that you don't have this kind of bookkeeping, a  
15 game being played, I guess is the bottom line.

16           MR. POLGAR: Before we get to that, because I think  
17 you were asking another question here too, first in response to  
18 Paul, segregation of funds is something between federal and  
19 nonfederal, something private groups all across the country do  
20 every day. It's not a new thing.

21           However, in answer to your question, 1010C, as you  
22 referred, prohibits the use of private funds received for the

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1 provision of legal assistance from being used in manners  
2 prohibited by the Legal Services Corporation Act itself. The  
3 other nonlegal services public funds, funds received by a  
4 grantee for something other than the provision of legal  
5 services, are not restricted.

6 MR. McNULTY: Public funds, right, other public funds.

7 MR. POLGAR: So, the answer to your question is that  
8 in terms of covering private funds, the other answer is -- it's  
9 going to be a legislative issue. It's the only place it can be  
10 resolved. The Corporation can express an opinion and take a  
11 position if it wants, but the question of extending any kind of  
12 restrictions on private funds beyond those that are now in place  
13 is purely a legislative issue.

14 You were trying to get that, too, weren't you, that  
15 kind of information?

16 MR. WITTGRAF: Yes, sir. In terms of where the issue  
17 stands at the moment statutorily or regulatorily and where, as  
18 you say, it can be resolved or will be resolved statutorily or  
19 regulatorily or there may be some things here that don't  
20 require any statutory or regulatory action at all.

21 MR. POLGAR: Speaking for my senator, we'll fall,  
22 fall on the sort on that one in the appropriations process.

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1 MR. WITTGRAF: Thank you.

2 MR. POLGAR: Timekeeping, I've never practiced law.  
3 I'm not going to pretend to be an expert here. I work for a  
4 senator who has been in both public and private practices as a  
5 law enforcement state attorney general and as a partner in a law  
6 firm.

7 His view on timekeeping is that it's an unbelievably  
8 massive headache and he can't imagine why anyone would even  
9 consider timekeeping. When we think of timekeeping, we're  
10 talking keeping time records. You spend X amount of hours on  
11 this client and X amount of hours on that client. Why would  
12 anyone do it if they're not billing a client?

13 The Justice Department doesn't do it. Ironically, we  
14 asked Ed Meese about it in one of our hearings. We even told  
15 him we were thinking in the context of the Legal Services  
16 Corporation. His answer was, while he didn't know anything  
17 about LSC, and there may be other factors that play there, he  
18 couldn't imagine imposing such a requirement on the Justice  
19 Department. It would produce information that was not useful  
20 and it would be a tremendous drain on the department  
21 bureaucratically.

22 Instinctively, that's Rudman's reaction to it. He

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1 hasn't staked himself out a firm position, but that's his  
2 instinctive reaction to timekeeping.

3 MR. McNULTY: I think that all these regulations and  
4 other issues we raise here have fallen into two categories.  
5 They fall into a question of the tools for accountability and  
6 monitoring of the Corporation; that is, what they have to rely  
7 upon as they look at the activities of any grantee. Then, of  
8 course, the questions involving things of a very basic nature  
9 of getting into what kinds of activities, like redistricting  
10 would be a good example.

11 I think we always need to separate those two issues  
12 out and say are we talking about a tool for accountability or  
13 are we talking about one that has to do with sort of political  
14 dimension of LSC? Here, obviously, we're talking about a tool.  
15 One of the, of course, difficulties of this is that if you don't  
16 have it, you don't know how much use it will do in the fullest  
17 sense, speculating in a certain sense.

18 One thing we know is that grantees keep time records  
19 for fee-generating cases and lobbying. You can keep records if  
20 there's a good reason to keep records. I think that is where  
21 the issue really lies, whether or not there's a good reason to  
22 keep the records but by the very fact that records are kept by

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1 grantees in certain areas.

2           In fact, the Justice Department has certain units  
3 within the department to keep records as well for similar kinds  
4 of reasons; although, obviously, the large majority of Justice  
5 Department lawyers do not. The fact that records are kept, I  
6 think is something that fundamentally has to be understood by  
7 the Corporation as indicating both the possibility of doing it  
8 and that life goes on.

9           The question is, of course, what will be done with the  
10 time records? How well can they be used? I would say that Mr.  
11 McCollum would say that timekeeping wouldn't be a very good idea  
12 if the Corporation could not work out a very positive way of  
13 making use of those records.

14           They shouldn't be done just to be done. They should  
15 be done so that they serve the purposes of accountability. Now  
16 it's always said that within any grantee, it's a management tool  
17 as well. That may be true, but obviously we're talking about  
18 this not for the benefit of an executive director of the grantee  
19 but for the purposes of the Board and the Corporation being able  
20 to monitor its recipients.

21           MR. POLGAR: I fundamentally react with suspicion to  
22 any proposal that somehow legal services attorneys should be

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1 restricted in the manner in which they pursue a case in ways  
2 that nonlegal services attorneys are not. Now, there are areas  
3 where you can argue -- as the next one on the sheet that you  
4 gave me -- whether or not there are any benefits to poor people.  
5 Maybe we don't want the programs into that kind of cases.

6           However, once you've decided that there's a reason for  
7 them to be in those kinds of cases, certainly migrant farm  
8 workers are an eligible class in who can be benefitted by these  
9 litigations, then to single out legal services attorneys in the  
10 group and suggest that they should operate under different  
11 rules, I have a problem with.

12           I went back last week, knowing you were going to do  
13 this, and looked at some of the history on this. It struck me  
14 as I went back through it that what's really happened here is  
15 that in 1983 when they rewrote what is now called AWPA -- it had  
16 a different name prior to then -- that the farm groups who  
17 worked out and supported the bill that was enacted cut a deal  
18 which in hindsight has proved very bad to them.

19           The key element of that deal was that prior to 1983,  
20 only the crew chiefs were largely liable for AWPA violations.  
21 The law was changed in 1983 to make the farmers jointly and  
22 severably liable. Now they are getting sued and they don't

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1 like it. The problem strikes me to be with the underlying act  
2 and not with legal services.

3 MR. McNULTY: There's a balance that we have to  
4 appreciate, and I'm sure you're already a long way into  
5 appreciating this balance on many of these kinds of issues. The  
6 balance is simply this, on the one hand, by the very fact that  
7 Legal Services Corporation exists, says that we have ar  
8 recognition of the fact that we need to ensure that those who,  
9 for economic reasons, are unable to have legal representation  
10 need to be afforded that legal representation.

11 So we're on record by the very fact this program  
12 exists. It exists with a significant number of votes in terms  
13 of a majority that vote to support the program. It makes that  
14 point very clear. The fact that these are federally funded  
15 lawyers doesn't, in any way, reduce the significance of the fact  
16 that this service has to be provided.

17 However, the balance then is balancing that with the  
18 fact that these are not private attorneys. These are attorneys  
19 that are paid for with the tax dollars contributed by Americans  
20 across the country. Therefore, by that very nature, there has  
21 to be a different approach to what they can and cannot do. That  
22 balance is what we've struggled with on every one of these

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1 restrictive issues.

2 I personally don't find it very helpful to talk about  
3 day to day versus impact because, frankly, I think that a lot of  
4 cases are going to be impact and they should be impact in a  
5 sense that if you're representing someone in an area of law and  
6 it happens to be controversial, well, that's just the way it  
7 goes.

8 On the other hand, I'm not sure what day to day always  
9 means. Day to day may involve some very interesting cases,  
10 complex cases that go a long way and it may be some very mundane  
11 cases that are routine and ordinary. I don't know how you use  
12 those two terms to describe this balance.

13 I think better is to describe the balancing of the  
14 fact that these are taxpayers financed lawyers with the desire  
15 to have them out there representing their clients well. When  
16 you work with that balance, I think when it comes to the  
17 agriculture issue that we have to see that there is a certain  
18 counterproductivity to a litigiousness that goes on in this kind  
19 of unique setting.

20 Is there any way that we can work out a process for  
21 reducing litigious nature of this kind of activity and at the  
22 same time realize that the individuals that these legal services

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1 attorneys are representing, they may be some of the individuals  
2 that are in most need in our society for very competent legal  
3 representation.

4           If the law has been violated with regard to that  
5 worker, if this worker has been denied what contractually is  
6 due, that certainly there is a great example of the need for a  
7 legal services attorney. There aren't a lot of lawyers that are  
8 willing to step in and fill that void if the legal services  
9 attorneys won't do it.

10           So I think that we have to ask how we can allow the  
11 ends of justice to be served by continuing to have legal  
12 services attorneys involved in these very necessary cases; at  
13 the same time, not allowing it to go on in such a way that it  
14 puts both farmer out of business because of the high cost of  
15 litigation, puts farm worker out of a job because of the closing  
16 of the farm and in a sense, serves no ones purposes except  
17 perhaps -- and I don't accuse every lawyer of this by any means  
18 -- but perhaps the desires of a particular attorney who would  
19 like to see a fundamental change in the way in which this  
20 relationship between farmer and farm worker works.

21           I don't think that's present in every case by any  
22 means, but I do think that we have to take responsibility for

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1 the way in which this litigation goes since we're the ones that  
2 are funding this litigation, in a sense. It's different than  
3 any kind of private representation.

4 These limitations are one effort. Mr. McCollum, I  
5 know for one, and Mr. Stenholm, because we've talked about it  
6 with Mr. Stenholm and his staff on many occasions, we're very  
7 interested in hearing other ideas for how we can make this  
8 litigiousness be dramatically reduced and how we can solve these  
9 farm worker problems.

10 We can work out the grievances that the workers have  
11 and at the same time, not drive the farmer into bankruptcy and  
12 eliminate those jobs and have it be counterproductive for what I  
13 think is a very necessary element of our society, and that is  
14 the agriculture community.

15 MR. POLGAR: Part of the problem when you start  
16 talking about legal services is that frequently you hear words  
17 thrown around that make you sit up and take notice. I don't  
18 want to be too critical of Paul here, but he talks about impact  
19 cases. Impact cases to most of us means far-ranging, class-  
20 action suits.

21 It's not what we're dealing with in the farm labor  
22 area. We're dealing with compliance, with minimum wage laws,

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1 with standards of housing and migrant labor camps. It's very  
2 basic bread and butter stuff. Incidentally, there's no  
3 attorneys fees awards provided under AWPA, so the programs can't  
4 even make money off of it. It's another allegation that I've  
5 heard come up periodically.

6 There's a provision in AWPA that says that the court  
7 in the case that goes to trial can take into account some  
8 pretrial settlement efforts before making an award, which has  
9 been, as I understand it, commonly interpreted to say that if  
10 one side doesn't negotiate in good faith to try to keep it out  
11 of court, the court can adjust the award to penalize that party.

12 It would seem to me that encourages it some. I  
13 understand, and I won't swear by this fact, but I was told last  
14 week of the cases that go to litigation, the legal services  
15 attorneys are winning 90 percent.

16 MR. McNULTY: Can I respond, Mr. Chairman?

17 MR. WITTGRAF: Sure.

18 MR. McNULTY: We're have a rule. We don't go back  
19 more than twice, okay. That's not the point as far as how many  
20 cases are being won by legal services attorneys because the  
21 whole issue on this -- the reason why there is an amendment is  
22 because it's the pretrial procedures. It's the prelitigation

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1 procedures even that are being so strongly opposed.

2           The fact of the matter is, those procedures, as they  
3 have been analyzed by many, are probably entirely appropriate  
4 from a procedural standpoint. Sending a letter to someone  
5 saying that I won't tell you who, but you have violated the  
6 provisions of federal law with regard to this particular  
7 individual, but if you settle for this X amount, there will be  
8 no case.

9           One could argue that that's just an opportunity being  
10 provided. If they wanted to file a suit, they could have filed  
11 a suit immediately. What makes this so complicated is that that  
12 particular kind of action results in just a tremendous amount of  
13 litigation cost or I should say attorneys fees paid by the  
14 grower to try to determine whether or not he should fight it or  
15 go forward. It becomes counterproductive for the entire  
16 agricultural community.

17           Because these are lawyers paid for by tax dollars by  
18 that farmer and every other taxpaying American, we have the  
19 opportunity to step in and say, is there a better way of having  
20 that kind of dispute resolved? We don't have to leave it up to  
21 the desires of both the representative of the farm worker and  
22 the grower. We can work with this process because it's one that

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1 is financed by the American taxpayer and therefore regulated by  
2 the Corporation and Congress.

3 So I think it's a unique area of litigation. I'm sure  
4 that many are winning their cases because by the time they get  
5 to the litigation, they have been through a long road of  
6 communications with these growers, where the growers often are  
7 so frightened by what is involved in terms of the costs of just  
8 paying their lawyer, that they bail out. That's why I think we  
9 should address the issue in some fashion or another in the  
10 McCollum-Stenholm Amendment.

11 MR. WITTGRAF: Redistricting?

12 MR. POLGAR: Senator Rudman doesn't see how  
13 redistricting litigation is of any particular use to poor  
14 people, so he's not supportive of the use of legal services  
15 resources on that purpose. Having said that, the perception out  
16 there, especially by many in Congress on my side of the aisle,  
17 that this kind of litigation somehow hurts Republicans is  
18 probably not accurate. I think you're mostly dealing with  
19 voting rights related cases. Probably the concept of voting  
20 rights cases hurts Republicans I don't think washes on  
21 examination.

22 As to private funds, the senator feels, as I expressed

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1 earlier on the regulation of private funds, whether or not the  
2 Corporation has the authority to act in this area, we will  
3 probably know at some point when the ongoing lawsuit filed  
4 against the Corporation for the regulation issued is finally  
5 adjudicated.

6 MR. McNULTY: This is an area that relates to that  
7 balance I described very well. There may be situations where  
8 the need to address the fundamental questions of the strength to  
9 vote of individuals arises. There is no doubt about that in my  
10 mind.

11 The question, though, again is, do we have something  
12 which is so inherently controversial, so inherently partisan be  
13 the activity of those attorneys that are funded by the American  
14 taxpayer? I think that this is an example of something where  
15 the balance is struck in such a way that we have to reduce  
16 dramatically the possibility of these taxpayer-funded attorneys  
17 being involved in something that strikes the heart of the  
18 community and has such a partisan edge to it.

19 Furthermore, this has become a very high-tech area.  
20 If we open the door to -- as it currently, I suppose, is -- if  
21 we continue to keep the door open on this litigation, this will  
22 undoubtedly grow. The interesting thing about the Hatch survey

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1 that took place in the early 80s was that that was only those  
2 who responded to that survey in terms of numbers of programs  
3 that were engaged in redistricting litigation.

4 Everyone will admit that the 1992 reapportionment  
5 battle is definitely going to be a much more intense battle for  
6 a variety of reasons, but one of which is the fact that this has  
7 become more of a high-tech process in '92. A lot of people will  
8 be getting involved for that reason.

9 To let the taxpayer-funded lawyers get involved as  
10 well, it seems to me to be an improper way to strike that  
11 balance between serving the poor and at the same time  
12 recognizing the fact that these lawyers are not the same as  
13 privately-funded attorneys.

14 MR. WITTGRAF: Further restrictions of class action  
15 lawsuits?

16 MR. POLGAR: The current law or the current  
17 appropriations rider says that each local Board has to have a  
18 policy, and class actions suits can only be brought in  
19 accordance with that policy. It seems to have worked reasonably  
20 well, at least complaints have gone down a great deal since  
21 1981.

22 The Board has since 1984 had the authority to adopt

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1 its own regulation on it, this Board here. Even the last Board  
2 never took it up, which also indicates to me that the system  
3 seems to be working itself pretty well as it stands. In terms  
4 of having the local Board make a decision on each class-action  
5 suit, my instincts tell me that it's impractical, would be very  
6 difficult to work out in practice. Some Boards only meet four  
7 times a year.

8 It raises all sorts of conflict problems for Board  
9 members that they now don't have because they are not involved  
10 in particular decisions on case selection. I should say  
11 potential conflict problems. I'm not sure it would actually  
12 work in practice.

13 MR. McNULTY: I generally agree with Tom. It's not in  
14 the McCollum-Stenholm amendment. That's simply because I don't  
15 think Mr. McCollum or Mr. Stenholm have become aware of a  
16 significant problem in this area. This goes back -- I'm going  
17 to wear out this balance thing, but I think this may weigh down  
18 the other side of that balance.

19 If an attorney out there in the field sees that as  
20 being the most effective and prudent way to pursue a matter and  
21 has followed the procedures that are already in law, that the  
22 fact that that may be an unpopular case because it has

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1 significant implications because it's a class-action suit, is  
2 not something necessarily that we should do anything about.  
3 Therefore, I think that Mr. McCollum would be generally  
4 satisfied where class actions stand right now.

5 MR. WITTGRAF: Specific application of federal fraud,  
6 theft statutes to LSC grantees or grantees' employees?

7 MR. POLGAR: I frankly thought they were covered for  
8 the most part. If it needs to be clarified, we don't have any  
9 particular objection to it. The only caveat I'll throw in there  
10 is that in the context of the various McCollum-Stenholm  
11 provisions, there was enough to get Senator Rudman going that  
12 we've never bothered to worry about the particular wording of  
13 this provision.

14 MR. McNULTY: Well, as a criminal law lawyer, this is  
15 one I have considerable amount of background in. I would say  
16 that the principle that Congress is using now is that where  
17 federal monies go, federal law seems to follow. That was  
18 addressed in the civil rights context with the Civil Rights  
19 Restoration Act.

20 Private programs in receipt of federal monies, the  
21 terms of their obligations to follow a variety of federal  
22 restrictions seems to be an almost settled issue. I think that

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1 it's very important when there is a violation of the public  
2 trust regarding the use of these funds; that not only are there  
3 common law theft statutes in every state that would perhaps be  
4 applicable, but the same way we treat any kind of theft of  
5 federal money or of fraud to receive federal money should cover  
6 the LSC grantees.

7 I don't mean to quote Mr. Frank incorrectly, but I  
8 recall that when this issue came up in the last oversight  
9 hearing, that he generally reacted in a positive manner. I  
10 would say that the awkwardness we deal with now in terms of the  
11 appropriations process is just that it's difficult to amend  
12 these statutes through an appropriations bill.

13 We ran into that last year on the House floor. We  
14 actually had to strike -- I'm not sure if you all are aware of  
15 this -- but the McCollum-Stenholm amendment last year on the  
16 House floor had delete this provision. A point of order was  
17 raised by Congressman Morrison on the House floor.

18 Fortunately, we had two ready to go. When the Chair  
19 rules in favor of the point of order and struck this provision  
20 on the ground of germaneness, we offered another amendment  
21 immediately that did not have the theft statute in it because it  
22 does become difficult in an appropriations process to amend

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1 statutes that are substantive provision of, say, Title XVIII.

2 MR. WITTGRAF: If I understood your first comments  
3 correctly when you said that federal law follows federal  
4 dollars, I was inferring from that that you didn't feel that the  
5 need was compelling. This was a part of the McCollum-Stenholm  
6 package.

7 MR. McNULTY: Oh, yes. My point for saying that was  
8 that that's why this makes sense. In this case, the federal law  
9 or at least the federal criminal law is not following those  
10 dollars in that same way in terms of the people who are the  
11 direct recipients of that money and are in the position of  
12 public trust to spend that money.

13 Because they are 501(c)(3) or private corporations  
14 does not, I think, reduce the amount of public trust as far as  
15 spending tax dollars. Therefore, federal criminal laws should  
16 apply to them.

17 MR. WITTGRAF: Earmarking, be it child support  
18 recovery, family law, antidrug activities, areas discussed, of  
19 course, in the context of McCollum-Stenholm, or anything else  
20 such as assistance to the homeless or any other areas?

21 MR. POLGAR: I'm not persuaded that national  
22 determination of priorities works for every program. Just to

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1 use the 9th example, rights of the homeless, for New Hampshire  
2 legal assistance to make that a priority of theirs just simply-  
3 - to decide we're going to spend 5 or 10 percent or 2 percent of  
4 their money on it, just simply makes no sense.

5 In the case of child support, I would note that it is  
6 a huge -- child support recovery efforts is a huge money maker  
7 for federal and state governments. The federal and state  
8 governments are already spending four times in excess of the  
9 Legal services Corporation budget on child support.

10 To make that a priority of legal services programs  
11 when the federal and state governments are already spending  
12 about \$1.4 billion a year on it, plus or minus \$100 million, is,  
13 I just think, foolish.

14 The real problem is that every community, every area  
15 is different. It's very hard to sit here and say what should be  
16 a priority when you're sitting out here. So we instinctively  
17 favor local control.

18 MR. McNULTY: That's why you really have to have a  
19 procedure. It was in the McCollum-Stenholm language and will  
20 continue to be. You have to have a procedure where the  
21 Corporation can make that recognition. The grantee simply has  
22 to let the Corporation know that that's not the nature of their

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1 particular service area so that the Corporation can waive that  
2 requirement. It has to be something to address Tom's concern.

3 I think earmarking generally is a good idea in going  
4 back to the question of how do you try to push a certain kind of  
5 litigation and try to restrict another kind when that is such a  
6 difficult process to make those distinctions. While I like  
7 earmarking, why I think Mr. McCollum and Mr. Stenholm want to  
8 push this idea is that it's a way of encouraging LSC attorneys  
9 to some limited extents.

10 You have to see, of course, that these percentages are  
11 very limited, to a limited extent encouraging activities in  
12 some areas where the Congress would say that this clearly is the  
13 kind of area that we had expectations that Legal Services  
14 attorneys would address, rather than say you can't do these 10  
15 things and assume that solves the problem.

16 We think that try to identify the list of things that  
17 can't be done, keep it to somewhat of a minimum in that sense  
18 because you realize that there is a need to represent the  
19 clients well, and at the same time try to encourage it in other  
20 areas.

21 The earmarking, to the limited extent they are, small  
22 percentages in actuality when they get worked out, are useful in

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1 that way. When we looked at the statistics which showed the  
2 number of cases involved in child support, we were very  
3 surprised.

4 We really expected to see a much, much higher level of  
5 involvement in child support cases. That's why we were  
6 persuaded or Mr. McCollum and Mr. Stenholm were persuaded that  
7 child support made sense. Of course, the drug trafficking issue  
8 has a life of its own that you are all, of course, very familiar  
9 with and you've been talking about that this morning.

10 So that's why that earmarking language came about. I  
11 think that Mr. McCollum and Mr. Stenholm will work vigorously in  
12 the appropriations process to press that concept. To keep it  
13 limited, I see that the upcoming we have some other ideas. I  
14 don't know where you draw the lines, but obviously if you  
15 earmark a wide variety of things, then you basically have not  
16 kept that balance and you've dictated to the attorneys every  
17 particular area they should engage in.

18 So I'm not sure where the line is drawn, but it  
19 certainly has to be minimized in terms of earmarking funds.

20 MR. POLGAR: One thing on child support we shouldn't  
21 forget here. When a welfare recipient collects child support,  
22 it increase their income and it reduces her welfare. The effect

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1 of it is that she doesn't gain very much, but the government  
2 gains a lot because of the reduced welfare cost.

3 As a result, the federal and state governments invest  
4 a great deal of money in child support enforcement efforts as it  
5 relates to welfare recipients. Whether a legal services program  
6 should invest substantial resources in that same area when the  
7 net gain to the client is not all that great but the net gain  
8 to the federal government is, I'm not sure that given the  
9 Corporation's mission, that that is a very helpful way to go.

10 MR. McNULTY: Your response to that simply is  
11 taxpayer-funded lawyers serving the interest of the government  
12 makes a lot of sense in that holding fathers or mothers  
13 accountable for their requirements to support their own  
14 children, and if that, in fact, assists in a budget deficit era  
15 relieving some of that obligation, I think that makes a  
16 tremendous amount of sense that that policy be pursued.

17 MR. WITTGRAF: Set way for earmarking into competitive  
18 bidding?

19 MR. POLGAR: I could write a book on this. The short  
20 answer is that we're in a stage right now where competitive  
21 bidding is a two-word phrase. I don't know what it means when  
22 it gets translated into practice. I see a plan for the

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1 implementation of competitive bidding. It would be a lot easier  
2 to pass judgment on it.

3 The current law says that the Board is going to have  
4 to develop and implement a system, so you have to come up with a  
5 plan. I've thrown the one caveat there that you may not be able  
6 to implement a reasonable plan without coming back to us for  
7 more legislation, especially as it relates to defunding and bar  
8 composition requirements. There may be some other things I  
9 haven't thought of.

10 It's very hard to have a view on the concepts. If it  
11 works, if somebody has a plan and it would work, presumably  
12 competition brings down the cost. If the plan doesn't work,  
13 then well -- if you can't come up with a good plan, then you  
14 can't do it.

15 MR. McNULTY: Competition for Mr. McCollum is a little  
16 bit like private funds is for Senator Rudman. It's one of the  
17 issues that -- it's probably the issue that Mr. McCollum is most  
18 committed to and will forcefully work for him in his days  
19 remaining in Congress, however long they might be.

20 I have briefed dozens of members on legal services  
21 issues. Every time I describe presumptive refunding to a member  
22 of Congress, his jaw or her jaw drops. They can't believe that

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1 that is the nature of the law with regard to those who receive  
2 grants.

3 It runs so contrary to the general nature of the  
4 markets effect, the kind of human nature recognition of what it  
5 means to be insured of continued funding, that it's compelling.  
6 I think Mr. McCollum feels that in time, and he's already made  
7 some progress in the sense that your confirmation under the law,  
8 the appropriations bill, will trigger the movement towards  
9 competition.

10 Mr. McCollum feels that that case can be made  
11 successfully in the United States Congress for some kind of  
12 competitive model. Now Tom's right, that competition in legal  
13 services is a very, very complicated thing. I know that the  
14 discussions over what the criteria will be for awarding a grant  
15 will be the most heated, probably, discussions in the history of  
16 this program should the day come that that begins to work itself  
17 out.

18 So I don't think that it's a simple thing. I just  
19 think it's the right thing to do to have competition. That's  
20 what I think that most members will recognize and then the task  
21 will be -- I would love to see the processes go far enough just  
22 to see the task get underway so that the process of working out

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1 a model which will take into consideration all these various  
2 delivery models and how it is that the United States Government  
3 can get the biggest bang for its buck as it funds attorneys out  
4 there to serve poor individuals, that that process be developed.

5 So competition is one that I am very optimistic about  
6 as far as the way the United States Congress is going to react  
7 to this however long it takes. As you may know, Mr. McCollum is  
8 adding this back in to his amendment. That is, we hope  
9 sincerely that your confirmation does take place soon.

10 He's going to make the argument on the House floor  
11 this year that waiting for the Board to be confirmed as that  
12 relates to competition just can't go on. We need to start  
13 moving on this competition issue ASAP. So I think the  
14 competition is just a question of time. When the time comes, I  
15 know it will be very hard work.

16 MR. WITTGRAF: Beyond broad concept of competitive  
17 bidding, any comments, either of you, on delivery systems other  
18 than the staff attorney model?

19 MR. POLGAR: The one comment that comes to my mind--  
20 of course, I'm always willing to experiment with new mechanisms.  
21 Quite honestly, certainly in terms of efficiency, as long as  
22 salary levels for legal services attorneys are as low as they

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1 are, it's going to be very, very difficult for any other form of  
2 delivery system to compete on a cost basis with them.

3 MR. McNULTY: Delivery systems are something that are  
4 steeped in the ideological split on this subject. Those who are  
5 very committed to the staff attorney model have a particular  
6 view of what the Corporation should be doing in a very  
7 fundamental sense in terms of social, political vision.

8 Those who are interested in the kind of voucher,  
9 adjudicare, private attorney models, usually look at it more  
10 from an economic standpoint and are not as interested or even in  
11 agreement with the fundamental, social, political visions of the  
12 staff attorney.

13 That's the problem with this whole debate. When a  
14 study was done of delivery models in the late 70s, the  
15 perspective on what works from the vision and purpose of Legal  
16 Services Corporation found its way really into that study. I  
17 think any study done of delivery models will be affected by  
18 that.

19 If the current staff were to do a study of delivery  
20 models, it would come out a different way for the same sort of  
21 philosophical reasons that it came out the way it did in the  
22 70s. I think that those different delivery models have shown

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1 themselves to have some merit. The fact that we don't know more  
2 about them is because we've really been locked into a staff  
3 attorney model. I know that Mr. McCollum and other minority  
4 members and some majority members in the House would be quite  
5 interested.

6 We just received a letter the other day from  
7 Congressman Bill Emerson to Mr. McCollum, actually it was a  
8 couple months ago, where he wrote a two-page letter, quite  
9 detailed, advocating for adjudicare model to Mr. McCollum. It  
10 showed the level of interest at least one member had in some  
11 other ideas. I think those ideas would probably expand if there  
12 was a climate for expanding them.

13 I think competition would probably provide that  
14 climate because then people could come forward and say here's a  
15 model for delivery and services that I've developed. I think  
16 it could get more done with it than the model that is currently  
17 serving in my area. That's the kind of healthy experimentation  
18 that Mr. McCollum would like to encourage.

19 MR. POLGAR: The big thing here is not trying to find  
20 new ways of delivering services. There are other ways to do it.  
21 The Corporation, incidentally, has gotten most of the money it  
22 has asked for over the last number of years to experiment. When

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1 crunch time comes and you're trying to develop a mechanism, you  
2 take a lawyer who gets paid \$50 an hour, which is very, very low  
3 wages, he works 1000 hours in a given year. That's half a year  
4 of billable hours. He's making \$50,000.

5           There are very few private attorneys that only charge  
6 \$50 an hour and only have 1000 hours of work a year. Probably  
7 not two percent of the LSC attorneys around the country make  
8 that \$50,000 a year. Don't talk ideology. Let's think in terms  
9 of cost. It's going to be very, very difficult to compete with  
10 the staff attorney system.

11           MR. McNULTY: I agree with that.

12           MR. WITTGRAF: Don't forget in that \$50 an hour, you  
13 have to take off somewhere between one-third or forty to fifty  
14 percent for the cost of overhead. It's not \$50 into the  
15 lawyer's pocket.

16           MR. POLGAR: I understand that.

17           MR. WITTGRAF: Well, I appreciate Tom's point. That's  
18 why I think we have to have some time to see how they might  
19 develop. It probably involves some creativity in the areas way  
20 of servicing as well. Yet the servicing has to be excellent.  
21 So that's where it becomes a challenge.

22           One of the things that I very much lost in all this--

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1 and I think it shouldn't be -- is that those who are serving  
2 right now in staff attorney models, are very dedicated  
3 individuals. That's a big asset. I think that the  
4 Corporation, whatever way it works out a competition framework,  
5 should really take into consideration that these are, by and  
6 large, some tremendous public servants in a time of sort of an  
7 "L.A. Law" attitude towards lawyers.

8 Legal Services staff attorneys, I think, are heroes.  
9 These are people who work for very low salary, generally  
10 speaking, and yet do it because they have a sense of vision and  
11 commitment. That's a wonderful thing. I think we need to  
12 really not try to discourage that by any means. The competition  
13 program will have to be sensitive to that fact that those kinds  
14 of public servants, those people who are out there on the front  
15 lines are serving.

16 The unfortunate thing over the 80s and all this battle  
17 over ideology and so forth, they have been really lost in the  
18 process because they are just unsung heroes who have bypassed big  
19 law firms and \$70,000 a year starting salaries to make this kind  
20 of commitment to the needs of the poor. That has to be  
21 appreciated and worked into any kind of framework for  
22 competition in other models.

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1           MR. WITTGRAF:     I'm afraid we're going to start  
2 imposing significantly on your respective schedules. The Board  
3 members have been sitting patiently and I know have a number of  
4 questions and comments. As we look just at the last several  
5 things on the list, PAI, private attorney involvement, alternate  
6 dispute resolution, the mandatory sharing of fee-generating  
7 cases or the possibility or need for greater client input,  
8 things that are, by and large, outside the reform debate that  
9 has occurred in the last year or two, do either of you want to  
10 make any comments on either of those?

11           MR. POLGAR:     I don't have very strong view on  
12 expanding PAI, but before anybody expands PAI, I think you need  
13 to make sure that in the process you're not reducing the  
14 availability of supply of legal services. That would sort of be  
15 my one caution.

16                     It's one thing -- they have to spend 12 1/2 percent of  
17 their grant now on private attorneys. If you expand that, are  
18 you just cutting the supply of legal services? That would be  
19 the first question that would come to my mind.

20                     The question of sharing fee-generating cases is a  
21 very, very controversial issue, I think. I'll just pass on it  
22 for now in the interest of time. I don't have very strong views

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1 on either alternative dispute, the other thing here, or on  
2 greater client input.

3 On the alternative dispute resolution, I'd simply say  
4 again that we would look long and hard at burdening LSC  
5 attorneys with some sort of procedural requirements not imposed  
6 of attorneys generally.

7 MR. McNULTY: I think that's a very fair observation  
8 and one that we would generally agree with, too, in terms of  
9 how ADR might affect them. I think that ADR has only limited  
10 usefulness for that reason, but that's something that -- both  
11 PAI and ADR are something that competition again might address.

12 I will say something very quickly about fee-generating  
13 cases. I think it's a good idea to have this regulation. I  
14 think that to the extent that the availability of fees would  
15 skew the priorities of a program, that this regulation would  
16 address that or at least is attempting to address that.

17 I think that's the kind of involvement the Corporation  
18 should have in the delivery of legal services. Fee-generating  
19 cases in regulation make some sense that way.

20 MR. POLGAR: Oh, I should say on fee generating, there  
21 is an appropriations rider on it.

22 MR. McNULTY: Right.

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1 MR. POLGAR: Don't forget about it.

2 MR. McNULTY: There's one on everything.

3 MR. WITTGRAF: One final question. This is the third  
4 time this board has met; one day February 12th, two days March  
5 26th and 27th, and now one day on April 30th. The law, of  
6 course, only talks about the need for quarterly meetings, just  
7 four a year. At least we've embarked since February on what is  
8 more or less a monthly schedule and anticipate tentatively  
9 carrying that through the year.

10 Each of you has, in different ways, been involved  
11 probably far more with Legal Services Corporation and Legal  
12 Services program, the grantees than the 10 of us were here, 11  
13 counting Mr. Suarez.

14 Any thoughts that either of you have particularly as  
15 we look at reauthorization on how better a Board oversight such  
16 as ours, be it meeting 4 times a year or as much as 10 or 12  
17 times a year, can provide better oversight or is this structure  
18 under which we exist since 1974 even realistic?

19 MR. POLGAR: Well, in a sense, I will say it serves  
20 its purpose. The structure of the Corporation -- now this is  
21 long before I ever, frankly, even heard of the Legal Services  
22 Corporation, but if you go back to the early 70s, there is a

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1 person in charge of this program when it was within the Office  
2 of Economic Opportunity.

3 He was put in charge, hated the program, was going to  
4 tear it down by hook or by crook. This structure was created by  
5 Congress then with the deliberate intent of making sure that no  
6 one person could ever do such a thing again. It's worked. So,  
7 from that standpoint, persuading a lot of people on the Hill  
8 that they ought to change it is going to be a very, very  
9 difficult road to hoe.

10 As a general proposition in terms of efficiency of  
11 running something, I hold to the theory that the fewer people  
12 you have involved, the more efficient result it is. That's not  
13 a very helpful answer.

14 MR. WITTGRAF: You don't see any particular concern or  
15 skepticism in your Congressional contacts with the so-called  
16 corporate structure that exists?

17 MR. POLGAR: I haven't thought it out very much. I  
18 don't see any, no. I'm certainly not concerned about its  
19 constitutionality. It's never crossed our mind. I would say  
20 that to the extent that the Board addresses some admittedly  
21 difficult issues down the road, to the extent it can reach  
22 consensus among itself before it acts, it's a very useful thing.

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1           When you have 6 to 5 votes repeatedly, it's just an  
2 invitation for Congress to come in and referee the issue. Six  
3 to five in a parliamentary sense, sure one side won and the  
4 other side lost. To us it's a 50-50 split Board. So, to the  
5 extent you can work things out, produce a consensus and then  
6 take the position, I think it would have much more force than  
7 the last Board ever had because of the divisions that they  
8 couldn't resolve.

9           MR. McNULTY: Mr. Chairman, I would say that there is  
10 talk from time to time about the corporate structure, whether or  
11 not it's the best way to go. The independence from the  
12 executive, the idea of folding into the Department of Justice,  
13 those ideas circulate. They have some interest to them, but I  
14 don't think they are of any kind of significant interest that  
15 they will see substantial attention in the future.

16           Mr. McCollum has not chosen to invest his time and  
17 effort into that area of reform in terms of the structure  
18 itself for the simple reason that it's probably not likely to be  
19 time efficient for him, given the lack of a mandate to change.  
20 I would say to your question, though, the other way, you may not  
21 have been asking this directly in a sense of the idea of coming  
22 together and having meetings. This is a very necessary step.

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1           What I would really urge, for what it's worth, is a  
2 very active involvement in getting around the country to be with  
3 the programs themselves, each Board member doing that in  
4 whatever way is possible, and not being surrounded by simply the  
5 sort of Washington folks on this thing, both on the corporate  
6 staff and those who are advocates for the program.

7           When I walked into the room today, many of the same  
8 folks were here when I worked in 1985 and were here before I  
9 was. Even though the staff changes, the staff carries the same  
10 issues that were issues we were pushing in those days. I think  
11 there's a kind of stalemate in that back and forth that needs to  
12 be broken in some manner or another.

13           I think it might be by each of you going out and  
14 becoming very familiar with the grantees, what they are doing,  
15 what their concerns are with the communities and the  
16 frustrations that might exist in terms of activities of program  
17 and trying to rise beyond the kind of sort of professional  
18 lobbying from both sides that really give, I am sure, a pounding  
19 with since you've come on board.

20           MR. WITTGRAF: I am going to open it up now. Before I  
21 do, thank you very much to both of you for preparing and taking  
22 so much time this morning. We sincerely appreciate it. I think

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1 we're all that much more knowledgeable as a result. As we said,  
2 last month when we had a day plus hearings -- we're very much at  
3 the beginning of our learning curve.

4 The questions we're asking today are just tentative  
5 questions. Forgive us if they appear to be ignorant questions,  
6 but we do need your assistance in helping us understand from  
7 whence we cometh and then to help give us some idea of where we  
8 might be going.

9 Mr. Collins?

10 MR. COLLINS: First, on the question of procedure.  
11 We are scheduled to have lunch, Mr. Chairman, from 12:00 to  
12 1:00. I would love to spend as much time as possible with these  
13 gentlemen. I really do appreciate your willingness to come  
14 here.

15 MR. WITTGRAF: I'll defer for a moment to the two of  
16 them. I do think each of them has commitments this afternoon.  
17 I suspect we're best off moving on. Let me see what they want  
18 to say for just a minute, Mr. Collins.

19 MR. POLGAR: I have time.

20 MR. WITTGRAF: The Chair would see two options; one  
21 would be about a 45-minute lunch break and then a continuation,  
22 the other would be simply to continue on for the next 45 minutes

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1 or so. What is the preference of the witnesses?

2 MR. POLGAR: I hate to do it, but in that choice I  
3 would prefer to continue on.

4 MR. McNULTY: I'm sorry. The idea of taking a break,  
5 and coming back, though, was probably not something that was in  
6 our schedule.

7 MR. WITTGRAF: That's correct.

8 MR. POLGAR: Let me say I prefer it one way. I'll  
9 stick if you want to each first and come back. Last week--  
10 you've probably been told this. That's probably why you're  
11 asking the question -- I made the comment that I had to be out  
12 of here by 1:00.

13 The reason I made that comment, which related to a  
14 committee meeting tomorrow, the agenda item was yanked. So I'm  
15 not quite under the constraints that I indicated I was to your  
16 staff last week.

17 MR. WITTGRAF: Mr. McNulty, it would be difficult for  
18 you to stay into the afternoon; is that correct?

19 MR. McNULTY: Well, it probably would.

20 MR. WITTGRAF: If we were to break until 1:00 and then  
21 continue with you gentlemen from 1:00 to 2:00, is that feasible?

22 MR. McNULTY: Well, I don't want to be the problem in

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

(1:27 p.m.)

1  
2  
3 CHAIRMAN WITTGRAF: Ladies and gentlemen, we are ready  
4 to proceed. At this time the chair recognizes Mr. Dana for any  
5 questions or comments he has of our two witnesses. Mr. Dana.

6 MR. DANA: Thank you, Mr. Chairman. I had a question  
7 concerning the current restrictions on the expenditure of funds,  
8 number 24. It says that the "New rules and regulations are  
9 revisions to existing rules and regulations adopted by this  
10 board after October 1, 1989, shall not become effective until  
11 October 1, 1990."

12 It speaks in terms of rules and regulations. What is  
13 the difference between a rule and a regulation? I know what a  
14 regulation is, I guess I don't know what a rule is.

15 MR. POLGAR: It's just regulations. I'm looking --

16 MR. DANA: In the statute itself it talks about rules  
17 or regulations.

18 MR. POLGAR: The answer to the question is we're  
19 basically talking regulations, we're talking policy decisions  
20 made by the board. I think the rules or regulations is almost a  
21 standard phrase because some agencies call what they rules, some  
22 agencies call it regulation. When you're legislating on this

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1 stuff, and I don't just mean on Legal Services, you frequently  
2 just end of with the term rules or regulations is the answer to  
3 the question.

4 MR. DANA: Thank you. Paul, you indicated that you  
5 thought 1010 C or the private funds, the use of private funds by  
6 LSC grantees was unworkable. Tom, you indicated that you  
7 thought the proposals for timekeeping were not very helpful and  
8 didn't see any real use for it.

9 It seems to me that the principal advantage in the  
10 timekeeping suggestions is so that we can accurately answer the  
11 concerns of those in Congress who don't like to see private  
12 funds used to do what Congress doesn't want them to do with  
13 them, so we are able to distinguish between who is doing what  
14 with whose dollars.

15 Right now my understanding is if the federal  
16 government gives LSC grantees to do certain things like the  
17 Older Americans Act, or a state government gives to an LSC to do  
18 things that are prohibited by Congress, that that's perfectly  
19 all right and either Congress or a state government can impose  
20 these things.

21 All of the programs don't have any problem  
22 distinguishing what pot is being used, but my problem is I'm not

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1 sure how they do it without timekeeping.

2 MR. POLGAR: There's a couple of answers to that  
3 question. First, programs to some extent do keep time now. If  
4 there's any kind of a billable case, a fee generating case, for  
5 example, they have to keep time. In terms of any lobbying they  
6 do with their LSC money, and there is some permitted, they have  
7 to keep time.

8 They also have to keep a number of other financial  
9 records to satisfy both the Legal Services Corporation itself,  
10 as well as other grantees. We had a situation in 1980 -- it was  
11 just one of many examples, but the New Hampshire Catholic  
12 Charities used to, I don't think they still do, gave an annual  
13 grant to New Hampshire Legal Assistance and they had to account  
14 for how they used the money and go back and justify themselves  
15 to the donor down the road.

16 In the case of a lot of sources of funds which are  
17 recurring annual sources, be it IOLTA or United Way, the funds  
18 will get cut off if you don't demonstrate to the source that the  
19 money is being used adequately.

20 MR. DANA: Wouldn't timekeeping assist in that  
21 endeavor?

22 MR. POLGAR: Timekeeping would probably assist in

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1 that, might assist in that endeavor, but at what cost in terms  
2 of implementation. I don't want to sit here and say that  
3 senator Rudman is unalterably opposed to timekeeping. When we  
4 were dealing with this a few years ago, we were dealing with a  
5 regulation with the program said -- I don't recall, and I don't  
6 have the number here with me -- would cost them approximately \$8  
7 million a year to run, an annual cost not getting into the one-  
8 time start-up costs.

9 At the time that was about three percent, four percent  
10 of their annual budget. We were saying what additional  
11 information are you going to generate that justifies imposing  
12 that kind of burden on the programs. Our instinct was that  
13 absent a positive showing of useful information, the existing  
14 standards for segregation of funds and accounting -- accounting  
15 is not the right word, but I'll use it -- accounting of costs  
16 and what paid for what and so forth, just seemed to us adequate.

17 Somebody can make a case that there is a use for that  
18 cost or if somebody can make a case, because I remember the  
19 Corporation said that \$8 million estimate was ridiculous, it  
20 won't cost them more than a \$1 million or \$1.5 million to do it  
21 annually in terms of timekeeping. So if somebody can justify  
22 that the benefit exceeds the cost, whatever the cost is, it's a

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1 whole different scenario.

2 MR. DANA: Okay. Under AWPA, moving to that briefly,  
3 have either of you considered in lieu of the proposals that are  
4 in Congressman McCollum's amendment, the McCollum-Stenholm  
5 amendment, have you considered recommending that the Equal  
6 Access to Justice Act apply to LSC funds such that in effect a  
7 farmer who was sued and there was not substantial justification  
8 for the lawsuit get his attorneys' fees paid by the LSC grantee?

9 MR. McNULTY: Well, I guess I should say that first of  
10 all, no, we haven't given it that much thought. One reason why  
11 we may not have given it much thought is that the approach we've  
12 taken to this issue has been more of a procedural matter in  
13 terms of the resolution of a dispute that exists on that  
14 particular land or with regard to that employment, contract  
15 employment.

16 As contrasted with the legitimacy or the correctness  
17 of the violation, as I understand these cases, and I've had  
18 many, many meetings with individuals who are the growers, at  
19 least from that side of it, in many cases they don't say that  
20 there hasn't been a violation of the statutory provisions  
21 regarding hour, wage and the other issues involved, so much as  
22 they make a claim or they raise the concerns about the way in

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1 which that violation was pursued and the way in which they had  
2 to deal with the problem.

3 My experience has been as I have talked to these  
4 growers, at least when they come and talk to those of us on the  
5 Hill, they make a recognition of the fact that violations  
6 certainly occur, but that it's the way in which those violations  
7 are addressed is a very costly, counterproductive process. So  
8 the amendment had the intention of focusing on the process for  
9 resolving the dispute as opposed to the legitimacy of the  
10 dispute itself.

11 MR. DANA: The Farm Bureau policies for 1990, have  
12 been distributed to us and their proposal 2C on this sheet calls  
13 for amendment to either prohibit Legal Services attorneys and  
14 groups from filing for or receiving costs or legal costs from  
15 defendants, or to permit successful defendants to file for and  
16 receive court and legal costs from the Legal Services groups  
17 that employees the attorneys bringing suit, which is the Equal  
18 Access to Justice Act.

19 It's the same vehicle that Congress used to write the  
20 problem of the federal government picking on a tax payer and  
21 losing. A lot of people are concerned about the might makes  
22 right problem in the federal government picking on the tax payer

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1 or the federal government-financed attorney picking on the small  
2 businessman.

3 I'm not sure that the solution that had been employed  
4 in the federal tax area isn't an appropriate one in the Legal  
5 Services area rather than creating this -- the Stenholm proposal  
6 struck me as making Legal Services attorneys fight their battle  
7 with one arm tied behind their back. Rather than giving a  
8 defendant who is being picked on a way of getting his attorneys  
9 fees back if he prevails and the suit is meritless or nearly so.

10 MR. McNULTY: I'll certainly take that suggestion back  
11 to Mr. McCollum and discuss it with him.

12 MR. DANA: The chairman indicated that we meet  
13 theoretically four times a year and recently on a monthly basis  
14 and we're trying hard to learn what it is that we're up to. I  
15 am, as I indicated at lunch, a little concerned about the  
16 language in the current statute that we're operating under, the  
17 appropriations statute, which indicates that should we actually  
18 be nominated, and better yet confirmed, that on October 1 we  
19 have to implement a competition model for all programs in this  
20 nation.

21 It's my understanding that we have done pilot projects  
22 over the last ten years and some of those projects we have

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1 internally studied but the final reports aren't even done yet.  
2 I am frankly concerned about, although I'm generally supportive  
3 of its flooring competition and using it where it would improve  
4 the delivery of Legal Services, and I think it would in some  
5 cases, that's just my instinct.

6 We don't have any, at least this board, hasn't had a  
7 chance to study anything, and to implement it on October 1 is a  
8 prescription for disaster. If we aren't going to have a  
9 reauthorization bill, I would give serious thought to giving us  
10 some time to a, study and perhaps test and permit us to  
11 implement on a very tentative basis so we don't, to use a  
12 phrase, throw the baby out with the bath water and/or harm the  
13 Legal Services programs and the lawyers that you spoke so  
14 glowingly about in your presentation.

15 MR. McNULTY: I appreciate that and, as I say, we are  
16 going to pursue it this year, but I think you make a very  
17 reasonable suggestion, as I said earlier, that the competition  
18 in a practical sense working out the framework for initiating  
19 that program was going to be a very complex process and it's  
20 going to take time. I think that Mr. McCollum and Mr. Stenholm  
21 would recognize that and we will certainly make sure that the  
22 language that is in the amendment is realistic in that regard.

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1 MR. POLGAR: I personally don't think you have to  
2 implement anything on October 1. I think the statute says you  
3 shall develop and implement. There is no -- even the original  
4 version on the language said develop and implement after  
5 September 30, 1989, so it was a not-before-date, it wasn't a  
6 date by which it had to be done.

7 I personally don't think you can do it. The  
8 corporation is now restricted in terms of what it can do even to  
9 implement such a system until the board is confirmed and let's  
10 assume things work smoothly in the Senate, which is never a safe  
11 assumption you're dealing with the U.S. Senate.

12 If you're confirmed next month, you can't put it in  
13 place in three months, it's not possible. We dropped out the  
14 date in the last go around, so now it just says, "A confirmed  
15 board shall develop and implement.

16 MR. McNULTY: Also I'll just add onto that, as you may  
17 know it preceded your arrival there was another hot debate over  
18 the question of how much on that could be done at this time to  
19 develop it. I believe Senator Rudman was concerned about the  
20 last board taking any action at all, at least any significant  
21 action to put anything together which would then be used when  
22 the power to actually award bids, grants competitively went into

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1 place.

2 So there is going to be a need, as a result of that  
3 dispute, over a new development, obviously.

4 MR. DANA: Mr. Chairman, I have some other questions,  
5 but I've taken up too much time.

6 CHAIRMAN WITTGRAF: Mr. Erlenborn.

7 MR. ERLENBORN: Just to finish up on that last  
8 question, these several limitations that have been adopted in  
9 the annual appropriation process are only valid for the fiscal  
10 year for which they're adopted, are they not, so that whatever  
11 was adopted in the past has a limitation on the appropriation  
12 would expire October 1st and would have to be reenacted to be  
13 effective in the next fiscal year.

14 MR. POLGAR: As a general proposition, that's correct.

15 MR. ERLENBORN: As to timekeeping I think I would echo  
16 what my colleague has said that there may be some usefulness to  
17 timekeeping in some situations. I'm afraid often when we're  
18 discussing some of these topics each of us has a model in mind,  
19 and when we say timekeeping it might mean different things to  
20 different people. I would say that it could be very useful to  
21 make certain that if there is the allegation that LSC funds were  
22 used improperly and the grantee said, no those were private

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1 funds, that if they had records to show the time spent on these  
2 different projects with the different limitations and how they  
3 were funded, I think it could be very useful.

4 As I understand it this board is supposed to be  
5 looking at some models for timekeeping to come up with some  
6 suggestions as to how this might be done.

7 Do we have that legislative instruction?

8 MR. POLGAR: No. I think it's probably fair to say  
9 the board has a free hand on timekeeping, with the proviso that  
10 if it's going to do something, at least in the context of this  
11 fiscal year, it has to do it by regulation. That's another way  
12 of saying the staff of the corporation can't do it, the board  
13 has to do it, at least that was the intent of the provision.

14 Beyond that, I mean, speaking for my senator, I don't  
15 think he's either encouraging it or discouraging it. He  
16 discouraged prior efforts because he didn't think a case had  
17 been made that the benefit exceeded the cost as someone who has  
18 addressed the subject in both public and private practice, he  
19 just has a rather visceral dislike for it.

20 So it's really up to you, subject to the only  
21 constraint that it's got to be by regulation.

22 MR. ERLNBORN: I can understand his visceral dislike,

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1 as one who has to keep time records. I really hate to do it  
2 until it comes time to send out the bills and I'm glad I did.

3 As to class actions, Paul, did I understand you to say  
4 that there is nothing in the current McCollum-Stenholm amendment  
5 or series of amendments that addresses class actions?

6 MR. McNULTY: That's Correct.

7 MR. ERLENBORN: There was in the past, was there not,  
8 or was that just talk of that?

9 MR. McNULTY: I think we may be talking about -- I  
10 think I know what we're discussing here, I was confused by the  
11 terminology. There is a provision, and this may be what we're  
12 describing and Tom can interject here, the provision that  
13 concerns the control, the board with regard to the priority  
14 setting and even the question that reaches to case selection.  
15 In that sense it certainly impacts class action suits as well.

16 I know that's a very controversial provision, the idea  
17 that the board of directors has some kind of direct say or  
18 impact on specific cases, and that must be the common issue here  
19 we're talking about. I'm sorry, I should have been more  
20 careful, just the word "class action" The word "class action"  
21 doesn't appear in that language, and that's what threw me off.

22 Is that what you were thinking of, Tom, when you said

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1 it's in there?

2 MR. POLGAR: I think it was direct. My recollection  
3 could be wrong, but I remember there being a provision in the FY  
4 90 -- in the amendment his congressman offered last fall which  
5 said that on class action suits you were going to have to make a  
6 -- the board was going to have to make the decision on whether  
7 to take on each case and then on each significant stage in the  
8 litigation the board was going to have to approve it.

9 MR. ERLBORN: When you say board did you mean the  
10 local?

11 MR. POLGAR: The local board.

12 MR. ERLBORN: The local board, yes.

13 MR. McNULTY: I'm sorry, I don't have the amendment  
14 with me right now and my memory right now has faded on this. I  
15 thought it was a more general, limiting language. I'll have to  
16 just go look at the amendment.

17 MR. ERLBORN: Do you know if that language that Tom  
18 was describing if that will be in the current version this year?

19 MR. McNULTY: Well, I could answer that question in  
20 this way, we haven't made any changes to it yet. We are working  
21 on some things right now and we may make other changes. In  
22 fact, some of the conversations I'm having here today will

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1 probably impact the language of the amendment, but I have to go  
2 back and check that one because my memory is so poor on the  
3 language there that I'm not able to be very useful right now.

4 MR. ERLBORN: Then lastly as to competitive bidding,  
5 I guess I had a new aspect brought to my attention here when I  
6 appear today at this meeting. So often in the past when I've  
7 heard people talk about competitive bidding, they begin to talk  
8 about individual attorneys or law firms bidding. Of course,  
9 that is not necessary what competitive bidding is.

10 The model for delivery of service could be -- there  
11 could be several different models, it wouldn't have to be  
12 individual attorneys or law firms bidding against local Legal  
13 Services groups.

14 MR. McNULTY: Right.

15 MR. ERLBORN: It does seem to me that the current  
16 law, if I understand it correctly, requires a formal procedure  
17 not to refund a program, it's somewhat analogous to the FCC  
18 license for a radio or television station. It was sort of an  
19 automatic renewal. I don't know what the current law is today,  
20 but I know there is quite a controversy in Congress about  
21 whether that ought not be changed so that a licensee would not  
22 have a prior right to the license the next year, but would have

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1 to reapply and prove themselves again.

2           Again, just kind off the top of my head without having  
3 reached a conclusion on this, it almost seems to me that that  
4 would have a salutary effect with grantees. Rather than to be  
5 assured that they were going to be refunded unless some formal  
6 procedure was gone through, but rather that they would have to  
7 annually prove their worth might have a salutary effect. As I  
8 say, I've not decided on this yet, but it does kind of appeal to  
9 me.

10           MR. McNULTY: Well, it's interesting in a different  
11 climate that concept is, I think as you've stated as reasonable  
12 idea. When the climate is such that there is so much conflict  
13 and antagonism on these issues, then of course anything like  
14 that is seen more in those terms and it's seen more as a way of  
15 just defunding programs and so forth and so on.

16           That's why it has to be seen in a new context or a new  
17 climate, which this board is really the first step in that  
18 process of developing. I mean, when you look at 1981, the very  
19 fact that Congressman Kastenmeier supported the elimination of  
20 the presumptive refunding language, why?

21           Not because Congressman Kastenmeier wanted,  
22 necessarily, to do away with section 1100 or whatever the

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1 section is, but because he and Caldwell Butler had established  
2 such a positive working environment with each other to try to  
3 work out a consensus on Legal Services that that was part of the  
4 give and take of that and Mr. Kastenmeier, I supposed, saw it as  
5 reasonable in the context of a general cooperative relationship  
6 he had developed with Mr. Butler.

7 I think it's that kind of climate where questions like  
8 competition have to be worked out because they do raise so many  
9 difficult problems, but at the same time as a theory apart from  
10 the antagonism it makes great sense. Obviously one of the key  
11 concerns is the transition. If a current grantee does not  
12 receive an award to continue to serve, you've got clients,  
13 you've got people who have to be served, and that has got to be  
14 something that is addressed so there is no loss in quality in  
15 service to any one client because of the change of that service  
16 area to someone else. Again another thing which is problematic,  
17 but I don't think something that can be overcome.

18 MR. ERLNBORN: Thank you, Mr. Chairman.

19 CHAIRMAN WITTGRAF: Mr. Hall.

20 MR. HALL: Thank you, Mr. Chairman. I have only one  
21 thought and it's a rather fundamental thought on the limiting  
22 the use of private funds that we've discussed here today. I

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1 don't know if it's well-founded or not, and I'd like to hear  
2 both of you respond to it.

3           As a board member of the Legal Services Corporation,  
4 if we have an opportunity to get more money to serve the poor,  
5 it seems like we should do that. Maybe that's where I'm  
6 confused, but it seems like if we take control or have the  
7 ability to take control over private funds, that's what we're  
8 doing, I almost feel I have an obligation to support that,  
9 especially in light of the fact that we can make exceptions to  
10 funds that go to help the elderly who might not be poor, fund  
11 that go to help battered wives who may not be poor and other  
12 exceptions like we put in the regulation that was passed last  
13 year on this matter.

14           At that time I just thought we've got an opportunity to  
15 -- we may be taking away from some people that need it, but our  
16 job is to give it to the poor. Where am I wrong on that? It  
17 tended to make me want to support that particular regulation,  
18 because of that duty.

19           MR. POLGAR: It's not a question of whether you're  
20 trying to divert resources from the poor. If a private group  
21 decides to issue a grant, make a donation to or issue a grant to  
22 another private nonprofit corporation, which is what the local

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1 Legal Services programs are, then there they have a relationship  
2 between themselves that they have to work out.

3 To say that in many instances, say, that you're going  
4 to restrict the way the money is going to get used, is to say  
5 that they're not going to get the money in the first place. So  
6 I'm not sure that you're succeeding in the goal of getting  
7 greater delivery of services to the poor.

8 There are also very, very tricky constitutional  
9 ramifications when you start getting into grants or the use of  
10 funds as it relates to expression, which can be both in terms of  
11 litigation in the court room and in terms of even outright  
12 lobbying if private -- New Hampshire Legal Assistance is a  
13 private, nonprofit corporation, this is an actual case, and is  
14 given a grant to lobby, I'm not sure that the federal agency has  
15 the authority to say no.

16 There, in fact, has been cases on this as it relates  
17 to public television stations, which the government lost and in  
18 which the public television station was able to persuade the  
19 court that it had a first amendment right to do with the money  
20 as it would. So it's a very, very tricky area to get into.

21 Let me add another thing, if you think broader than  
22 Legal Services, and Senator Rudman sits on the Appropriations

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1 Committee, a lot of people have bright ideas as to how we would  
2 like to control what other people do.

3           You have an area that's very, very controversial and  
4 it relates to right to work laws. There is a lot of local  
5 chambers around the country that federal money for job creation  
6 in states where right to work laws are a perennial issue, that's  
7 not every state but in a lot of states, those same local  
8 chambers of commerce are lobbying very, very strongly in favor  
9 of a right to work law.

10           Now can we or should we try to use the federal job  
11 training funds as leverage to restrict what the local chambers  
12 do? You can work your way through this on issue after issue  
13 after issue. It would be a nightmare if we got into it on the  
14 Hill, who has the votes of the day.

15           MR. McNULTY: Mr. Hall, I am not sure if I fully  
16 understand your point in that you're saying that the restriction  
17 on private funds would actually -- you supported, is that what  
18 you said?

19           MR. HALL: I did, and I probably was wrong, but I felt  
20 like it gave more money to help the poor, it brought it a  
21 greater class of eligible poor although it let out other people  
22 whose needs are serious and probably just as sincere, but yet

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1 they weren't eligible clients.

2 MR. McNULTY: I see what you mean.

3 MR. HALL: Was I wrong?

4 MR. McNULTY: No, I'm sorry. I see that point.

5 MR. HALL: Then I felt if that's what it does, I have  
6 never understood the constitutional issue. I just look over at  
7 Tim and say, "Can we do this," because I agree with you. It's a  
8 strange thing to me to find out that we could pick somebody  
9 else's pocket for own folks, but you know they told me I could,  
10 so I did. I felt I had a duty to it.

11 MR. McNULTY: I wouldn't agree with Tom's analysis of  
12 that constitutional issue. I think there is some amount of -- a  
13 certain amount of debate on that point. It depends on what  
14 precedent you want to look for regarding the ability to bind the  
15 private organization if it accepts federal money. The first  
16 amendment issue is certainly --

17 MR. HALL: I was just saying on the constitutional  
18 arguments on either side, instead of saying whether or not I  
19 understand them both, I'll say I understand each of them equally  
20 well. In the meantime, we passed a regulation on it that kind  
21 of got axed. It seemed to me we might have the duty to support  
22 that if it costs more money for the poor.

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1           MR. McNULTY: It's an interesting perspective on it,  
2 that had been the focus so much in thinking about -- we always  
3 normally think of the private funds issue in the context of  
4 trying to get Legal Services attorneys out of certain activities  
5 where they are free to engage as a result of the money being  
6 bound by a federal law. I think you've raised an interesting  
7 perspective on that debate.

8           However, I think it will probably continue to always  
9 primarily focus on this question of what is done with private  
10 funds, because it does touch probably some of the most  
11 controversial issues that face as even a nation, if you think of  
12 it from the perspective, for example, of the abortion and what  
13 can be done with private funds and what cannot be done with the  
14 federal monies. We're talking about something that strikes as  
15 probably the most controversial chord that exists on the House  
16 or the Senate.

17           CHAIRMAN WITTFGRAF: Ms. Wolbeck?

18           MS. WOLBECK: I have nothing, thank you.

19           CHAIRMAN WITTFGRAF: Mr. Guinot?

20           MR. GUINOT: No.

21           CHAIRMAN WITTFGRAF: Ms. Pullen?

22           MS. PULLEN: No.

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1 CHAIRMAN WITTGRAF: Mr. Molinari?

2 MR. MOLINARI: Nothing.

3 CHAIRMAN WITTGRAF: Ms. Love?

4 MS. LOVE: No.

5 CHAIRMAN WITTGRAF: Mr. Dana?

6 MR. DANA: Angels rush in.

7 (Laughter.)

8 MR. DANA: I was interested in the dialogue between  
9 the two of you on the subject of earmarking in the area of child  
10 support. We have been treated to several emotional speeches on  
11 that subject. I think I understand, correct me if I'm wrong, is  
12 it true that if we were to spend \$20 million on child support  
13 endeavors and we were successful, we would take money from  
14 absent fathers and give that money to state and federal  
15 governments?

16 MR. POLGAR: To the extent that the mothers who are  
17 being assisted were on welfare, that is correct. In fact,  
18 federally funded lawyers are doing that. My recollection is  
19 it's an entitlement program for the states through the AFDC  
20 program where, to the extent the state is willing to invest in  
21 lawyers to go after people with child support, the federal  
22 government kicks in about 60 percent of the total pot, and \$1.4

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1 billion, I think, this year they're estimating will be spent on  
2 it.

3 MR. DANA: We're spending this money which dwarfs the  
4 money we spend on legal services because it is a way of reducing  
5 the costs to government of this program?

6 MR. POLGAR: That's correct. It has now also been  
7 expanded so that certain people who are not on AFDC can access  
8 into the system as long as they're willing to pay 10 percent of  
9 their collection to the states.

10 MR. DANA: So if we were to spend this \$20 million on  
11 this endeavor, it would, in effect, remove money from what might  
12 be poor fathers and not benefit poor mothers, but maybe benefit  
13 the taxpayers, did I understand that's your view?

14 MR. POLGAR: That's correct. It would expand, if you  
15 take \$20 million as your base, it would expand the existing  
16 effort by something on the order of one percent, one and a half  
17 percent.

18 MR. DANA: Well, this is being sold to us as a benefit  
19 to poor mothers and children, but they aren't going to benefit  
20 at all from this, are they?

21 MR. POLGAR: Not dollar for dollar, but to the extent  
22 that their award, the court ordered payment, exceeds what

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1 they're getting on welfare, you know if I'm getting \$200 a month  
2 on welfare and all of a sudden start collecting \$500 a month in  
3 child support, then there is a gain to the client, yes.

4 MR. McNULTY: I would say that I am a little troubled  
5 by this analysis only because I'm not sure if it's correct to  
6 assume that the parent who is in need of the child support has  
7 actually not benefitted by the collection of that support. Part  
8 of the problem here is that Tom does apparently have some  
9 figures that he's able to cite.

10 I have not had a chance to talk to those in practice,  
11 but it strikes me as being a rather unusual conclusion to reach  
12 here that one who is owed child support and does not receive  
13 that child support is actually not better off by receiving it as  
14 opposed to just simply going to the government for that support.

15 If that were true, it would defy some of the only--  
16 my own personal experiences which I had which were very limited  
17 for a year before I came to Congress where I was working out of  
18 my law school clinic and involved in these kinds of cases and  
19 seeing the kind of anguish of mothers who were in need of that  
20 support, if they were so well taken care of by the state, I  
21 would have thought my experience would have been different, it  
22 wasn't that way.

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1           So I'm a little surprised by that conclusion.

2           MR. DANA: I'm not sure of my conclusion, but that's  
3 all of the evidence I've been hearing would lend me to believe  
4 that this \$20 million is not going to help poor mothers and  
5 children, it's going to help reduce the cost of government. I'm  
6 not sure that it's being sold as a use of Legal Services money  
7 to help mothers and children. I think I'm sensing the reality  
8 as something else. I just think we ought to be very clear who's  
9 the beneficiary of this, and if it's being sold as a way of  
10 reducing the cost of government, then I think Congress ought to  
11 put the \$20 million into the \$1.4 billion that they're --

12           MR. McNULTY: I don't think I would, at this point,  
13 disagree with Tom's observation to the extent that child support  
14 obligations are collected, that that reduces the draw upon the  
15 state to, in effect, stand in the place of that support. So if  
16 there is a second benefit and if that's the way you want to  
17 frame it, I can see that clearly, but to presume that the second  
18 benefit, therefore, somehow makes the first benefit, that is the  
19 parent in need of the child support, I don't follow the logic of  
20 that it would reduce that benefit at all, if benefits do exist  
21 to that parent, it does also impact the government, there's no  
22 doubt about it.

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1 MR. POLGAR: I'm not saying that I think a woman is  
2 better off receiving child support from her former husband than  
3 she is having to fight with the welfare system, that's not the  
4 value I'm drawing.

5 What I was saying that the federal government also  
6 benefits so clearly that through the welfare systems operating  
7 int he states it is investing a great deal of money in it  
8 already, so in the context of setting priorities for local Legal  
9 Services programs looking -- what are the important problems in  
10 all of our towns and counties to deal with, I don't think this  
11 is it.

12 MR. McNULTY: Mr. Houseman and I had a conversation  
13 afterwards where he mentioned to me that there may be some child  
14 support collected in other contexts of service to clients,  
15 divorces and some other matters, that's something that we'll  
16 immediately take a look at. That's a very good point and we  
17 want to make sure that our earmarking of it is a realistic and  
18 necessary thing. We went on some -- used information we had  
19 last year that may not have told the entire story.

20 MS. PULLEN: I think when we talk about the state and  
21 federal governments keeping some of their welfare benefits by  
22 spending money to get child support collections up in order to

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1 get women and children off welfare, therefore, LSC doesn't have  
2 to do anything because everybody else is already so into this, I  
3 think that we are forgetting a group of people who are poor  
4 enough to be eligible to be LSC clients, yet are not so poor  
5 that they are on welfare.

6 The eligibility does not match, at least the  
7 information that I've been told. We serve more people than just  
8 those who are on welfare, and those are people who are in a very  
9 marginal position. The fact that we service them indicates that  
10 we don't think that they have enough money to afford an attorney  
11 to do this themselves, but they are not getting attention from  
12 the state and federal government helping them do it, because the  
13 state and federal government is not benefitting from those  
14 collections.

15 MR. POLGAR: Yes, ma'am, that is correct. There are a  
16 lot of people who are eligible for Legal Services because they  
17 are below the poverty line, which is the thrust of the cutoff,  
18 as I recall, whose income is still too high to receive welfare.  
19 Those individuals can access, and I'll get you the details on  
20 the, I'm sorry I don't have them, but even they can access the  
21 existing federal and state child support mechanism.

22 MS. PULLEN: But those existing mechanisms do not put

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1 the priority on those cases that they do on the cases where the  
2 state and federal governments will monetarily benefit from it.

3 MR. POLGAR: I don't know the answer to that.

4 MR. McNULTY: That's a very good observation, though.

5 CHAIRMAN WITTGRAF: I have a couple of questions.  
6 From your perspectives, can either of you comment for us on your  
7 sense of the effectiveness of the monitoring, audit and  
8 compliance effort that has been made in recent years by the  
9 Legal Services Corporation on successes, failures, shortcomings,  
10 opportunities?

11 MR. POLGAR: I think they've invested a great deal of  
12 money in attempting to determine whether or not programs are  
13 complying with the existing regulations, statutes or policies  
14 affecting the grantees. I think there has been virtually no  
15 effort to try to look at a program and evaluate it and see what  
16 it could do better or how it could operate more efficiently or  
17 whether there were problems with their personnel systems in  
18 terms of how they were taking care of their employees, the kinds  
19 of things that go into running an effective and efficient  
20 operation.

21 In addition, from the stories and from examples have  
22 cited at me, the monitoring audit and compliance effort is so

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1 geared to finding something wrong and has such an inherent  
2 assumption built into there must be something wrong, that they  
3 are demanding innumerable records and paperwork and making the  
4 programs just jump through massive hoops, which are time  
5 consuming and costly to the program in an effort to, sort of  
6 like a fishing expedition, to find it. I guess I would liken it  
7 to discovery in a civil litigation where you just go rummage  
8 your way through the corporation's documents to see if you can  
9 find something wrong.

10 I don't portend that that's the whole story, but  
11 that's certainly the impression I'm getting where I'm sitting.

12 MR. McNULTY: I haven't had any personal involvement  
13 with the monitoring process. For three years when I was here at  
14 the corporation, it was the time when a very significant  
15 transition was occurring as far as the regularity of monitoring  
16 and the speed at which the report would be produced, and that  
17 consumed a lot of my time in terms of congressional relations  
18 satisfying members regarding that.

19 There was a philosophical change that occurred in  
20 monitoring in the mid to about the mid-'80s, maybe a little  
21 earlier than that. Once the whole management issue settled down  
22 a bit in terms of the board members, the confirmation, as you

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1 know, didn't take place until '84, '85. So there was a lot of  
2 instability for that reason in terms of leadership.

3           Once that settled down, then the process of  
4 monitoring, I think, improved greatly, but it was a difficult  
5 process because a transition had to be made from what was a  
6 monitoring in the former administration by those who were very  
7 sympathetic and inexperienced with Legal Services programs, in  
8 many cases Legal Services attorneys have working with others to  
9 monitor, too, what was then, obviously a whole different  
10 administration and a different attitude toward the grantees,  
11 which was much more adversarial and that created a different  
12 kind of approach to monitoring.

13           That, as you can imagine, brought with it a lot of  
14 different problems. I think that the staff that work in the  
15 monitoring are very professional and hardworking. I know them  
16 from just my time when I was there, and many of them are still  
17 working at that and there is a lot of dedication there. I think  
18 they try to work in a personal way the programs.

19           I can't deny that Tom makes a good point in the sense  
20 that that full range of development assistance, I don't know to  
21 what extent that's being tried today, because I haven't seen a  
22 typical monitoring team or a typical monitoring report as of

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1 late.

2 I think that what I'm most concerned about, though, is  
3 the compliance issue, not so much whether or not there is enough  
4 compliance out there, but the question of how complicated that  
5 is. This goes back to my discussion with Mr. Erlenborn  
6 regarding the issue of competition and defunding. I think that  
7 everyone has to admit that 1980 showed us that a defunding  
8 process under this current law is an enormous task.

9 I can tell you that that is one thing has impacted Mr.  
10 McCollum significantly and why he's trying to look at ways of  
11 improving the delivery through competition, because he realizes  
12 how complex it is to defund a program if there are problems. I  
13 think that that's the concern we have, and I think that probably  
14 it would be reasonable to assume that a majority of the members  
15 of at least the House could be persuaded on that point, that  
16 there is a need to improve that process.

17 I would only say that the corporation has probably  
18 found themselves in a situation where they don't dare move  
19 forward in a compliance case unless they have something that's a  
20 very strong and enough happening there for them maybe to have to  
21 pass over other things simply because the amount of resources  
22 committed to a defunding is enormous, and certainly discourages

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1 it greatly.

2 CHAIRMAN WITTGRAF: So the so-called math process  
3 logically could and perhaps should be tied to competitive  
4 bidding or to the renewal of the license, to use FCC analogy Mr.  
5 Erlenborn gave, that those could logically go together. I  
6 assume aside from our discussion right now, that's why nothing  
7 has come up in the congressional process with something that  
8 would strike the two of you hopefully as somewhat reasonable as  
9 we talk about monitoring, audit and compliance on the one hand  
10 and competitive bidding on the other hand.

11 MR. McNULTY: Yes, but I would say that because a  
12 program has violated a restriction in the act or the riders,  
13 that in and of itself may not be a good reason to assume that  
14 they're not the best program in that service area in terms of a  
15 competition. So there seems to be a distinction between the  
16 compliance effort and competition. I didn't mean to blend them  
17 completely.

18 As you look at individual programs or applicants and  
19 you select one that appears to be the best to serve the eligible  
20 clients in that service area, that observation and that choice  
21 may not be -- and that is something that will have to be worked  
22 out as to how a violation will impact, but a violation of the

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1 rider or something may not negate the fact that they still offer  
2 very wise and careful manner for serving the clients.

3 So there's always going to be a need to do oversight  
4 and to deal with problems. Of course, if the problem is  
5 egregious that it goes to the point of defunding, then that's  
6 probably going to be resolved easier in the context of a  
7 competition than it would be to go through the litigation of  
8 defunding.

9 CHAIRMAN WITTGRAF: You're talking about earmarking.  
10 You both commented and you both gave different perspectives  
11 this morning. Taking some exception, I think, to what Mr.  
12 Polgar said, expressing a skepticism toward earmarking as I  
13 understand the history of federally funded Legal Services  
14 programs, earmarking has been part and parcel, at least as  
15 particular to Native American and migrant programs, so there is  
16 some history of earmarking.

17 Maybe instead of the term "earmarking" incentive  
18 funding would be another one, getting at Mr. McNulty's notion or  
19 Mr. McCollum's notion that the Congress is particularly concerned  
20 in certain areas, be it child support recovery, perhaps, or  
21 noneligible persons or be it in trying to deal with drug  
22 activity problems.

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1           You do acknowledge, Mr. Polgar, that there is some  
2 history of earmarking and would it be more palatable, perhaps  
3 Senator Rudman and some in the Senate if we were talking about  
4 incentives, which might be monies, especially now that we've  
5 asked for some additional monies, monies on top of the regular  
6 grants for areas of congressional emphasis on an incentive basis  
7 rather than an obligatory percentage of grantees monies being  
8 used in that way.

9           MR. POLGAR: There is a history of targeting a portion  
10 of the funds made available to the corporation to target  
11 populations perceived as in need of special services, mainly  
12 Indians and migrants, that was actually a decision made by the  
13 corporation that was just picked up by Congress and enveloped  
14 into the existing laws.

15           There is no history to my knowledge within a delivery  
16 program, whether I'm talking about local programs or even  
17 migrant and Indian component programs around the country,  
18 telling them what kinds of cases they should focus in on. I'm  
19 not sitting here saying that that's necessarily a bad idea. I  
20 mean, there's even language which admittedly is open to  
21 interpretation in the conference report on the State Justice  
22 Commerce Appropriations bill from last year saying all you local

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1 programs out there, we want you to give greater emphasis on  
2 anti-drug efforts.

3 What we did not try to do, and certainly Congress  
4 cannot do intelligently, but even may be a problem for you, is  
5 to sit there and say this is the right percentage and lock it in.  
6 That's where -- at least based on what we now know, that's a  
7 very difficult case to make.

8 CHAIRMAN WITTGRAF: That's why I was trying to  
9 establish the concept, perhaps, of incentive funding as opposed  
10 to earmarking so it's not obligatory or mandatory, but could at  
11 the same time reflect a congressional emphasis through federal  
12 funds through the funding of grantees for special or incentive  
13 areas.

14 MR. POLGAR: Certainly and then the national support  
15 centers, of course, are efforts by the corporation to focus in  
16 on the greater emphasis or attention to certain areas of law by  
17 definition, the veterans project, the consumer law center, the  
18 Western Center on Law and Poverty and so on and so forth.  
19 Several of those are specifically aimed at bringing emphasis to  
20 certain areas.

21 CHAIRMAN WITTGRAF: One final question from me.  
22 Virtually everything that we've talked about today and virtually

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1 everything that's been brought to us, I think, in the last few  
2 months has been what kind of strikes me of a restrictive nature;  
3 accountability being a more palatable word, perhaps, than  
4 restriction or restrictive.

5 I'm concerned as we look ahead for the '90s, having  
6 com through a tumultuous period in this area in the '80s, what  
7 if any ideas, or what if any information the two of you might be  
8 able to pass on to us in terms of the challenges that do lie  
9 ahead or expectations that members of Congress might have.

10 I suppose earmarking or incentive funding in some  
11 areas, the areas we've been discussing, might be a small step in  
12 that direction, but to the extent you can speak for them are  
13 there members of the Congress who are looking to some  
14 additional things, some new things, some different things--  
15 competitive bidding might be one -- but if there are other areas  
16 where opportunities lie or where challenges lie that haven't yet  
17 been brought to our attention and that are in the minds of  
18 certain members of the Congress?

19 MR. POLGAR: In my view there probably hasn't been any  
20 serious look at the existing structure of the program in over 10  
21 years. I don't mean to say that there aren't individuals out  
22 there who haven't given it serious thought and looked at it and

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1 thought about it, but by and large they kept their views to  
2 themselves, had positive, forward-looking ideas haven't been put  
3 out. Nothing along those lines has happened.

4 In the Senate, I've been dealing with this stuff  
5 mostly through the appropriations process. The appropriations  
6 committees, which have jurisdiction essentially over the whole  
7 United States government, are problem solving committees which  
8 don't have the time to sit there and give this kind of forward,  
9 "Where should we go from here," view of any program, not just  
10 the Legal Services program. I mean, we deal with problems, we  
11 make yesterday's problems go away.

12 If you're authorizing committees, I think you'll start  
13 seeing them getting into that. What there hasn't been is a  
14 debate or focus, where can we go from here. Even within the  
15 components of the corporation is the existing mix of resources  
16 or distribution of resources among the support centers. Is the  
17 existing earmark for Indian programs the right amount, is it too  
18 high, is it too low, even those kinds of more nitty-gritty day  
19 to day questions have not really seriously been looked at.

20 What Congress has done, what we've done through the  
21 appropriations process, is take a steel wall and surrounded the  
22 existing structure and said this is the way it's going to be,

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1 it's not going to change. If there's an area where things can  
2 be done, that's it. As to what exactly, I don't have it.

3 CHAIRMAN WITTGRAF: Unfortunately our budget request  
4 for FY 91 reflects, in a sense, that it kept the same  
5 allocations that you've just referred to and we have not, and  
6 all the work on the subject between the two of you and many of  
7 your colleagues, we have not looked at any kind of  
8 reapportionment.

9 MR. McNULTY: Well, I'm not very optimistic about the  
10 ability of Congress to do what Tom described and I agree with  
11 Tom that that would certainly be beneficial and is needed. As  
12 Tom was talking I was thinking of other issues unrelated to  
13 Legal Services where you have from time to time some significant  
14 shifts in the approach and structure and think forward in that  
15 sense, and it usually occurs when there is a climate for it to  
16 take place where a majority and a minority member because,  
17 perhaps, one is the chairman and one is the ranking member on a  
18 particular committee, they make a commitment that they're going  
19 to sit down and really work something out together and they lead  
20 the way in that sense.

21 The experience I've just recently gone through is with  
22 regard to the RICO (phonetic) statute where everyone wanted to

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1 reform, but were not sure how to do it. With Chairman Billy  
2 Hughes of the Crime Subcommittee and Bill McCollum we have just  
3 completed a process of probably close to a year with an entirely  
4 new structure for how RICO will work, much different than all  
5 the other bills that exist.

6 It's been a very positive and encouraging thing. The  
7 cooperation has been tremendous and that was the agreement we  
8 had we walked into the process. That's the only way you're  
9 going to have a real restructure, and that's going to take some  
10 individuals deciding they're going to do that. Right now I  
11 don't really see how that lines up.

12 I think that short of that kind of very fundamental  
13 rethinking of the issue from a structural perspective, I think  
14 that competition, I know that you said except for competition,  
15 but I really do think that competition is going to be the place  
16 where in this decade where the most significant reshaping of LSC  
17 will occur.

18 I think that competition will provide an opportunity  
19 for a consensus on Legal Services finally, because in the past  
20 what we have had is members who are visited by some constituents  
21 and the constituents say, "I was sued and look what happened and  
22 this is the situation that occurred following the lawsuit."

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1 This conservative member, maybe even a moderate member gets  
2 upset and then brings that to the attention of the authorizing  
3 committee or the Appropriations Committee members and says,  
4 "What's going on here? Why are Legal Services lawyers doing  
5 this?"

6 Competition will provide a very fine response to that,  
7 which is basically to say, well, there are restrictions and  
8 those restrictions are being enforced as best they can be, and  
9 that is probably point two to this, that monitoring or the  
10 oversight will always have to continue to be there and to be  
11 very effective, and that's why there's maybe some tools that  
12 will be necessary to make it better.

13 You can say, look theirs is a service area, these are  
14 the people that are interested in serving that area and this is  
15 simply the process that the corporation is following. It sort  
16 of takes the corporation out of having to pick sides in terms of  
17 any one legal dispute that the recipient of funds is simply  
18 doing what the recipient is permitted to do under law.

19 The response to that might then be more of going back  
20 to the community and saying does this grantee represent the  
21 consensus of this community or this grantee trying to force an  
22 agenda that is outside of really the community's general

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1 interest and so forth.

2 I think that that's, perhaps, a better way to resolve  
3 these disputes that have gone on for the last many years. So I  
4 think that's where the '90s are going to focus, more on the  
5 method for delivering services and getting more people involved  
6 in that process, letting more people have an opportunity to say  
7 I'd like to serve this area in a different way and give the  
8 corporation a chance to really think that through.

9 MR. POLGAR: Let me add the ability to -- when we talk  
10 about competition, most of us, at least I do, I think buying and  
11 airplane or buying houses or even taking bids on building a road  
12 or a building, competitive bidding in service delivery areas,  
13 ranging from processing Medicare claims for individuals to  
14 public defender work at the state and local level, to delivery  
15 of education services has been fraught with problems where it's  
16 been tried and also full of controversy.

17 I'm not saying it's not workable here, it may well be,  
18 but the concept that competition will make the controversy go  
19 away isn't going to wash, and we have had tremendous problems.  
20 We had a situation in new Hampshire where Medicare put out the  
21 claims processing for Medicare part B out for bid. They had,  
22 and I won't name the companies involved, but the company that

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1 had been doing it for years lost the bid to a new company and  
2 three years later we're still trying to put the damage to repair  
3 the damage that has been done to the ability of the senior  
4 citizens and providers and hospitals in the state to get  
5 reimbursed for services they have provided.

6           So it's not an easy thing. To the extent that  
7 competition extends beyond simple how much service can you  
8 deliver for how little money, which is what -- and you're  
9 talking about going beyond that when you start using MAC  
10 standards or how the community views the program or other  
11 nonfinancial elements, you start bringing those into the  
12 competitive bidding process, we're right back to the -- I mean,  
13 you're going to be right in the thick of controversy as people  
14 try to use the competitive bidding system that is designed to  
15 deny funding or insure funding for a favorite group which has  
16 nothing to do with the merit of the service they can provide,  
17 but has to do with the attitudes and the friendships and the  
18 politics of the competing organization.

19           So competition is not an easy thing to go down, it is  
20 not going to be a very easy thing to implement. To some extent  
21 there will always be some controversy or some headline or some  
22 powerful person upset about Legal Services.

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1           You've got over 300 programs which probably have over  
2 1,000 offices, maybe 2,000, and 15,000 lawyers nationwide, many  
3 of them very young, many of them very idealistic, because if  
4 they weren't very idealistic they wouldn't take the jobs at the  
5 lower wages, and they are going to periodically going to bring  
6 suits that are just going to drive everybody up a tree.

7           Some of those suits may be perfectly meritorious suits  
8 from a legal standpoint, but that doesn't meant that somebody  
9 like me who is sitting there as a politician is saying that's  
10 ridiculous. So you can never fully shed controversy in Legal  
11 Services. The most you can do is develop a reasonable method  
12 for delivering services which keeps the controversy down to a  
13 minimal level, and on that I wish you luck.

14           CHAIRMAN WITTGRAF: Anyone else? Thank you both very  
15 much for taking so much of your time, we appreciate it.

16           MR. ERLNBORN: Mr. Chairman, one comment. Let me  
17 thank you for having the thought of inviting these two men here  
18 and thank them for proving that it's possible to have some  
19 thoughtful and reasoned discourse over these issues, which I  
20 doubted a while ago.

21           MR. POLGAR: Thank you very much.

22           CHAIRMAN WITTGRAF: Thank you. We will look forward

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1 to seeing both of you again.

2 At this time the Chair is prepared to move to item six  
3 on the agenda. The information from the president and staff  
4 regarding three particular areas of activities, areas which  
5 might even involve some of the controversy of which Tom Polgar  
6 and Paul McNulty spoke.

7 Mr. President?

8 MR. WEAR: We have three items on the agenda. The  
9 first is Texas Rural Legal Aid. The second, California Rural  
10 Legal Aid. And last, the Community Action Program in New York  
11 City.

12 If I may, Mr. Chairman, I would like to defer our  
13 action on the program in New York City and take that after, I  
14 think, the next item dealing with personnel since it is really  
15 tied in with that.

16 Mr. Chairman, as you and the other board members know,  
17 the Corporation has been taking a long and hard look at Texas  
18 Rural Legal Aid with regard to that program's activity in the  
19 Veterans' Peace Convoy case.

20 There was a good deal of examination of that program  
21 trying to determine whether or not the program got into that  
22 case without clients and then hustled them up. What motivation

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1 the program had to get into the case itself? Whether or not the  
2 review of the purported clients as to eligibility was, in fact,  
3 adequate? Whether or not TRLA became involved in this matter in  
4 support of politically motivated activity?

5 The bottom line, Mr. Chairman, is that it appears that  
6 TRLA got involved in this case without clients. The  
7 investigators, with the Corporation, have examined those logs  
8 very carefully. It appears that given the sequencing of those  
9 logs that those clients came in to the program and were, in  
10 fact, processed through the intake procedures after the case had  
11 been filed.

12 It also appears that the analysis as to eligibility  
13 was both inadequate when these clients were subsequently brought  
14 in and after the suit was filed.

15 I have given the board, I think, a memorandum that  
16 runs about seven pages long and it details these findings to a  
17 greater extent.

18 Based upon the staff's analysis of this situation, I  
19 am going to be sending a letter to Texas Rural Legal Aid  
20 tomorrow advising the program that I am going to reduce their  
21 funding for this calendar year by 9.95 percent as a result of  
22 their activity in this program.

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1 I take this action reluctantly, because I think that  
2 it is going to have an impact on that program. But I think it  
3 is also important for both the Legal Services community and the  
4 people on Capitol Hill to know and to understand that the  
5 Corporation will, in fact, enforce the rules when those rules  
6 are broken.

7 I think there is a perception in the Legal Services  
8 community that the Corporation won't enforce the rules, that the  
9 Corporation really doesn't care, or that we can pull the wool  
10 over the Corporation's eyes if we dummy up records.

11 I think that it is very important, Mr. Chairman, for  
12 the Corporation staff to be able to rely on the records and  
13 representations of the programs when we do these compliance  
14 investigations.

15 The evidence in this case, Mr. Chairman, reveals that  
16 in my view the program made a conscious attempt to cover up its  
17 actions in this particular case and tried to put the very best  
18 face they could on it. This best face was not justified by the  
19 evidence. I think that that is a real shame and it was one of  
20 the principal things that moved me to take this action that I  
21 have outlined.

22 Moving on, Mr. Chairman --

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1 CHAIRMAN WITTGRAF: Are you through with this?

2 MR. WEAR: Yes, I am.

3 CHAIRMAN WITTGRAF: The Chairman has at least a  
4 document that has been sent to him in recent days that I think  
5 he needs to share with the board. I am not sure whether members  
6 of the board have it or not. Mr. Hall, at least geographically,  
7 may be somewhat closer to this than some of the rest of us.

8 I have a letter from David G. Hall, executive  
9 director, dated April 27. I guess it indicates that there is a  
10 carbon copy or carbon copies were being sent to board members.

11 MR. HOUSEMAN: Mr. Chairman, he asked me to hand this  
12 out. He faxed it to me Saturday.

13 CHAIRMAN WITTGRAF: Fine. Please.

14 MR. HOUSEMAN: I said I would. I talked to you  
15 earlier about it.

16 CHAIRMAN WITTGRAF: Yes, sir. The Chair appreciates  
17 the forthright remarks of the president. The Chair is a little  
18 concerned, though, in reading the letter about the equity or the  
19 fairness of the procedure that is about to be undertaken.

20 The Chair will ask each of the board members to take a  
21 moment to review Mr. Hall's letter, the copies of which are  
22 being handed to them at this time.

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1           It appears to the Chair that the members of the board  
2 have had an opportunity to review Mr. Hall's letter. Before the  
3 Chair initiates or entertains further discussion on this  
4 subject, the Chair will ask counsel for the Legal Services  
5 Corporation, Mr. Shea, if he would be good enough to summarize  
6 and, if necessary, respond to any questions or inquiries  
7 regarding his memo dated April 27, 1990, regarding so-called  
8 adverse actions, alternatives to program defunding.

9           Does Mr. Shea have a copy of his memo?

10          MR. SHEA: Sure.

11          CHAIRMAN WITTGRAF: Do the board members have before  
12 them the memo to which I am referring? It is a memo directed to  
13 the LSC board members from Timothy B. Shea, vice-president and  
14 general counsel, dated April 27, 1990, regarding adverse  
15 actions, alternatives to program defunding.

16          Before we talk, perhaps, more specifically about Texas  
17 Rural Legal Aid it might be of benefit to the board members for  
18 you to summarize what is in your memo.

19          Mr. Shea?

20          MR. SHEA: Thank you, Mr. Chairman. If I may very  
21 briefly. This memorandum is a general discussion of the general  
22 -- the purview of the appropriate incentives and disincentives

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1 that the Corporation has available to it in order to pursue the  
2 purposes and policies of Legal Services Corporation Act.

3 As it was readily apparent from the discussion, the  
4 funding discussion we just had, there are both positive  
5 reinforced -- through positive reinforcement the Corporation can  
6 advance certain objectives and, likewise, through sanctions the  
7 Corporation can do that as well.

8 Here, I think it is well established that in terms of  
9 administrative law that an agency has broad discretion to  
10 fashion in a way that is based on its experience, to fashion  
11 appropriate remedies to deal with violations of the law that it  
12 administers.

13 I think it is well established, and as I set out in my  
14 memorandum, that LSC has considerable authority in implementing  
15 the sanctions that are available, that are established in the  
16 Legal Services Corporation Act, as well as other appropriate  
17 sanctions.

18 Now, the act mentions what has been referred to  
19 terminations and denials of funding and, likewise, suspensions.  
20 For all of those, it requires a hearing.

21 It is important to note that our rules for some time  
22 have contemplated that there are a number of -- that other kinds

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1 of enforcement actions can be taken. There is a reference to  
2 that effect in 45 CFR, part 16.18. Likewise, for quite some  
3 time it has been clear that the Corporation has implemented a  
4 number of other alternatives to denial of refunding and  
5 termination.

6 I might add by way of explanation, to some there is  
7 some confusion about the difference between termination and  
8 denial of funding. Termination contemplates the cutting off of  
9 funding during the period of a grant.

10 In our case, ordinarily it would be during a calendar,  
11 in the middle of a calendar year. Denial of refunding  
12 contemplates a termination of funding at the beginning, that is  
13 a denial of an application for funding.

14 Now, the action that is proposed here, the less than  
15 ten percent proposal, is a lesser form of a denial of refunding.  
16 I will deal with that in some detail in a moment or two.

17 I might add there are other tools and they are well  
18 established, both in legal services context as well as with  
19 other agencies, that matters such as special grant conditions,  
20 corrective action plans, short-term funding, perhaps fines or  
21 imposition of various sorts of costs, are perfectly acceptable  
22 and appropriate ways of dealing with discrete violations.

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1           By way of example, a corrective action plan is a  
2 notice to a program that they have some existing violation of  
3 some particular rule or regulation. It prescribes measures that  
4 need to be taken to overcome the problem and might ordinarily  
5 prescribe some time period in which that needs to be addressed.

6           These tools I would urge are fairly standard for  
7 administrative agencies. They are also part of what I would  
8 style, I guess as a general proposition, as progressive  
9 discipline. That is they provide an opportunity for programs to  
10 deal with smaller or discrete problems in an efficient low level  
11 way so that problem are dealt with on the lowest level first and  
12 only if they are not remedied by that level does the Corporation  
13 move on to what may perhaps be more severe sanctions.

14           With respect to the issue about less than ten percent,  
15 our regulations in this area are very much along the lines of  
16 the regulations under the Office of Economic Opportunity. Our  
17 statute provides that recipients have an opportunity for hearing  
18 if their application for funding is denied or not addressed.

19           However, under our rules that only applies if the  
20 denial is ten percent or more. Now, under OEO regulations that  
21 threshold was 20 percent or more. It was clearly contemplated  
22 that the purpose of that was that small denials -- that

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1 regulation essentially creates a bright line. The bright line  
2 is for our purposes ten percent.

3 Small denials of refunding don't trigger the hearing  
4 requirement pursuant to the rule. That was also the case with  
5 respect to OEO, our predecessor agency. That distinction was  
6 upheld, at least as to OEO, in a Second Circuit opinion.

7 The purpose of such a procedure, I think, first of  
8 all, in passing on a grant application, I think it is well  
9 established that agencies have more discretion than when they  
10 are dealing with administration of a grant. That is that if  
11 they are looking at a new application they can take a look at  
12 matters such as pass compliance and current and perhaps future  
13 compliance issues.

14 Likewise, a reduction can appropriately give  
15 recognition to matters that are outside the scope. For  
16 instance, outside the scope of other sorts of remedies.

17 Here on my memorandum, as I said on page 4, this could  
18 deal with other violations that are not readily addressable  
19 under existing rules. For instance, there is under part 16.30  
20 of our regulations, the Corporation can recapture funds that  
21 were spent, either for matters that were either improvident or  
22 ineligible.

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1           If a program served an ineligible client and it could  
2 be so demonstrated in an administrative proceeding, we can  
3 recapture the funds that were allocated to that activity.  
4 Likewise, if they undertook a purchase that was either  
5 ineligible or overly expensive, whatever the portions of that  
6 undertaking were that were too expensive, can also be  
7 recaptured.

8           The reductions, the sanction of a reduction, of less  
9 than ten percent is explicitly recognized in the regulation  
10 16.23 insofar as it only provides for hearings when the  
11 reduction is ten percent or more.

12           To the extent then that there is a reduction of less  
13 than ten percent, there is no mandate for a hearing. Also, I  
14 might add, there may be an occasion for some other type of paper  
15 hearing in which the matters of whether there are issues of fact  
16 can be aired. Likewise, the notion of what potential violations  
17 are, the program will have an opportunity to be heard in terms  
18 of the application of the Legal Services Corporation Act itself.

19  
20           So, no trial type hearing is mandated for less than  
21 ten percent denial of refunding. I think some sort of informal  
22 notice and opportunity to be heard ought to transpire. But

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1 within those parameters the procedure is certainly well within  
2 the parameters of our rule and has been upheld, it is not really  
3 -- it has been extant in the rules for quite some time, as well  
4 as in the rules of our predecessor agency.

5 That is a little brief. I hope I wasn't too brief.

6 MR. WEAR: Mr. Chairman?

7 CHAIRMAN WITTGRAF: Mr. President?

8 MR. WEAR: Thank you, Mr. Chairman. Mr. Shea, can you  
9 outline the informal hearing process that occurred in this case?  
10 If you need help, Ms. DiSanto can come up and help.

11 MR. SHEA: I can do it without the benefit of dates.  
12 I believe that by letter of January -- maybe I better ask Emilia  
13 DiSanto to come forward. I don't have all the correspondence in  
14 front of me.

15 CHAIRMAN WITTGRAF: While Ms. DiSanto is coming  
16 forward, I think Mr. Guinot had a question for you, Mr. Shea.

17 MR. SHEA: Sure.

18 MR. GUINOT: Yes. Actually I have a lot of questions.  
19 I just don't know if we have time to even talk about all of  
20 them, because I am just fascinated by this situation here.

21 But if the president imposes a 9., whatever the  
22 percentage, cut, I understand from your presentation that is

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1 done to in a way not have to get into the idea of a hearing.  
2 Would you describe then what action a board is to take or what  
3 is our role in that situation?

4 MR. SHEA: Well, first of all --

5 MR. GUINOT: In other words, if the president acts  
6 under the powers given him by his position, all right, and he  
7 imposes a cut of 9. whatever percent, and obviates a reason for  
8 a hearing, assuming that all the other elements of due process  
9 that he would be hearing surely have happened and so on, what is  
10 the role of this board in hearing this?

11 MR. SHEA: I don't think the board --

12 MR. GUINOT: Other than information.

13 MR. SHEA: I would say it is informational. The board  
14 need not take any action on this as far as I know.

15 MR. GUINOT: Okay. Can the board take action?

16 MR. SHEA: I suppose the board could take some action,  
17 surely.

18 MR. GUINOT: Can the board overrule the president?

19 MR. SHEA: Well, the board could do a number of  
20 things. That depends I guess on what, on how.

21 MR. GUINOT: Maybe this is unfair.

22 MR. SHEA: The board could, for instance, defer. I

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1 suppose try to defer any action on the matter somehow. It is  
2 hard for me to speculate, I guess. But the answer is it seems  
3 to me the board could certainly deal with the procedure, as well  
4 as the proposal in some ways. Yes.

5 CHAIRMAN WITTGRAF: Surely you are not saying the  
6 board could not reverse the action of the president?

7 MR. SHEA: No. I am actually not saying that.

8 CHAIRMAN WITTGRAF: Good.

9 (Laughter.)

10 MR. SHEA: But see, first of all, no action has been  
11 taken as yet to be perfectly honest.

12 CHAIRMAN WITTGRAF: I understand. I just want to be  
13 sure. I wasn't sure of what you were saying on Mr. Guinot's  
14 question.

15 MR. SHEA: I would urge, for instance, by way of fact  
16 -- I don't think the board should get into fact finding per se.

17  
18 CHAIRMAN WITTGRAF: That is an opinion subject to the  
19 board's interpretation of its role.

20 MR. SHEA: I understand that. That is correct. The  
21 board could well deal with the procedure if you understand me.

22 MR. GUINOT: Yes. Okay. Fine. Why don't we get Ms.

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1 DiSanto?

2 CHAIRMAN WITTGRAF: Yes. One of the two of you, I  
3 gathered from Mr. Wear was going to review the exchange of  
4 letters in January and February between --

5 MR. SHEA: I can do that. I just don't have the  
6 letters in front of me.

7 In the late summer of 1989 there was an exchange of  
8 correspondence between the Office of Monitoring, Audit and  
9 Compliance and the program with respect to this case, Lopez  
10 versus Shultz. There was a letter dated July 25, '89, asking  
11 for documents in connection with the case. By letter of August  
12 5, 1989, TLRA responded.

13 By letter of September 12, 1989, the Office of  
14 Monitoring, Audit and Compliance forwarded a supplementary  
15 request for information. That was addressed by the program on  
16 September 28, 1989.

17 By letter of January 19, 1990, President Wear advised  
18 TLRA of his proposal to reduce the grant to TLRA by 9.95 percent  
19 based on the information that was available to the Corporation  
20 at that time. The proposal invited a response to be submitted  
21 within 20 days to deal with the proposal.

22 The proposal set out the basis for the contemplated

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1 action in some detail. That was, I think, an eight-page  
2 document if memory serves me. Actually it was an eleven-page  
3 document setting out the basis for the proposal. It also  
4 invited a response that would deal with both legal issues and  
5 factual issues as well.

6 By letter of February 9, 1990, TLRA responded with an  
7 opposition and that opposition included a treatment of both the  
8 facts and the applicable law. They also furnished  
9 supplementary materials as I recall, although I don't have them  
10 available to me now.

11 Thereafter, the Office of Monitoring, Audit and  
12 Compliance pursued some supplementary facts, both by  
13 correspondence and with interviews.

14 That is the general scope of the procedure to date.  
15 Now, the --

16 CHAIRMAN WITTGRAF: Am I correct in my understanding  
17 that we are talking about \$450,000 and change?

18 MR. SHEA: That is about right.

19 CHAIRMAN WITTGRAF: Mr. Shea, do you either you or Mr.  
20 Wear recall right off hand, either during the current fiscal  
21 year or for the last calendar year, how many defundings have  
22 been carried through such as the 9.95 percent sanction

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1 MR. SHEA: Only one. That relates to a national  
2 support center called -- we call it youth law, but I can't  
3 remember at this moment --

4 MR. WEAR: National Center for Youth Law.

5 MR. SHEA: National Center for Youth Law. Thank you.

6 CHAIRMAN WITTGRAF: What is the status of that  
7 defunding?

8 MR. SHEA: Well, first of all, again it was less than  
9 ten percent.

10 CHAIRMAN WITTGRAF: Yes.

11 MR. SHEA: And that is under judicial review now in  
12 the United States District Court in California. It was  
13 effectuated and we are funding them at the lower level.

14 CHAIRMAN WITTGRAF: Subject to some form of court  
15 review?

16 MR. SHEA: Correct. That is correct.

17 MR. GUINOT: Did that case come before the board?

18 CHAIRMAN WITTGRAF: No.

19 MR. SHEA: No, it did not.

20 CHAIRMAN WITTGRAF: That was the prior --

21 MR. GUINOT: I know, but I just wondered.

22 CHAIRMAN WITTGRAF: Have you seen this letter dated

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1 April 27 of this year from David Hall?

2 MR. SHEA: Not up until just a few moments ago. I  
3 will give you a reaction if I may. This item was designated as  
4 not necessarily an action item for the board, because it doesn't  
5 necessarily -- the president, as far as I know, could take the  
6 action without specific authority of the board.

7 CHAIRMAN WITTGRAF: Let me make a point and any board  
8 members here can take exception. I as one of the board members  
9 view defunding of 9.95 percent or in this case \$450,000 plus  
10 dollars as a significant action by the board. I appreciate, as  
11 I said a few moments ago, Mr. Wear bringing the matter to our  
12 attention. I think it is also consistent with a resolution that  
13 was passed by this board on the afternoon of Tuesday, March 27th  
14 of this year.

15 I think it is appropriate, and my directive at this  
16 point to Mr. Wear, and tentatively to any successor, will be  
17 that such, what I consider to be major actions, should be  
18 brought before the board for review, if not for approval. This  
19 is being brought before the board for review and as I indicated,  
20 I, for one, appreciate that.

21 I am somewhat bothered in turn by Mr. Hall's letter.  
22 There may be some misunderstanding as he had conversations

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1 perhaps with Ms. Bozell and with anyone else as to what action  
2 was and what an action item may or may not be.

3 We have got lengthy written materials here, an  
4 exchange of correspondence from January and February of this  
5 year, but when we are talking about taking away the better part  
6 of a half a million dollars, I, for one, am somewhat reluctant  
7 without giving notice in the form of both sides the opportunity  
8 to be heard.

9 We are talking about relatively few actions like this,  
10 I think it makes board involvement that much more significant.  
11 The board may determine in time that this is not very  
12 significant, but it is something that is new to this board. I  
13 think for one member at least, this member, it is something that  
14 is significant for the board.

15 The board will ask, unless there is objection, that  
16 Mr. Wear put off his decision to give defunding notice of 9.95  
17 percent until our meeting on May 21. At which time Texas Rural  
18 Legal Aid will have an opportunity to make whatever oral  
19 comments it wants on its own behalf and as they certainly  
20 suggested they would like to do in the letter dated April 27.

21 Is there any objection?

22 MR. COLLINS: Mr. Chairman?

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1 CHAIRMAN WITTGRAF: Mr. Collins?

2 MR. COLLINS: Rather than put it in the context of  
3 whether or not I object, I would like to make a few comments  
4 about this.

5 First of all, it seems that if this organization, and  
6 that includes the president and the board and everyone else  
7 connected with it, is to be anything other than a total paper  
8 tiger, someone has to be able to take some initiative and some  
9 action.

10 I think that the president was attempting, and I am  
11 sorry that I wasn't here during the early part of this colloquy,  
12 was attempting to abide by what we had asked him to do, which  
13 was to advise us of what he was doing.

14 With respect to the letter, which I read, from Mr.  
15 David Hall, which seems to me to be a self-serving letter, and I  
16 asked Ms. Bozell just a moment ago whether or not he, in fact,  
17 reflected accurately the conversation with her, she answered in  
18 the negative, that he did not. As a matter of fact, she said  
19 that she attempted to couch everything she said to him as I am  
20 not certain, I don't know, I don't believe.

21 Am I rephrasing accurately what you told me?

22 MS. BOZELL: Mr. Collins, I did not know the nature of

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1 the discussion today with regard to TLRA. I could not be  
2 specific, because I did not have the facts. I did tell Mr. Hall  
3 that to my knowledge it was not a board action item. I also  
4 told him that his presence was not required. However, that  
5 other programs had whenever they had been the topic of  
6 discussion seen fit to send representatives. But that he was  
7 under no requirement to do so.

8 MR. COLLINS: And you did read this?

9 MS. BOZELL: Just now.

10 MR. COLLINS: Yes. This letter reflects a slightly  
11 different conversation than that which you have just related to  
12 us.

13 MS. BOZELL: That's correct.

14 MR. COLLINS: In other words, you told him that it was  
15 not necessary that the board take any action and you didn't  
16 anticipate that there --

17 MS. BOZELL: No. I told him that to my knowledge it  
18 was not a board action item.

19 MR. COLLINS: And it isn't.

20 MS. BOZELL: That's correct.

21 MR. COLLINS: And you did not tell him not to come.

22 MS. BOZELL: No.

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1 MR. COLLINS: He knew that it was going to come up  
2 before the board from our information.

3 MS. BOZELL: That was the purpose of my call.

4 MR. COLLINS: He had a perfect right to send somebody  
5 if he chose.

6 MS. BOZELL: That's correct.

7 MR. COLLINS: He chose not to.

8 MS. BOZELL: That's correct.

9 MR. COLLINS: I don't know whether or not we owe Mr.  
10 Hall two or three bites at the apple if he was concerned about  
11 whether or not this was a \$400,000 or whatever other monetary  
12 elimination was going to take place. If he was worried about  
13 it, he ought to have been here or had somebody here.

14 So, I don't -- I am not entirely sure that we should  
15 be instructing the president to do or not to do something under  
16 these circumstances.

17 But if the sense of what you are saying is that we  
18 want to give Mr. Hall the benefit of the doubt and since he may  
19 have made a mistake in not availing himself of the opportunity  
20 to come here, we are going to be good boys and give him another  
21 chance, that is entirely a different matter.

22 I do not want to have it portrayed as a review to the

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1 president.

2 CHAIRMAN WITTGRAF: I don't think it has been. In  
3 fact, I think, Mr. Collins -- and I am not sure how much of the  
4 colloquy you have been present for -- I think I have on three  
5 occasions so far commended Mr. Wear for, in my judgment, meeting  
6 the spirit of the discussions. In fact, the one resolution that  
7 was adopted by the board in our meeting on March 27th.

8 Now, I certainly share Mr. Wear's concern that the  
9 board not be, I think to use his term, a paper tiger. I think  
10 that there is some tension inherent in the relationship between  
11 the board and the program recipients or the grantees. But at  
12 the same time when \$450,000 plus dollars is in question, I do  
13 think that it is a significant question.

14 I do think that we ought to at least give the other  
15 side, as it were, the opportunity to be heard. There appears,  
16 be the letter self-serving or not, to be some misunderstanding  
17 in that regard.

18 This is a serious action as suggested by the fact that  
19 it has only been done once in the last year and when it was  
20 done, it was challenged in court and that challenge awaits  
21 resolution by the court at this time.

22 I guess in my judgment, it is, among other things,

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1 being, as you say, being good boys and good girls. With that in  
2 mind, let me ask you if you have objection to my directive to  
3 the president?

4 MR. COLLINS: No, I don't have objection. But I think  
5 that there was -- if it is a \$400,000 item and he didn't want to  
6 invest 4 or \$5,000 to come up here, it is a serious  
7 misallocation of his resources also. It just seems to me that  
8 we have got to establish the right to be able to do something.

9 CHAIRMAN WITTGRAF: Mr. Molinari?

10 MR. MOLINARI: I am not sure if I understood Mr.  
11 Shea's statement correctly. What I think I heard you say, Mr.  
12 Shea, was that the procedures of the Corporation were followed,  
13 due notice was given to the grantee of this case. All due  
14 process was followed. They were put on notice to the fact that  
15 there could be this kind of measure adopted.

16 Now, that has been the judgment rendered and,  
17 therefore, there is no further action necessary or to be  
18 contemplated by the board of directors themselves. Is that  
19 accurate?

20 MR. SHEA: It is. If I may, thank you for the  
21 opportunity for trying to elaborate on that. I will tell you  
22 that it is my view that there is no other procedure to which

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1 TRLA is necessarily entitled, which doesn't mean that the board  
2 may wish to accord them -- the board in its discretion may  
3 accord some additional procedure. But I think they have been  
4 accorded all the procedure to which they are entitled, first of  
5 all.

6 Secondly, while it seems to me as well, the board has  
7 every right and every reason to be informed as to both the  
8 factual basis for the action and the legal underpinnings, I  
9 would caution the board against itself trying to undertake this  
10 adjudication.

11 That was the reason for my caution against fact  
12 finding per se. I think that rests properly with the president.  
13 The may well wish to get into the matter for procedural and for  
14 policy reasons. I think that is entirely appropriate.

15 But I think fact finding rests with the president.  
16 Hence, I would caution the board against, in effect, trying to  
17 take on the hearing itself.

18 MR. MOLINARI: I don't know that that is anybody's  
19 intent.

20 MR. SHEA: Fine.

21 MR. MOLINARI: There is an allegation of not having  
22 the opportunity to be heard and misrepresentation or no, that

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1 becomes a matter of semantics. The board may at some point want  
2 to be more involved as a fact finder. That is certainly not my  
3 suggestion.

4 My suggestion is that we have done, at least in the  
5 last three meetings now, given the opportunity to some people  
6 who are aggrieved as they see it in one way or another, the  
7 people with whom we work day in and day out and year in and year  
8 out in the form of grantees, the opportunity to be heard.

9 MR. SHEA: Certainly.

10 MR. MOLINARI: Mr. Guinot, Mr. Chairman?

11 MR. GUINOT: My concern is again that if we decide  
12 that these sanctions or administrative actions, or whatever you  
13 want to call them, are to be reviewed by us, we are, in effect,  
14 managing the Corporation insofar as a very important element of  
15 their work.

16 I am not saying that perhaps this is not a good idea.  
17 I am saying that this is, in fact, what we are doing, because  
18 automatically all of these things will come here.

19 It would seem to me then that we are going to have to  
20 realize or set up a procedure whereby do they come as a matter  
21 of right or is it a writ of certiorari kind of thing where they  
22 have to ask for a hearing and we say yes or no.

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1 MR. SHEA: That's right.

2 MR. GUINOT: You stated a few minutes ago that you  
3 felt that no action was taken. Mr. Wear's memorandum seems to  
4 me pretty darn close to taking an action. I mean he did say  
5 that he intended to write to them pretty soon.

6 Having said all that, my main concern is procedure as  
7 to the board. That is what I was asking Mr. Shea before and he  
8 answered it rather well. I mean is there a process by which  
9 these things automatically come up here? Do we merely endorse  
10 what the president does? Do we ratify it? Do we go further and  
11 call for a hearing?

12 In this case, we have a serious matter, because  
13 obviously Mr. Wear is recommending or doing something. Not  
14 recommending, he is doing it. We are expected to take some  
15 action. I don't know what it is, whether it is to ratify it, or  
16 to comply, or to even call him to come up.

17 Then this letter comes up in which there is a very  
18 serious situation in which they say that they are being misled.  
19 Ms. Bozell did or did not tell them something that they say  
20 here. That goes against their due process, such as it is, if we  
21 decide that there is such a situation.

22 We have very many questions to ask ourselves. Who

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1 decides what an action item is? Does the secretary of the board  
2 talk to the president about what the action items are? All  
3 these elements don't seem to be here. This is, I think, rather  
4 disquieting.

5 I would like very much for the litigation to end at  
6 some point, Mr. Chairman. A decision has to be made and then go  
7 from there.

8 CHAIRMAN WITTGRAF: Mr. Dana?

9 MR. DANA: We have been -- we have read a memo dated  
10 April 26 to Terrence Wear concerning this subject, but it  
11 doesn't indicate who drafted the memo. I would like to know who  
12 drafted the memo and whether or not it was shared with TLRA.

13 MR. WEAR: Mr. Chairman?

14 CHAIRMAN WITTGRAF: Mr. Wear?

15 MR. WEAR: Thank you, Mr. Chairman. In response to  
16 your question, the memorandum came to me from the staff.  
17 Various individuals worked on it from MAC and the Office of  
18 General Counsel. It was not sent to the Texas Legal Rural Aid  
19 program. Again, there is no requirement to share internal  
20 documents with the program.

21 We went through a very extensive, I believe, hearing,  
22 informal hearing, with the program on this starting last year in

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1 mid summer. We went forward. We had an exchange of letters  
2 this year. We then sent investigators down to the program that  
3 spent approximately five days there at the end of March and have  
4 come back now.

5 So, I think that the fact finding process done or  
6 handled by the Corporation has been completed. I think, as the  
7 general counsel, has outlined, the board does have an important  
8 role with regard to setting policy. If the board decides that  
9 the Corporation ought not attempt to use this tool as a general  
10 matter, I think that that is an issue for the board.

11 As to whether or not the tool should be used in  
12 particular cases, because the program is a big program, this  
13 program runs approximately \$4.6 million a year from this  
14 Corporation. That is why the percentage decrease is as large as  
15 it is. But it would be the same percentage increase for a  
16 smaller program.

17 I think that the procedures that we followed have been  
18 more than adequate. The program has had several opportunities  
19 to make its case. I think that it would be a mistake for the  
20 board to embroil itself in each particular dispute with a given  
21 program. That is why the Corporation has a president. That is  
22 why the president is the chief executive officer.

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1 I would hope that we would be able to go forward with  
2 this action.

3 MR. COLLINS: Mr. Chairman?

4 MR. MOLINARI: Mr. Chairman?

5 CHAIRMAN WITTGRAF: Mr. Molinari?

6 MR. MOLINARI: I wanted to clear up a question again,  
7 Mr. Shea. I had a conversation with the chairman. My concern  
8 is that by our injecting ourselves as a board into the issue  
9 today where a determination has already been made, we may well  
10 be giving rise to another legal issue that will be the subject  
11 of a court dispute in the future.

12 If I understood your ruling before or your counselling  
13 to this board, you were strongly suggesting that we do not get  
14 into the facts and stay away from the decision that has been  
15 made. That is the provence of the chairman -- I mean, the  
16 president rather -- and that due process has been followed in  
17 every case.

18 MR. SHEA: Well, I -- pardon me.

19 MR. MOLINARI: My concern, and a very serious concern,  
20 is that by taking any further steps that we may be jeopardizing  
21 the present position of Legal Services Corporation in the  
22 actions taken to date.

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1 MR. SHEA: Well, let me respond by saying, first of  
2 all, with respect to my advice about the facts, I would urge  
3 that the board not attempt to make any particular fact finding.  
4 The board may nevertheless want to find out for its own purposes  
5 and want to be informed, first of all, without making any fact  
6 finding of its own. All right.

7 So, that in other words you are may hear differing  
8 views without trying to make any -- we may not take any action  
9 on what collectively the board finds the facts to be. Okay.

10 With respect to the second matter, that is would the  
11 very fact that the matter was presented to the board, impede any  
12 potential action, it is not readily apparent to me that it  
13 would. That may require some attention, I think, but only  
14 perhaps in connection with what the board may do in the next--  
15 if it revisits the matter later.

16 In other words, the board simply may hear all the  
17 matters and say thank you very much and take absolutely no  
18 action. In which case, I don't perceive that as effecting any  
19 perspective litigation. If the board were to take an action  
20 then I may have other concerns.

21 CHAIRMAN WITTGRAF: Mr. Collins?

22

M O T I O N

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1 MR. COLLINS: Mr. Chairman, along the lines that Mr.  
2 Shea was just speaking, therefore I move that we accept the  
3 report of the president.

4 MR. SHEA: Well, wait a minute. I shouldn't --

5 MR. COLLINS: You don't think we should take that  
6 action? It has been presented to us.

7 MR. SHEA: With all due respect, and I suppose I  
8 shouldn't have -- I was too quick to intervene, but I would urge  
9 that the board not, at least at this point, take any action  
10 except it may wish to be more and better informed. I don't  
11 think -- I surely cannot and shouldn't object to that.

12 To accept -- to do something that would, in effect,  
13 constitute fact finding, I would urge that you not do that.

14 MR. COLLINS: Well, just a minute, Mr. Shea, no one is  
15 saying anything about fact finding. We have been presented with  
16 a report. The record indicates that the report has been  
17 presented to us. I simply am suggesting that we should indicate  
18 that it has been presented to us and we accept it. We are  
19 recommending no action and we are not telling the president not  
20 to take action.

21 MR. ERLNBORN: Mr. Chairman?

22 CHAIRMAN WITTGRAF: Mr. Erlenborn?

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1 MR. ERLÉNORN: Mr. Chairman, I must admit once again  
2 to being of two minds. This is not an easy issue to address and  
3 find a quick answer to it.

4 I am very sensitive to the issues raised by Mr.  
5 Guinot. They arise in my mind as well. I don't think that this  
6 board should become on a regular basis the body to review the  
7 decision of the president that is within his power to make.

8 Having said that, let me also say that I am a little  
9 troubled by the fact that this is a new device as I understand  
10 it. The use of this 9.95 percent reduction in funding has not  
11 been utilized for a long time in the past, a long period of  
12 time. It has only actually been implemented once or twice I  
13 believe in the past and proposed in a couple of other cases.

14 What bothers me, I think, the most about it is in each  
15 case it is 9.95 percent. It doesn't appear that the punishment  
16 fits the crime if there is a crime. In the case of Texas Rural  
17 Legal Assistance, as I understand it, the amount that was  
18 expended in violation of the rules was under \$10,000. The  
19 penalty of \$450,000 for a \$10,000 illegal expenditure bothers me  
20 considerably.

21 On the other hand, I am also quite bothered by the  
22 allegation or the finding of fact that TRLA may have engaged in

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1 what might be described as a cover up. So, I would think that  
2 recovering something more than the illegal expenditure would be  
3 warranted.

4 But I think what is lacking here is any kind of  
5 guidelines for the president or the administration. That is  
6 neither his fault, the Corporation's fault or our's. I think it  
7 is the fact that this is a new procedure that had not been  
8 engaged in in the past.

9 I think what would be helpful, not for fact finding  
10 necessarily, but for this board to determine whether some sort  
11 of general policy or guidelines are warranted and what they  
12 might be. I think it would be helpful to hear Texas Rural Legal  
13 Assistance without making any fact finding as to that case and  
14 then determine whether this board desires guidelines to be given  
15 to the administration and the president for the use of this sort  
16 of sanction in the future.

17 CHAIRMAN WITTGRAF: The Chairman has asked that  
18 without objection the matter of defunding 9.95 percent of the  
19 Texas Rural Legal Aid be put off by the president until after  
20 our board meeting on Monday, May 21, to allow representatives of  
21 that grantee to make any comments they wish on that occasion.

22 Is there objection to that directive?

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1 MR. WEAR: Mr. Chairman, may I ask a question?

2 CHAIRMAN WITTGRAF: Yes, sir.

3 MR. WEAR: Thank you, Mr. Chairman. How will the  
4 board function on May 21 in the event there is no objection  
5 raised to your motion?

6 In the past, in effect, what we have done with regard  
7 to the Pittsburgh program, the Middlesex program, when they have  
8 come in, the board has functioned as a fact finding entity.  
9 They have listened. We have extended in the case of those  
10 programs. We extended Pittsburgh two months while some  
11 negotiations were under way. What role will the board play in  
12 this other than fact finding?

13 CHAIRMAN WITTGRAF: I am not sure what the board will  
14 do. That remains to be seen. I guess my concerns are some of  
15 those described by Mr. Erlenborn and that is that this is a  
16 major initiative undertaken. One that we happen not to be  
17 familiar with. Mr. Shea has enlightened us simply with his memo  
18 and his comments regarding the sanctions that are available to  
19 the Legal Services Corporation.

20 It may well be that we will do nothing as has been  
21 suggested. But I think as we tried to do now, in February and  
22 March and now the end of April, to understand what the nature of

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1 what our responsibilities either are or might be, this is going  
2 to help us with that process. I am not going to prejudge what we  
3 might or might not do.

4 But the withdrawal or the defunding of any grantee,  
5 particularly a large grantee, of \$450,000 is significant. I am  
6 concerned with that.

7 I am also concerned with the fact that the agency has  
8 asked to be heard, has been told possibly that there was no need  
9 to be heard. I would like to give them the opportunity to be  
10 heard even if it is only to enlighten us as board members as to  
11 the nature of the problem we are dealing with, not because we  
12 are going to make any findings of fact.

13 Is there objection?

14 MR. COLLINS: Mr. Chairman, a question, please. If  
15 there was objection and, therefore, the president were to  
16 proceed to initiate this defunding process, how long would that  
17 process take?

18 MR. WEAR: Mr. Chairman?

19 CHAIRMAN WITTGRAF: Mr. Wear?

20 MR. WEAR: Thank you, Mr. Chairman. In response to  
21 the question, Mr. Chairman, the monies are withheld. In the  
22 case of the other program in which this has occurred, a portion

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1 of the money is withheld each month throughout the remainder of  
2 the year.

3 So, we would figure out what the amount is. The  
4 Chairman says it is approximately \$450,000. We would take that  
5 in equal payments throughout the remainder of this year. I  
6 haven't done the arithmetic and so I don't know what that amount  
7 would be.

8 MR. COLLINS: What year are we talking about, the  
9 calendar year?

10 MR. WEAR: Yes, sir. The calendar year. The program  
11 has a payment due in May, June, July, August, September, October  
12 and November. That is, I believe, seven payments. So, one-  
13 seventh of the amount would be taken out of each month.

14 Mr. Collins, I could begin withholding this money in  
15 May. That would mean that they would be taken out in six  
16 installments instead of seven. It could be done that way.

17 CHAIRMAN WITTGRAF: Mr. Guinot?

18 MR. GUINOT: Yes. I will have to object to your  
19 suggestion. I believe that until a decision is made by the  
20 president we are not an issue. There is no issue between TLRA  
21 and Legal Services.

22 The record, according to Mr. Shea, of the procedure

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1 whereby the decision is being arrived at, it seems to be rather  
2 clear that they have had opportunity to be heard on several  
3 occasions.

4           If the board decides that the action of the president  
5 in cutting their funding is improper, then that is another  
6 matter. To postpone it and then to listen to the other side,  
7 once again what we are having is an evidentiary hearing and  
8 there is no escaping that we are going to have to make some kind  
9 of a decision. Even saying nothing is a decision in itself.

10           I suggest that we should allow the process to go  
11 forward administratively and then proceed from there.

12           MR. HALL: Mr. Chairman?

13           CHAIRMAN WITTGRAF: Mr. Hall?

14           MR. HALL: You know, some of us might want to make a  
15 motion to alter it or change it in some form or fashion. But I  
16 wouldn't want to until after I had heard one of my main  
17 concerns, and that is what effect taking \$450,000 away from this  
18 program will have on their program and on the people that they  
19 serve.

20           Where will the money go to and how will we pick up and  
21 continue to serve those that is obviously given to this  
22 particular program to serve? That would be a concern of mine.

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1           It doesn't seem to be a very good deterrent so far as  
2 --

3           CHAIRMAN WITTGRAF:    Before we move to Mr. Wear's  
4 response to that, the Chairman is going to have the board take a  
5 recess until 3:45.

6           (A brief recess was taken.)

7           CHAIRMAN WITTGRAF:    Before we proceed to item 6B on  
8 the agenda it is my understanding, Mr. President, that you will  
9 be sending out a notice as soon as possible, probably later this  
10 week, to Texas Rural Legal Aid indicating that the 9.95 percent  
11 defunding will be effective for that agency as of June 1 of this  
12 year.

13          MR. WEAR:    Mr. Chairman, I am going to send the  
14 program, Texas Rural Legal Aid, a letter indicating that I am  
15 reducing their funding for this calendar year by 9.95 percent.  
16 But that the reductions will not begin until June 1 of this  
17 year.

18          The next item, Mr. Chairman is item 6B, California  
19 Rural Legal Aid Assistance.

20          Mr. Chairman, the Corporation's investigative staff  
21 has also been looking at this program with regard to its  
22 involvement in two particular cases. The first one is entitled

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1 "Litmus v. Kaiser." The second one is "Committee to Defend  
2 Reproductive Rights versus Kaiser" or Kaiser, I am not sure of  
3 the pronunciation.

4 The first case, Mr. Chairman, involves funding for  
5 various family planning services throughout the State of  
6 California. In 1989, the California State Legislature voted to  
7 appropriate approximately \$36 million in funds for family  
8 planning services, including advice and counselling on abortion.

9  
10 The governor of the state then exercised his line item  
11 veto to reduce the funding for these services to approximately  
12 \$12 million. The state legislature failure to override that  
13 veto and the agency administering the family planning program  
14 reduced the funds going to the providers of these services by  
15 approximately \$24 million.

16 California Rural Legal Assistance and the National  
17 Center for Health, rather the National Health Law Project, which  
18 is another of our grantees, then sued the State of California on  
19 behalf of certain clients and forced the restoration of the \$24  
20 million in funding.

21 The examination of this matter shows us that  
22 California Rural Legal Assistance used Corporation funds to pay

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1 for its involvement in this case.

2 I have determined, Mr. Chairman, that on its face the  
3 action appears to be illegal in that the Legal Services  
4 Corporation Act prohibits the use of Corporation funds to  
5 provide legal assistance to facilitate obtaining abortions. The  
6 advice and counselling given by these clinics does facilitate  
7 the obtaining of abortions.

8 It is also true, Mr. Chairman, that these clinics also  
9 give other health advice, but our statute is very clear with  
10 regard to the facilitation of abortion.

11 There are other matters to consider in this case and I  
12 have decided, Mr. Chairman, that I am going to send a letter to  
13 California Rural Legal Assistance in the next few days  
14 indicating that I have made a preliminary determination to  
15 decrease their funding by an amount up to 9.95 percent and that  
16 the program will have an opportunity to show cause why this  
17 should not occur. They will have 20 days from the date of  
18 receipt of this letter to do so.

19 The letter will be the same procedurally as the  
20 letter, I believe, dated January 12, 1990, that was sent to  
21 Texas Rural Legal Aid.

22 We are also looking at a second case involving this

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1 program, Mr. Chairman. The Committee to Defend Reproductive  
2 Rights versus Kaiser. It is unclear at this point exactly what  
3 the facts are, Mr. Chairman, as to whether this effort was  
4 funded with LSC funds or with monies obtained from the  
5 California IOLTA Commission or Interest on Lawyers Trust  
6 Accounts Commission.

7 We are going to continue to look at that and if action  
8 is warranted with regard to that case it will be rolled into the  
9 action taken in connection with California Rural Legal  
10 Assistance involvement in the Litmus matter.

11 Mr. Chairman, if I may, I would like to defer  
12 consideration of item 6C and roll it in with the general  
13 discussion of access to employment verification files and  
14 others, which is the next numbered item on the agenda.

15 CHAIRMAN WITTGRAF: Is there questions for the  
16 president?

17 (No response.)

18 CHAIRMAN WITTGRAF: Hearing none, we will proceed to  
19 agenda item 7, both in general terms and as it pertains  
20 specifically to Community Action Legal Services.

21 MR. PADILLA: Chairman Wittgraf?

22 CHAIRMAN WITTGRAF: Yes.

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1 MR. PADILLA: My name is Jose Padilla.

2 CHAIRMAN WITTGRAF: Yes, sir.

3 MR. PADILLA: I would like to ask the board if I can  
4 be heard?

5 CHAIRMAN WITTGRAF: Surely. You represent California  
6 Rural Legal Aid?

7 MR. PADILLA: That's right.

8 CHAIRMAN WITTGRAF: We would be happy to give you an  
9 opportunity to be heard for up to ten minutes.

10 MR. PADILLA: Thank you.

11 CHAIRMAN WITTGRAF: You didn't have any printed  
12 material of any kind, did you?

13 MR. PADILLA: No, we don't, sir.

14 Chairman Wittgraf and respected members of this body,  
15 my name is Jose Padilla. I am the executive director of  
16 California Rural Legal Assistance. With me today is our general  
17 counsel, Ralph Abascal.

18 As a preface, let me just say that I, as much as I  
19 believe any other believer here in this room, appreciated the  
20 quote from the "Bible" earlier, "Amos talked about justice  
21 running like water."

22 It seems these days when we deal with a Corporation,

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1 we out in the field, that every once in a while when we talk  
2 about matters of due process and notice, somehow it appears that  
3 somebody up the river is damming up the whole thing and some of  
4 that water doesn't quite reach us.

5 I say that because I am somewhat reluctant to make any  
6 comments here today just given the nature of the discussion that  
7 took place a little earlier, and that is that this may be  
8 perceived as CRLA's due process moment.

9 I also say it because it is very difficult to come  
10 here with very little notice and try to defend ourselves by the  
11 seat of our pants.

12 I say that wanting to make three points, but yet being  
13 very clear to you that we do feel that we want another  
14 opportunity to review whatever charges have been brought against  
15 us and any findings that perhaps the Corporation has found,  
16 because it is not until today that we found out that LSC is  
17 interpreting certain language of the appropriation writer and  
18 found us in violation of some of that.

19 He talked about the family planning case, and I want  
20 to emphasize the fact that I know that any time abortion is  
21 mentioned, Mr. Polgar brought it to your attention, people have  
22 repeated this over and over again today, that there are certain

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1 words that are used that are very charged. Any time anybody  
2 mentions abortion and abortion counselling it becomes very  
3 charged.

4 Let me mention to you the fact that the family  
5 planning case involves primary health care to women. You are  
6 talking about services that help women obtain contraceptive  
7 information, screening and treatment for cervical cancer,  
8 treatment for sexually transmitted diseases and AIDS, the  
9 preconceptional counselling, maternal and fetal counselling, and  
10 the like.

11 But most troubling to me is this, that the program,  
12 its guidelines and the statute governing the program for these  
13 services, very clearly prohibits the use of those funds for  
14 abortion and for services ancillary to abortions.

15 It is very troubling to me for it to be said that when  
16 the law and the practice of a department is very clear in what  
17 it says about its prohibitions that we get charged in such a  
18 public forum without any notices of that conclusion that we have  
19 violated the appropriations writer.

20 I wanted to share with you -- just very briefly read  
21 about the prohibition, because I think it is critical to my  
22 second -- particularly to my third point, sir.

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1 I would like Mr. Abascal to pass that to you so that I  
2 can just read two points.

3 Again, you have to understand that when we bring this  
4 litigation, we review and interpret what we believe to be the  
5 law, the law of California. Let me read to you two items.

6 One of them is on the second page, which clearly says  
7 in section 14500.5(A), "Family planning does not include  
8 abortion, pregnancy testing solely for the purposes of referral  
9 for abortion, or services ancillary to abortions."

10 On the next page there is another section, section 2,  
11 14509(D) where it says, in part, that, "Those clinics that  
12 contract with the state department for health services will not  
13 be a group, clinic or organization which with funds provided  
14 pursuant to this chapter advertises, advocates or promotes  
15 abortion as a method of family planning, or which receives any  
16 fee or other consideration as payment for referrals for abortion  
17 services."

18 I raise that to you because in our determination as to  
19 whether or not we should have brought this case with federal  
20 funds we knew what the practice was of the Department of Health  
21 Services was. This is the law, for us it is prohibited activity  
22 -- it prohibits abortion activity. That was one of the

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1 judgments that we used in bringing the litigation.

2 I also wanted to make my second comment with respect  
3 to a process as a procedural matter. Many of you raised earlier  
4 the whole question of what does 9.95 percent mean. For CRLA it  
5 means \$450,000.

6 Mr. Blakely Hall asked a question about what does that  
7 mean in terms of the impact. For CRLA you are talking about  
8 nine lawyers, the funding of nine lawyers. That is not  
9 insignificant given the fact that for the last ten years we have  
10 lost 25 because of the funding decisions having been made by  
11 this board.

12 But I raise it as a procedural matter because there  
13 was an awful lot of discussion about fact finding. You are  
14 concerned that you do not want to be a fact finding body.

15 We believe that given the opportunity to more  
16 specifically respond to the case, and I am talking about with a  
17 little more notice and not two hours of notice, that we will  
18 address to you the whole question of whether the Corporation is  
19 not taking a new policy, changing its policy in the  
20 interpretation of these abortion provisions, because it is our  
21 position that this is a new policy.

22 We bring to your attention again at the previous board

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1 meeting there was a motion passed that before the Corporation  
2 takes any new or routine position with respect to policy that  
3 you, the president, have to be consulted -- excuse me. I mean  
4 you, the Chair, has to be consulted by the president of the  
5 Corporation and that you will decide if to refer the matter to  
6 the board or to the appropriate committee of the board for  
7 consideration and action.

8           So, it is our position that this is a policy question  
9 involving that litigation and that we feel that we should be  
10 given an opportunity, perhaps with counsel. But at least  
11 another opportunity to at least bring that before you having had  
12 an opportunity to see the positions being taken by the  
13 Corporation, because we have not seen anything until today.

14           CHAIRMAN WITTGRAF: You understand, Mr. Padilla, we  
15 are talking here about a preliminary determination being made by  
16 the president and the staff; correct?

17           MR. PADILLA: Well, my understanding is we will  
18 receive a letter, whether you say preliminary or not. But what  
19 it is going to indicate to us is findings, fact findings, and  
20 certain interpretations of the Corporation with respect to these  
21 provisions and clearly some conclusion as to whether or not we  
22 will receive up to 9.95 percent of our funds cut.

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1 I wouldn't be surprised if we were the first  
2 organization that perhaps received 9.0 just to indicate that  
3 perhaps it is not 9.5 all the time.

4 MR. GUINOT: Did you notice that there will be a 20  
5 day answering period to this?

6 CHAIRMAN WITTGRAF: I think, Mr. Padilla, you are not  
7 in the same position, you understand, as Texas Rural Legal Aid  
8 at this point in time. You are essentially -- where they were  
9 warned in January that -- the letter or the document to which  
10 Mr. Wear referred is what I might characterize colloquially and  
11 legally as a rule to show cause. You will be asked to show  
12 cause why such a determination should not be made in fact.

13 In that sense I would like to suggest, from what I  
14 know of this situation, that you have not been deprived of your  
15 right to notice. But that rather you will be given your right  
16 to notice formally by the Corporation within a matter of days  
17 and then will have 20 days from and after that date to show  
18 cause why that determination should not be made or why that  
19 tentative determination is wrong.

20 MR. PADILLA: I clearly understand the distinction  
21 between our situation and the situation of Texas Rural. My only  
22 point is that I think that if this board is concerned about

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1 policy decisions.

2           Particularly policy decisions that do have a drastic  
3 impact on programs like mine, that it would then at least take  
4 some time to ask that question of the Corporation and have the  
5 Corporation at least indicate to you as far as they are  
6 concerned it is not a new interpretation of policy.  
7 Particularly just given the action taken by this body at the  
8 last meeting.

9           MR. ABASCAL: Let me just point out one additional  
10 thing. When we have the opportunity to, we will address at  
11 great length our belief that the family planning program in the  
12 proper interpretation of the state law in California does not  
13 constitute an abortion program.

14           But an even larger issue is raised with respect to  
15 what the staff is proposing. That characterization of family  
16 planning constituting an abortion program means that, in fact,  
17 more family planning is provided through Medicaid, the federal  
18 program throughout the United States providing medical services  
19 generally. Family planning is provided to a greater degree  
20 through Medicaid than the family planning program per se.

21           The family planning program is a separate program and  
22 only provides family planning services to individuals that

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1 aren't eligible for Medicaid. But if a person is eligible for  
2 Medicaid then they are provided family planning services through  
3 Medicaid.

4 Therefore, a much larger issue is raised. I think  
5 that virtually every program in the United States, every legal  
6 services program in the United States, has engaged in  
7 representation of Medicaid recipients with respect to Medicaid  
8 eligibility. So that a lawsuit involving ineligibility for  
9 Medicaid would be a lawsuit related to abortion, because it is  
10 related to family planning.

11 So that the larger implications of this interpretation  
12 could justify or compel a ten percent reduction to virtually  
13 every program in the country.

14 I think that that, apart from CRLA and CRLA's interest  
15 in terms of preserving its funding, raises a much larger issue  
16 that the board should address in terms of the propriety and the  
17 implications of such an interpretation.

18 MR. COLLINS: Mr. Chairman, I think that they have  
19 pointed out their position. They will have ample time to  
20 document it when we meet with them again and we look forward to  
21 exploring it with them in more detail I am sure.

22 CHAIRMAN WITTGRAF: Mr. Collins, thank you. Anything

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1 else, gentlemen?

2 MR. PADILLA: No.

3 CHAIRMAN WITTGRAF: Thank you very much for the  
4 opportunity to hear --

5 MR. PADILLA: Thank you for your time.

6 CHAIRMAN WITTGRAF: We want to thank you for being  
7 here. At this time, the Chair is pleased to recognize  
8 Congressman Stenholm of Texas who is here to share some comments  
9 with us.

10 Congressman?

11 MR. STENHOLM: Thank you very much, Mr. Chairman and  
12 members of the Board. My name is Charlie Stenholm, Congressman  
13 of the Seventeenth District. A name, I believe, you have heard  
14 frequently either at the beginning or the end of a dynamic duo  
15 of which "McCollum" is the other half.

16 I would rather not guess the ratio of the times you  
17 have heard from your witnesses our names connected with praise  
18 compared with the number of times they've been connected with  
19 complaint.

20 Regardless, It's a pleasure to see my former  
21 colleagues, Guy and John, here today. As I will mention later  
22 on, I believe there can be some improvements to last year's

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1 amendment that Bill McCollum and I offered last October, which  
2 was defeated by seven votes.

3 But I continue to support the basic principles  
4 involved in that amendment as we continue to find what we  
5 believe to be, our hope will be, a more improved version.

6 Before I say anything else, I want to make one thing  
7 perfectly clear to you, this board. I believe in Legal  
8 Services. I did not believe in Legal Services when I was first  
9 elected from the Seventeenth District of Texas because of the  
10 unfavorable publicity that it was receiving at that time. But I  
11 do believe in it today.

12 I believe that the majority of Legal Services  
13 attorneys in Texas and throughout the nation are providing the  
14 services that Congress intended in the early 1970s. I believe  
15 that legal representation for the poor is vital in our American  
16 system.

17 I feel that much good is being accomplished today by  
18 many LSC attorneys. That is why I do not support no longer  
19 abolishing the LSC as some do. However, that firm belief and  
20 the importance of legal services to the poor is also why I am  
21 committed to seeing some reforms enacted. Hopefully, in the  
22 legislative process.

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1           It is my impression that the inappropriate activities  
2 of a fraction of LSC attorneys are, in effect, stealing money  
3 for the pursuit of a political agenda rather than meeting the  
4 genuine day-to-day legal needs of poor folks.

5           When one hears that Legal Service grantees have  
6 developed and distributed brochures, such as "The Law and Direct  
7 Citizen Action," which talks about organizing for social change  
8 in training citizens in strategies and tactics based on  
9 polarization and confrontation, it raises some serious concern.

10

11           When one knows about publications, a copy of which I  
12 possess, developed specifically to teach Legal Service attorneys  
13 how to circumvent their local boards of directors, the reality  
14 of local control under the current system becomes suspect.

15           In one citizen's letter to me last year I was startled  
16 to read, "One Texas LSC attorney told a group of growers that  
17 she was there to redistribute wealth and that in a revolution  
18 some people get hurt. Interestingly her office had pictures of  
19 outstanding Democrats." Her words, "Like the recent Marxist  
20 leaders of Nicaragua instead of our government officials just in  
21 case we need reminders of where their movement would take us."

22

          These examples help explain why I believe LSC reforms

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1 are warranted. I want to say right upfront that I do not come  
2 to you as a Judiciary Committee member who has jurisdiction  
3 over, and historically-based intimate knowledge of the Legal  
4 Services program. I don't even come to you as an attorney. I  
5 am a farmer by background and to help support my farming habit I  
6 used to be a teacher and now I am a member of Congress.

7 That lack of a legal background puts me somewhat at a  
8 disadvantage when I am dealing with you lawyer types. On the  
9 other hand, it may give me a little bit of an advantage by not  
10 being so much a part of the legal process. It may be that I can  
11 remove myself a little bit and, as they say, see the forest for  
12 the trees.

13 To some degree, I am in a similar position to you all  
14 who are here as part of the new board of directors. Coming in  
15 with fresh perspectives, as you have, your positions on  
16 different issues aren't tied down with historical commitments or  
17 ideological baggage.

18 I think each of you has a respected record and that  
19 the board shows a balance which will improve its credibility as  
20 well as the respect it is given by the House and Senate. I am  
21 pleased that this new board has been named and I hope the best  
22 for your earliest possible confirmation by the Senate.

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1           The point I was making was that the people in my part  
2 of the country talk about a thing called "West Texas Tractor  
3 Seat Common-sense." That is the perspective for which we tried  
4 to come to the legal services issue.

5           I don't have the legal background, but I do see some  
6 things which to the average laymen just don't seem to make West  
7 Texas common-sense. They bother me. To avoid being called a  
8 Texas chauvinist, I would like to quote my colleague, Chet  
9 Atkins, Congressman, not the certified guitar player, who  
10 recently expressed a similar feeling.

11           As you all know, Chet and I are not necessarily  
12 especially close on the political spectrum. Massachusetts sure  
13 as heck isn't much like Texas and the same thing Massachusetts  
14 would say about we Texans.

15           But certainly while expressing his frustration an  
16 anger over Legal Services attorneys representing drug dealers  
17 whom housing authorities had attempted to evict, an eviction  
18 which incidentally was being demanded by fellow housing  
19 residents, Chet had this to say:

20           "Legal Services use of taxpayer money to protect drug  
21 dealers destroys the public's faith that the government acts  
22 with a modicum of common-sense and doesn't follow every nutbag

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1 extremist philosophy." In this case, Chet and I are talking the  
2 same language.

3 Things like waste, fraud and abuse provisions seem so  
4 common-sense to me that it's hard for me to understand why  
5 they're controversial. The fact that a Legal Services attorney  
6 in my district, during regular working hours, is staffing a  
7 campaign office seems so blatantly wrong that I can't see why a  
8 prohibition on political and redistricting activity is  
9 questioned.

10 Something like timekeeping, which every other attorney  
11 in the country or most every other attorney in the country, I  
12 would say, must do if he or she expects to get paid seems so  
13 basic that I can't understand the problem with requiring it.

14 It doesn't seem to me that just because the payer in  
15 this case happens to be the United States taxpayer there is any  
16 less reason to keep time and know how our money is being spent.

17  
18 I recognize that some of the other provisions in the  
19 reforms we have offered are a little more complicated than that.  
20 In fact, I recognize that the issue which more than any other  
21 got me involved in Legal Services reform, that being the role  
22 some, and I emphasize some, Legal Services attorneys are taking

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1 against agricultural producers. That issue is one of the more  
2 legally complicated provisions of the amendment.

3 Let me assure you that in no way do I want to see the  
4 law biased against farmworkers. I am sure that abuses by  
5 producers do occur. I want those farmworkers to have access to  
6 legal service attorneys. But likewise, I don't want to see  
7 Legal Services biased against producers. From the accounts I  
8 have heard time and time again, I believe we have a problem  
9 which needs to be corrected.

10 As you know by now, my colleague, Bill McCollum, and I  
11 joined forces several years ago in an effort to redirect the LSC  
12 back towards what we understand Congress intended it to be,  
13 assisting poor persons in their day-to-day legal needs.

14 Last October, we offered our amendment to the relevant  
15 appropriation bill, since an opportunity to debate a  
16 reauthorization bill hasn't been afforded to us for nearly a  
17 decade. That reform amendment narrowly failed by seven votes.

18 Parenthetically, I would just like to mention that we  
19 came that close on the vote even though we had very little time  
20 to try to educate other members on the issue of our amendment.  
21 Also, we were doing something that this member does not like to  
22 do, and that is authorizing on an appropriation bill which is

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1 something that kind of goes against the grain in the House. But  
2 we came within seven votes.

3 That implies to me that other members have heard of  
4 these problems on their own and wanted to see some remedy. I  
5 believe that from the testimony you heard from Bill McCollum and  
6 other documents your staff has provided you, you are fairly  
7 familiar with the amendment Bill and I offered last year.

8 Bill also informed you that the intent of our  
9 amendment was focused around two primary goals, improved  
10 accountability and greater local direction. My sincere belief  
11 is that by enacting these reforms and causing Legal Services  
12 attorneys to act more like other attorneys, the image of the  
13 legal service lawyer will actually be enhanced along with the  
14 program being improved.

15 Simply to refresh your memory, let me mention that the  
16 seven major elements of the amendment were:

17 One, a prohibition of redistricting activities by  
18 Legal Service attorneys.

19 Two, application of existing federal waste, fraud and  
20 abuse provisions to Legal Services programs.

21 Three, reforms of acceptable activities by LSC  
22 attorneys in farmworker/producer cases.

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1 Four, timekeeping requirements.

2 Five, greater authority to Legal Services local  
3 program boards of directors.

4 Six, regulation of private funds.

5 And, seven, earmarking of funds for child support and  
6 drug cases.

7 As I mentioned to you earlier, my background gives me  
8 a particular sensitivity to the reform related to ag workers and  
9 producers. To give you a feel for the kind of anecdote which  
10 has motivated me, I would like to read to you a paragraph from a  
11 letter sent to me by one agricultural producer.

12 I quote. "We seem to continually be subject to one or  
13 two harassment or new precedent setting lawsuits despite our  
14 best efforts to be good and far above average farm labor  
15 employers. Currently we are working toward settlement over wage  
16 payments and migrant and seasonal workers violations on  
17 employees that never, we believe, worked for either us or our  
18 labor contractor.

19 "We survived wage and housing scrutiny during the  
20 seasons and yet two years later without any notification we are  
21 sent a copy of a suit filed against us by a group of people who  
22 claim they worked for us and were not properly paid. Naturally,

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1 they claim records keeping violations because how can we have  
2 payroll records on people who didn't work?

3 "Why did it take two years for a group to 'remember'  
4 they worked and were not paid? We will be forced to take the  
5 'rational' choice and settle \$70,000 worth of allegations. The  
6 big lesson we learned was not to operate where legal services is  
7 militant."

8 Now, obviously, this farmer was in a Catch-22  
9 situation where he was going to lose money no matter what  
10 happened. While neither the plaintiff nor the Legal Services  
11 attorney could possibly lose money. The producer was guaranteed  
12 a financial loss no matter what course of action he chose.

13 A related example was brought to me by Congressman Tim  
14 Valentine of North Carolina during last year's Floor debate.

15 Tim, who had first-hand knowledge of these cases  
16 because he helped constituents draft their response, said that  
17 letters from Legal Services attorneys "said in effect that, 'I  
18 represent a person who has worked for you, and you have violated  
19 his or her rights,' without naming the individual or without  
20 giving enough particulars for that farmer to be able to form any  
21 judgment even as to whether or not the person had ever been  
22 employed by him.

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1           "The letters would say, 'If you will send us \$5,000 or  
2 \$3,000, we will end the matter. If you don't pay us, we are  
3 going to sue you.'"

4           As Tim pointed out, unsubstantiated, vague accusations  
5 of alleged wrong-doing attached to demands for payment usually  
6 get called "extortion" where I come from.

7           Naturally, I understand that somebody else is going to  
8 have a different side to those stories and I certainly don't  
9 presume to take the role which rightly belongs to the courts in  
10 such matters. However, it seems clear to me that things like  
11 solicitation of clients, no requirements for mediation or  
12 administrative remedy, and no requirement to identify plaintiffs  
13 creates an environment where abuse can abound.

14           It is possible for us to draft an amendment where  
15 growers who deserve to be sued because they exploit their  
16 workers are, in fact, sued without innocent producers being  
17 harassed and financially devastated, which has been far too  
18 often the rule.

19           I would like to emphasize three important points at  
20 this time. First, I felt that there were some valid criticisms  
21 against our amendment last year. Bill McCollum and I are trying  
22 to learn from those criticisms and incorporate some improvements

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1 in this year's reform package.

2 Bill and I are still working out the details of those  
3 improvements. So, I am not able to provide you with a final  
4 product yet. In fact, before we do arrive at a final product,  
5 we would be happy to hear from any of you board members for your  
6 suggestions or comments.

7 One area in which we are taking a particular good hard  
8 look is the provision relating to the agricultural worker and  
9 producers. Some of the changes we are considering are:

10 A. Providing a choice between exhausting  
11 administrative remedies or making a good faith effort to use  
12 alternative dispute resolution.

13 B. Removing the words "any and all" from the  
14 requirement of exhausting administrative remedies.

15 C. Making the requirement of identifying the  
16 plaintiff compatible with the requirement contained in the  
17 Federal Rules of Civil Procedure which all other attorneys  
18 follow.

19 D. Allowing the court to omit a plaintiff's name.

20 E. Removing the requirement that an affidavit be  
21 filed with the complaint.

22 I reiterate that these changes have not been finally

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1 agreed to, but they are adjustments which we are considering and  
2 which we are considering them because we want to be open-minded  
3 about the criticisms which we have received. I believe that  
4 some modifications in the non-agriculture provisions might also  
5 be possible.

6 In a related note, the second point I want to make is  
7 that Bill McCollum and I are very happy to meet with other folks  
8 who have an interest in these reforms. When Bill testified  
9 before you last month, he was strongly urged to meet with a  
10 representative from the ABA. I am happy to report that plans  
11 for that meeting are underway.

12 Similarly, I wanted to let you know that I have made a  
13 point of meeting with the Legal Services attorneys in my own  
14 congressional district and that the meetings I have had with  
15 them are always very amicable.

16 As I said earlier, I believe that the majority of LSC  
17 attorneys are performing a valuable service in a commendable  
18 manner and that certainly it is the impression I have had of LSC  
19 folks in my district. When my constituents contact me with  
20 legal problems, I frequently have cause to refer these  
21 constituents to Legal Services and I never have reservation in  
22 doing so.

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1           So, my point is that I value input from everyone  
2 interested in this issue and will be happy to meet with anyone  
3 who has concerns about our reform. Particularly, I value the  
4 input from this board.

5           Thirdly, I want to give you every reassurance that I  
6 am eager to work through the committee authorization process  
7 rather than the appropriations process for trying to enact these  
8 reforms. I have always made it clear that I am uncomfortable  
9 with authorization type language on an appropriate bill and that  
10 is not my preferred way of doing business.

11           Unfortunately, we have not had the option of a  
12 reauthorization vehicle for quite some time. In fact, since  
13 1981. Then it passed the House and died in the Senate. I am  
14 delighted that Barney Frank, chairman of the Subcommittee on  
15 Administrative Law and Governmental Relations, has now scheduled  
16 reauthorization hearings for May the 9th and 23rd.

17           I have already spoken with Barney and I am on the  
18 witness list on the May 9th hearing. I also intend to work with  
19 Harley Stagers, a subcommittee member, who has had some past  
20 interest in our reforms so that if we get to a subcommittee mark  
21 up we will be participating in the committee process from the  
22 inside as fully as possible.

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1           Of course, Bill McCollum serves on the full committee  
2 and will be carrying the water for the reform effort if a full  
3 committee mark up occurs.

4           My fond hope is that the reauthorization process will  
5 be completed this year and that we won't be forced to look to  
6 the appropriation bill for remedy of some of our concern.  
7 However, we will be prepared to take whatever route is available  
8 to us.

9           Ladies and gentlemen, this concludes my remarks.  
10 Again, I appreciate very much the opportunity to testify before  
11 you today. I do sincerely look forward to working with you and  
12 accomplishing some of the goals which we have outlined to you  
13 today.

14           CHAIRMAN WITTGRAF: Thank you very much, Congressman  
15 Stenholm. Do you have a few minutes?

16           CONGRESSMAN STENHOLM: Surely.

17           CHAIRMAN WITTGRAF: Mr. Collins?

18           MR. COLLINS: I have no questions, except to  
19 congratulate the Congressman for his continuing interest and  
20 perseverance. I intend to help you as much as I can.

21           CONGRESSMAN STENHOLM: I appreciate that.

22           CHAIRMAN WITTGRAF: Ms. Love?

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1 MS. LOVE: Nothing.

2 CHAIRMAN WITTGRAF: Mr. Molinari?

3 MR. MOLINARI: I have to say hello of course. Good to  
4 see you.

5 CONGRESSMAN STENHOLM: Good to see you.

6 MR. MOLINARI: We had some staff members in earlier  
7 today and they were rather pessimistic about the possibility of  
8 an authorization bill coming up this year with the clock running  
9 out. Do you have any idea whether such a bill is possible this  
10 year or, if not this year, next year?

11 CONGRESSMAN STENHOLM: I, as I mentioned, have had  
12 conversations with Barney Frank, the chairman of the appropriate  
13 committee. I believe that he is 100 percent sincere in his  
14 desire not only to hold hearings, but also to move through the  
15 mark up process.

16 I have visited with Harley Staggers, he and I serve on  
17 the Agriculture Committee together. Harley has had some  
18 personal problems at home in his district, of which I sense that  
19 the tolerance level, if not exceeded, is getting there for non-  
20 action.

21 Therefore, between the two, I believe today that we  
22 will see the authorization process move at least through the

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1 subcommittee level if that spirit shall prevail and the  
2 willingness to look at reform.

3 In our conversations that we have had in the past, and  
4 that is why I mentioned some of what I consider to be valid  
5 criticisms -- as I said I am not an attorney, therefore, you  
6 have to explain it to me about twice and then I will never  
7 understand it, but if it makes sense I will support it.

8 I believe that some of the things that have been  
9 suggested about some of our language last year made sense.  
10 Therefore, we are open to making some of those corrections. So,  
11 where some of the legal concerns are there and are valid that we  
12 can make some.

13 So, with all that, Guy, I have got to -- I guess maybe  
14 that is the farmer in me that comes out right now, the eternal  
15 optimist. I believe Barney is sincere 100 percent. So, I think  
16 we are going -- we are going to shock the pessimists among us.

17 MR. MOLINARI: Thank you. That is encouraging and  
18 certainly it would make our job a lot easier if such a bill  
19 could wind its way through both Houses and be signed. It is  
20 good to see you.

21 CONGRESSMAN STENHOLM: Thank you.

22 CHAIRMAN WITTGRAF: Ms. Pullen?

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1 MS. PULLEN: Congressman, I would just like to  
2 apologize that I had to interrupt my attention to your remarks  
3 with an urgent phone call. I will be taking your testimony home  
4 and reading it on the plane. I appreciate your coming here.

5 I also, as a non-attorney, appreciate your willingness  
6 to jump into this fray and try to bring what you and many others  
7 perceive as common-sense to this. I think that we can't afford  
8 to allow these attorneys to have the entire playing field in  
9 this regard, because the taxpayers certainly have a deep  
10 investment in this important program.

11 CONGRESSMAN STENHOLM: Ms. Pullen, I must be further  
12 honest and confess to you that I have cleaned up my act  
13 considerably on attorneys since my oldest son has now become  
14 one.

15 (Laughter.)

16 CHAIRMAN WITTGRAF: Mr. Guinot?

17 MR. GUINOT: I just would thank the Congressman for  
18 coming over here and certainly it is very clear your position  
19 and your feeling. Certainly we will look at it very carefully.

20 CHAIRMAN WITTGRAF: Ms. Wolbeck?

21 MS. WOLBECK: I am glad to hear there is someone else  
22 that needs it run by a couple of times. I am a farmer also.

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1 CHAIRMAN WITTGRAF: Mr. Hall?

2 MR. HALL: I just wanted to say that my aunt and my  
3 first cousin and many of my good friends live in Comanche,  
4 Texas, which is in the Congressman's district. I appreciate  
5 seeing him here today. It is nice to have a normal American  
6 accent that I can understand.

7 (Laughter.)

8 MR. HALL: This will be the highlight of my day,  
9 Congressman.

10 (Laughter.)

11 CONGRESSMAN STENHOLM: Blake, good to see you.

12 CHAIRMAN WITTGRAF: Mr. Erlenborn?

13 MR. ERLENBORN: Charlie, welcome. It is good to see  
14 you here. Let me say hearing you and Bill McCollum, and the two  
15 staffers who were here today, I think proves to all of us that  
16 we can have, as I mentioned earlier today, reason to discourse  
17 about this without getting so passionate.

18 Unfortunately, not everybody is that way when you get  
19 into the legislative process. But I am happy to see your very  
20 practical and dispassionate approach.

21 Thank you.

22 CONGRESSMAN STENHOLM: Thank you, John.

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1 CHAIRMAN WITTGRAF: Mr. Dana?

2 MR. DANA: I want to second the comments of  
3 Congressman Erlenborn and thank you for being here today. Thank  
4 you especially for reemphasizing a point that was made earlier  
5 today that all of these matters are on the table and open to  
6 discussion and that our views and the views of the community  
7 will be listened to, if not necessarily adopted. Hopefully, we  
8 will come up with a reauthorization of this act that does what  
9 it is supposed to do.

10 I will say that I have never really understood what  
11 "day-to-day" means, but it has become a code word for something.  
12 I am not sure what.

13 CHAIRMAN WITTGRAF: I think you understand that this  
14 is the only the third time that this board which is  
15 characterized as a board of recess appointees. I don't know  
16 that most of us even knew what recess appointees were until a  
17 few months ago. We may yet this year become nominees. If we  
18 are real fortunate, later this year we might actually be  
19 confirmed.

20 We have been -- in the three times we have been  
21 together -- spending a great deal of time really trying to  
22 learn. Your participation, Mr. McCollum's, Paul McNulty's and

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1 Tom Polgar's this morning, as well as 39 or 40 people who  
2 testified or appeared before us on March 26th, has been very,  
3 very helpful.

4 We have not to this point attempted to enunciate board  
5 positions in any of the reform areas. We were not expecting and  
6 didn't learn until recent days that beginning -- the resumption,  
7 I guess I should say, of the reauthorization hearings on May 9th  
8 and 23rd, which you referred. I think we are scheduled to add  
9 our words of wisdom on the 23rd, two weeks after you appear. We  
10 do have another board meeting scheduled on the 21st.

11 I think we do plan to take you seriously at your  
12 suggestion that we may well have some thoughts. Both  
13 Congressman McCollum last month and then Mr. McNulty and Mr.  
14 Polgar this morning indicated that it is a dynamic process. It  
15 is an evolutionary process. That the McCollum-Stenholm reforms  
16 are not cast in stone. We hope to be able in the months ahead to  
17 get more actively into that process.

18 As Mr. Molinari indicated, it appears that Mr. McNulty  
19 and Mr. Polgar were fairly pessimistic. They didn't have your  
20 West Texas tractor seat optimism. They were fairly pessimistic  
21 about reauthorization this year.

22 But they stressed the importance of it, because if we

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1 get a serious start in '89-90 in the 101st Congress, it will be  
2 influential, we all hope, I guess, in the deliberations of the  
3 102nd Congress if reauthorization carries over.

4           So, we do look forward a little bit later in the year,  
5 perhaps in sharing some suggestions with you. We will begin  
6 casting those suggestions probably when we get together for our  
7 May meeting.

8           But forgive at this point, we are even less students  
9 perhaps on some of these issues than you, the non-lawyer,  
10 farmer, teacher, Congressman.

11           Thank you very much. We appreciate your taking time  
12 to be here. We hope that you will not hesitate yourself or  
13 through your staff to either ask for us for some inputs on  
14 specific areas or to share some thoughts or concerns that you  
15 have with us as our service unfolds, because we are learning now  
16 and we are going to continue to learn.

17           As you get a few horror stories brought to you and you  
18 and your colleague, Mr. McCollum, become sort of lightning rods  
19 for those horror I suspect at this point, complaints I will call  
20 them, want to be made aware of them.

21           I think we share your perception that the vast  
22 majority of Legal Services staff attorneys are doing what most

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1 of us think they ought to be doing, providing legal services to  
2 indigent Americans. But if you become aware of those kinds of  
3 complaints or horror stories, please share them with us.

4 Thank you.

5 CONGRESSMAN STENHOLM: Mr. Chairman, we certainly will  
6 do that. Just to repeat one thing, I am totally convinced we  
7 have a very serious problem that needs to be corrected or an  
8 entire program, of which, as I have said, I am very supported of  
9 today, will be the one to suffer. That means the very folks  
10 that the act was designed to take care of are the ones that are  
11 going to be hurt unless we are able to find the solution to  
12 that.

13 We truly will look forward to working with you and we  
14 will welcome your input at any time, and accept your kind offer  
15 on the other side to work with you in this, because we are  
16 dedicated to finding resolution if at all possible.

17 Thank you.

18 CHAIRMAN WITTGRAF: Thank you. Mr. President, at  
19 this time, I think we are prepared to move to agenda item 7.  
20 You have got some comments to begin, I believe.

21 MR. WEAR: Thank you, Mr. Chairman. Agenda item 7  
22 deals with the access to certain records. Those have been

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1 denominated as comprising the EVA or employment verification  
2 file.

3 If I may, Mr. Chairman, I would like to ask both  
4 Emilia DiSanto, the director of the Monitoring, Audit and  
5 Compliance Division, and general counsel, Tim Shea, to come  
6 forward to the witness table.

7 Mr. Chairman, earlier last week the board members  
8 received a copy of a memorandum from Mr. Shea summarizing the  
9 current situation with regard to three grantees. One the  
10 Neighborhood Legal Services Association of Pittsburgh, the  
11 Middlesex County Legal Services Corporation, which the board  
12 heard from last month, Pittsburgh in February. And, lastly,  
13 Community Action for Legal Services, Inc. That memorandum  
14 summarizes where we are, Mr. Chairman.

15 With regard to Neighborhood Legal Services of  
16 Pittsburgh, we have been talking with that program. They are in  
17 the sixty day period they were given at the February board  
18 meeting. We thought we had worked out an agreement with them.

19  
20 When we went to examine those files we found out we  
21 didn't. It turns out that the union associated with that program  
22 sent a memorandum to its workers, dated April 18th, which is

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1 attached to Mr. Shea's memorandum outlining their position on  
2 this situation. The bottom line is that we are not even at  
3 square one. We have moved back behind square one from where we  
4 were in February with regard to this program.

5 Middlesex Legal Services, again we have been talking  
6 with them. They appeared before the board in March. The bottom  
7 line is that we have not been able to resolve that question.

8 With regard to Community Action for Legal Services,  
9 Inc., we have also been working with that program. Mr. Shea has  
10 been talking with the program's executive director and their  
11 attorneys. We believe that we have a situation which will  
12 permit the creation and inspection of those files prior to the  
13 effectiveness of the preliminary determination to suspend  
14 funding.

15 So, I will take a cue from Congressman Stenholm and be  
16 optimistic about that and hope that that is going to be resolved  
17 as we move forward.

18 That, Mr. Chairman, is a brief summary of where we are  
19 with regard to those three entities. There is also a memorandum  
20 from me to the director, dated April 26, dealing with the  
21 background information that is in these files and why that  
22 information is important and the uses to which it is put by the

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1 Corporation.

2 Mr. Chairman, I think summarizes where we are on this  
3 issue. Given the fact that the sixty day extension for  
4 Neighborhood Legal Services in Pittsburgh has run out, we are  
5 back to where I was in February with regard to that program. We  
6 do not have a contract with the program. We are not able to  
7 fund them further and, indeed, will ask them for the return of  
8 the monies that they have received thus far.

9 We have somewhat a similar situation with regard to  
10 Middlesex and, again, we have not been able to resolve that  
11 question.

12 I would be pleased to respond to any questions that  
13 any board members may have and also, if necessary, to ask Mr.  
14 Shea and Ms. DiSanto to elaborate on the points that I have  
15 covered or on the need for the information.

16 MR. DANA: Mr. Chairman?

17 CHAIRMAN WITTGRAF: Mr. Dana?

18 MR. DANA: Mr. Chairman, it was my recollection at the  
19 last board meeting that we, as a board, asked Mr. Shea to  
20 prepare a memo setting forth the rationale for seeking all of  
21 the records, to share that with Mr. Loines and Houseman and to  
22 get their reply so that we could understand better what this

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1 issue was all about. And, why the Corporation without benefit  
2 of board action or regulation imposed this requirement on all  
3 contracts unilaterally without either regulation or board  
4 action.

5 My understanding is that the memorandum was prepared  
6 and distributed to us, but specifically denied Mr. Houseman and  
7 others.

8 I wondered if perhaps I misunderstood what it was that  
9 we were going to do this last month or whether the time ran out,  
10 or what the reason for precipitating yet another crisis and  
11 putting this board in a position where at the eleventh hour our  
12 president presents us with a situation that requires not only  
13 the defunding of programs that are providing legal services to  
14 the poor, but requiring them to return monies that they have  
15 already obviously spent to help the poor.

16 MR. WEAR: Mr. Chairman?

17 CHAIRMAN WITTGRAF: Go ahead, Mr. Wear.

18 MR. WEAR: Thank you, Mr. Chairman. In response to  
19 Mr. Dana's request the general counsel did confer with Mr.  
20 Houseman and with Mr. Loines at some great extent, actually that  
21 period of conferences is laid out in the first portion of Mr.  
22 Shea's memorandum. They were able to isolate in general five

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1 kinds of information that were of, I guess, some controversy.

2 If I may, I will ask Mr. Shea to elaborate and to fill  
3 in the gaps on that particular portion of the memorandum.

4 MR. SHEA: Certainly. I spoke with them from time-to-  
5 time on the phone and then had a meeting with Alan Houseman and  
6 Dwight Loines about the subject of the EVA file in an attempt to  
7 distill where our differences lay with respect to the file.

8 Now, I will tell you that from a practical point of  
9 view, I think we all have different views about what the legal  
10 setting is. None of us tried to address in that context the  
11 issue of LSC entitlement to personnel files one way or another.

12 Obviously our legal position is that we are entitled  
13 to any personnel files as long as they are not covered by some  
14 applicable privilege. No one has seriously argued that there is  
15 an applicable privilege with respect to these, at least to date,  
16 number one.

17 Within that context, nevertheless, we did discuss what  
18 the concerns of the programs were and the concerns of the union  
19 are. I think I might add I have had similar discussions as well  
20 with other programs who have had problems with access generally.

21

22 The program's view is that the matter of access should

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1 be dealt with in a much broader context, that is the context of  
2 the meaning and function of monitoring in general. What  
3 monitoring is supposed to accomplish and what a monitor is  
4 supposed to do.

5 The unions have similar concerns and they also were  
6 able to articulate some of the particularized concerns they had  
7 with respect to the EVA file. Most of those concerns deal with  
8 certain classes of -- there are fourteen classes of documents  
9 that are in the EVA file. Most of the concerns relate to  
10 personal information that may be found in resumes, in  
11 performance evaluations generally, grievances, disciplinary  
12 actions and request for permission to engage in the outside  
13 practice of law.

14 With respect to the balance of the documents there was  
15 no special concern. I think it is fair to say with perhaps some  
16 limitations anyway. There was no special concern about making  
17 available the balance of the documents that appear in the EVA  
18 files.

19 MR. DANA: Excuse me just a moment. Mr. Chairman, I  
20 asked whether or not Mr. Shea's memo was shared -- why wasn't  
21 your memorandum shared with the people? Didn't we ask you to do  
22 that at the last meeting so that they could respond rather than

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1 have you make a presentation here and then their having to stand  
2 up and -- the effort at the last meeting was to ask the  
3 Corporation to sit down the programs and exchange communications  
4 on this subject. I don't think that happened and I am wondering  
5 why.

6 MR. SHEA: Well, frankly, it took quite some time for  
7 us -- that is for Alan, myself and Dwight to get together.  
8 Dwight was on the road, I think, for the two weeks immediately  
9 following the last board meeting. That is my recollection.

10 MR. DANA: Let me put it this way, the file you -- the  
11 EVA memorandum that you mailed to me, did you mail it to them?

12 MR. SHEA: No, I did not.

13 MR. DANA: Were you instructed not to?

14 MR. SHEA: All I did was give it to the Corporation's  
15 secretary and as far as I know it wasn't. So, it hasn't been  
16 furnished and I got requested this morning to furnish it. I  
17 didn't find -- the president urged that I not furnish it to the  
18 public.

19 CHAIRMAN WITTGRAF: Anything further at this time, Mr.  
20 Shea? Mr. Shea, will you summarize your understanding of the  
21 present situation relative to Neighborhood Legal Services of  
22 Pittsburgh, Middlesex County, New Jersey, and CALS of New York?

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1 MR. SHEA: Certainly. It is consistent with the  
2 explanation already provided by President Wear. But let me be a  
3 little -- let me elaborate a little bit if I can. With respect  
4 to Neighborhood Legal Services Association of Pittsburgh, their  
5 position prior to the last time they appeared was that they  
6 would not create or make available the so-called EVA files.

7 After the meeting, they agreed to create EVA files.  
8 Actually, strictly speaking, they had some EVA files, but they  
9 specifically kept out four classes, I think, of documents out of  
10 that file, grievances, evaluations and the like. After the  
11 meeting, they agreed to put in those four classes of documents  
12 in the EVA files.

13 Insofar as they had represented that there were very  
14 few records that they considered to be sensitive, these four  
15 classes of papers, that were extant. That is they apparently--  
16 my understanding was they didn't do regular yearly evaluations  
17 of employees, but there were only a handful, if any, of either  
18 grievances or EEO complaints.

19 It appeared to me that there would be every reason in  
20 the world why -- if and when our monitors appeared to reexamine  
21 the EVA files that we could access to -- either if not all of  
22 them -- an overwhelming number of them. That expectation turned

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1 out to be a little overly sanguine.

2           The program advised us when our monitors were about to  
3 reappear that they still going to obtain permission from each  
4 and every one of the employees whose EVA file was sought and  
5 that after some consultation with the union representations,  
6 practically none of the employees provided consent.

7           I might add when the monitors appeared, I think in  
8 February of this year, they got consent to a number of people's  
9 personnel files, as well as all of the EVA files that were  
10 missing these four classes of documents. When they were trying  
11 to schedule a return, they weren't even able to get access to--  
12 they were able to get access to an even fewer number of EVA  
13 files.

14           So, hence, we -- in spite of what I like to think was  
15 some opportunity to resolve the differences in principle, they  
16 remain. I advised -- Neighborhood Legal Services expressed some  
17 concern about their status I might add and they sent in a letter  
18 to me and perhaps to the board members, I have it here if you  
19 don't have it available, suggesting that they expect that their  
20 funding status should remain intact. They have been advised  
21 that regrettably their status remains in jeopardy for the very  
22 reason that -- because the matter hasn't been resolved.

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1           CHAIRMAN WITTGRAF:    Which grantee is it that is  
2 involved with this union letter, the attachment?

3           MR. SHEA:           That is Neighborhood Legal Services  
4 Association of Pittsburgh.

5           If I may move on to the matter of Middlesex County  
6 Legal Services Corporation, I have had a couple of conversations  
7 with Paul Mullen, who is the executive director. He also  
8 appeared before the board. That organization maintains the  
9 reservations that it has to, first of all, to -- I think they  
10 had some reservations about creating EVA files.

11           They now, I think, are comfortable in creating EVA  
12 files. I think it is fair to say. They have reservations about  
13 making them available without -- insofar as would contravene the  
14 terms of their existing collective bargaining agreement.

15           I think it is their view that come the end of the year  
16 in all likelihood they could create and maintain. In that  
17 setting they would not -- they would have no objection to doing  
18 so or they are unlikely to have an objection to doing so.

19           As things currently stand, though, as for our current  
20 demand for creation of the files and access, their position  
21 remains the same. That is that they are precluded from doing so  
22 by reason of, first of all, a policy of the board of directors.

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1 Secondly, the collective bargaining agreement they now have in  
2 place. So, that position, again, is unchanged.

3 CHAIRMAN WITTGRAF: Do I understand that you have  
4 worked something out with CALS?

5 MR. SHEA: Well, yes. CALS, around the time of the  
6 last board meeting or perhaps shortly before, they were  
7 scheduled for their regular monitoring. The monitors were  
8 denied -- in connection with that regular monitoring, the  
9 program did not furnish access either to EVA files or to the  
10 documents that ordinarily would appear in EVA files.

11 The program actually had not created the EVA files,  
12 although they had available, of course, the records that  
13 ordinarily would be put in them. Thereafter, they were served  
14 on April 11, 1990, a preliminary determination to suspend  
15 funding under part 16.23 was served on CALS. CALS counsel met  
16 with me on the proposed action. That proposed action, of  
17 course, put in jeopardy their monthly grant check.

18 They at the same time, and perhaps as a result of the  
19 monitoring visit itself, pursued the contractual -- they  
20 exhausted the remedies that were required under their--  
21 apparently required under their collective bargaining agreement.

22

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1           Wherein they went to arbitration, I believe, and then  
2 bargained to impasse with a union with respect to the issue  
3 about creating EVA files and making them available. Once they  
4 got to impasse they were in a position to pursue things without  
5 regard to any impediments in their collective bargaining  
6 agreement.

7           They advised us by letter of April 24 that it would--  
8 well, first of all, on April 20th, it advised me that it would  
9 proceed to create and maintain EVA files pursuant to the grant  
10 condition. On April 24th, they advised me that they would  
11 provide access to permit monitors to review these files if they  
12 are created.

13           Hence, they have avoided -- under the terms of the  
14 notice, they will avoid the suspension subject, of course, to  
15 the confirmation by Monitor, Audit and Compliance that they  
16 have, indeed, created the files and given us access. So, that  
17 suspension -- they have responded properly to the suspension  
18 notice.

19           CHAIRMAN WITTGRAF: If my understanding is correct,  
20 Mr. Houseman and Mr. Loines are both here, and I think certainly  
21 Mr. Houseman and certainly Mr. Loines are prepared to be heard.  
22 We have got a couple of representatives of Middlesex, and a

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1 representative of CALS. Anybody else who would like to be heard  
2 with regard to EVA, if you gentlemen and ladies would come  
3 forward at this point, it would be helpful.

4 Mr. Houseman, let me be sure that I understand, how  
5 the board understands, where we are at. I think we have some  
6 general concern with the EVA requirements and we have also got  
7 some specific concerns as it pertains to the two or three  
8 different grantees.

9 As Mr. Dana indicated in his questioning earlier, it  
10 was his intention, and I think the intention of the staff as  
11 well, that there would be more of an opportunity to react to Mr.  
12 Shea's memo. In fact, it has come out only very recently. I  
13 think perhaps even one or more of our board members have not  
14 received it prior to today either.

15 Why don't each of you give us an idea first of where  
16 you are coming from and then I think Mr. Wear has some comments  
17 before we proceed.

18 Mr. Houseman?

19 MR. HOUSEMAN: That's fine. It is really up to you.

20 CHAIRMAN WITTGRAF: Just tell us first -- I don't want  
21 the remarks.

22 MR. HOUSEMAN: No. I understand.

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1 CHAIRMAN WITTGRAF: Okay. Who each of you represent.

2 MR. HOUSEMAN: Okay. I am Alan Houseman. I am  
3 director of the Center for Law and Social Policy. I represent  
4 the National Legal Aid and Defender Association, a project  
5 advisory group, with regard to legal and regulatory issues and  
6 with regard to this. Let me just say one word about where we  
7 are and then I will pass it on.

8 I prepared the two documents that you have in front of  
9 you on Friday, late on Friday, when it became clear I was not  
10 going to receive anything from Mr. Shea to respond to. That is  
11 why I did it. I had no idea what the memorandum contained.

12 Secondly, we did have a meeting on April 17th. Since  
13 then we have been ready, willing and able to meet, to talk, to  
14 go back and forth with proposals about resolving both the narrow  
15 EVA issues and to begin a dialogue about the broader issues that  
16 we want to discuss with you today.

17 So, let me just stop there.

18 CHAIRMAN WITTGRAF: That's good. Just introduce  
19 yourselves and your interest for the moment. I believe Mr.  
20 Guinot has some comments he needs to make before he has to  
21 leave.

22 MR. MILLER: I am D. Miller. I addressed the board at

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1 the last meeting and I worked with Alan Houseman to try to  
2 prepare a perspective, adding the field perspective, on the  
3 general policy issues that we would hope this board would  
4 address rather than dealing with the specifics of individual  
5 grantees.

6 CHAIRMAN WITTGRAF: Mr. Loines?

7 MR. LOINES: My name is Dwight Loines. I am president  
8 of the National Organization of Legal Services Workers, District  
9 65, UAW.

10 MR. JOHNSON: Good afternoon. I am Dale Johnson, the  
11 executive director of Legal Services for New York City, formerly  
12 known as CALS. I came up because I was invited by the Chair to  
13 come up. I would only say that I will continue to work with Mr.  
14 Shea in resolving this from my perspective and my organization's  
15 perspective.

16 However, I feel that it is going in the right  
17 direction. There has got to be a better way to resolve this  
18 issue.

19 CHAIRMAN WITTGRAF: Mr. Mullen and Mr. Green are here  
20 on behalf of Middlesex County Legal Services Corporation.

21 MR. GREEN: Yes. I am Jeffrey Green and I am the  
22 chairman of the board of Middlesex County Legal Services

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2 CHAIRMAN WITTGRAF: Mr. Mullen, who visited with us on  
3 March 27th is the executive director.

4 MR. MULLEN: Correct.

5 CHAIRMAN WITTGRAF: Mr. Guinot would like to make a  
6 few remarks before I turn to Mr. Wear. Mr. Guinot?

7 MR. GUINOT: There are very few. What I would like to  
8 say that this is a subject matter which I am very interested in  
9 as you have been able to determine from my comments in the past.

10 Unfortunately, by reason of administrative oversight  
11 or whatever, I did not get the memorandum that was prepared by  
12 the staff. I travel a lot and they are obviously sitting in my  
13 office. I flew in very, very late on Friday night. So, I am  
14 embarrassed. I cannot address myself to any of the issues  
15 presented by the Corporation.

16 But the fact is that I have an appointment and I have  
17 to leave and I do not want my absence to be construed as lack of  
18 interest. It is not. On the contrary. I hope to be able to  
19 catch up. But I wanted to say that before I left.

20 Thank you.

21 MR. WEAR: Mr. Chairman?

22 CHAIRMAN WITTGRAF: Mr. Wear?

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1 MR. WEAR: Thank you, Mr. Chairman. Mr. Chairman, in  
2 light of the material that we received from Mr. Houseman and  
3 also the National Association of Legal Services Workers and the  
4 fact that Mr. Guinot has not had an opportunity to read the  
5 staff memorandum on this, I would propose that the Corporation  
6 fund the Pittsburgh program and the Middlesex program for an  
7 additional month to allow the parties to digest this material  
8 and allow Mr. Houseman and whomever else to look at Mr. Shea's  
9 memorandum, dated April 27th, and also the memorandum from me,  
10 dated April 26th, and to prepare whatever responses they had to  
11 it. We can take this matter up at the next meeting.

12 I believe that the situation with regard to the New  
13 York program is in the process of resolving itself. So, I don't  
14 think we have to worry about it.

15 CHAIRMAN WITTGRAF: I am a little bit concerned. Mr.  
16 Houseman is with us on a regular basis. Dwight is here quite  
17 regularly as well. Mr. Mullen is not. Mr. Green, I am sure,  
18 hopes not to be here again if at all possible.

19 (Laughter.)

20 MR. GREEN: Actually I am unable to be here on the  
21 21st.

22 CHAIRMAN WITTGRAF: Let's go back to CALS for just a

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1 moment. I guess I am at a little bit of a loss, as an outsider  
2 here and perhaps other of the board members are in the same  
3 position, how it is possible for CALS to have worked out an  
4 accommodation, if you will, of the Corporation's needs and the  
5 grantees' and the employee's needs where I gather we are making  
6 little or no progress with Middlesex.

7 MR. JOHNSON: I don't -- I cannot speak on behalf of  
8 my employees and whether I have worked out anything to their  
9 satisfaction. To the contrary, I don't believe I have.

10 All that I did was comply with the contractual terms  
11 of my collective bargaining agreement from the moment I received  
12 the grievance when the monitors were on site in my program. I  
13 believe that Mr. Shea now understands fully the contractual  
14 obligations that I encountered at the time which had a limited  
15 stay provision involved, which did not involve a stay through  
16 arbitration.

17 We have not been through arbitration. Rather, I could  
18 not declare impasse before the passage of five days. This  
19 clause, by the way, has been in existence since the '70s. It  
20 wasn't something of recent development.

21 CHAIRMAN WITTGRAF: In the contract with the  
22 employees.

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1 MR. JOHNSON: In the contract. Exactly. It has never  
2 been discussed in about six successor agreements to that  
3 contract. At any rate, we continued to negotiate while the  
4 monitors were on site. The union asked, I believe, some  
5 legitimate questions about what this was about, what use it was  
6 going to be put to. I was not in a position to provide them  
7 with answers.

8 I subsequently corresponded with the Legal Services  
9 Corporation asking them questions, not knowing what was  
10 happening on the national level. I received a copy of the  
11 Oregon reply brief on the appeal in response to my letter. I  
12 read it. I gathered as much as I could from it. The union and  
13 I continue to negotiate.

14 My counsel and I visited with Mr. Shea last week or  
15 so. I continued to meet with the union after that meeting with  
16 Mr. Shea. I relayed to them what he had told me. At that  
17 point, I recognized that there was no room for further  
18 discussions between the union and me, and I declared impasse,  
19 and stated that I would give the Corporation access to the  
20 documents that they wanted.

21 In addition, we did communicate with Mr. Shea telling  
22 him, as he relayed to you, that we would create those EVA files.

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1 There was legitimate confusion on our part about whether it was  
2 going to be one file or these records.

3 My organization has over 300, about 300, employees in  
4 nineteen different locations. Our files are maintained  
5 differently than any place else. It is going to take me some  
6 time. That is why I would ask for some understanding to create  
7 these files by bringing documents in from various locations,  
8 sending them out from other locations, and we will be provided  
9 with it.

10 I am going to be very practical about this. I don't  
11 like what is happening. I don't like the way things have  
12 proceeded. If I am put in a position of breaching something,  
13 and every month it is in excess of a million dollars for me, I  
14 have a large number of employees, a lot of clients are dependent  
15 upon our service, I am going to act very practically and make a  
16 determination of which one to breach. I think it is very clear  
17 and very unfortunate that I had to be put in that position when  
18 I think it can be worked out.

19 I have, since the late 1970s, negotiated about six or  
20 seven contracts with this union. We have had our differences,  
21 but we have been able to come to an agreement each and every  
22 time. The same thing can be done here.

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1 I just ask that people be reasonable. I don't think  
2 it makes very much sense for it to be done on a case by case  
3 basis with hundreds of grantees. There has got to be a better  
4 way to deal with this.

5 CHAIRMAN WITTGRAF: That, of course, gets to the  
6 process when three gentlemen in the middle are involved and some  
7 adequate opportunity to get one another's written views. Let me  
8 go across to Middlesex for just a moment. We have heard the  
9 gentleman from CALS, I am just wondering what, if anything, that  
10 means to the Middlesex situation.

11 MR. GREEN: Yes. I would like to make one comment,  
12 Mr. Chairman. In looking at the minutes to the meeting, on page  
13 13 it indicated that Mr. Mullen asked for continued funding for  
14 Middlesex County Legal Services while he negotiated with its  
15 employees on the issue of monitors access to personnel files.  
16 Mr. Mullen had indicated to me that he had requested continued  
17 funding while he negotiated with LSC. That was our  
18 understanding as to what was said at the meeting and not that he  
19 negotiate with his employees.

20 Mr. Mullen in the --

21 CHAIRMAN WITTGRAF: Let me stop you there just a  
22 moment. We took some action on the minutes this morning, but

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1 you are proposing a change. Mr. Mullen, are you suggesting that  
2 the minutes should be corrected in that way?

3 MR. MULLEN: Yes, Mr. Chairman. There was some  
4 discussion on my ability to negotiate with the union. I was  
5 saying to the board that I was unable to negotiate that issue.  
6 The continued funding for Middlesex was in the hopes of  
7 resolving the issue with LSC.

8 If you recall, I mentioned my being uncomfortable with  
9 that since I did not have much success in negotiating with you  
10 up to the point of that last meeting. You had asked that  
11 funding be continued for the month while we continued to  
12 negotiate.

13 CHAIRMAN WITTGRAF: Does anyone have any objection to  
14 the minutes being amended accordingly?

15 MR. WEAR: Mr. Chairman, if I may. We will review the  
16 transcript and see what it says. I don't know, but we will look  
17 at it.

18 CHAIRMAN WITTGRAF: Thank you. Going beyond that --

19 MR. GREEN: Could I continue?

20 CHAIRMAN WITTGRAF: Yes.

21 MR. GREEN: When Mr. Mullen was here before the board  
22 the last time, he did not have the benefit of our particular

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1 union contract completely analyzed. Since that meeting we have  
2 presented a complete statement of facts and background to a  
3 labor counsel that we have requested study this matter.

4 As has been indicated in the letter that was given to  
5 the Chairman, and I would like to give a copy of that letter to  
6 the other members, our legal counsel, labor counsel, has  
7 indicated that based upon article 22 of our collective  
8 bargaining agreement and based upon the agreement that had been  
9 reached between Middlesex Legal Services Corporation and the  
10 union during the month of December, and finalized on January  
11 2nd, which was before any notice was received from this board  
12 that there would be a change in the funding requirement for  
13 1990, everything had been agreed to in the union contract except  
14 for the issue of salary.

15 According to our labor counsel, if we take the  
16 position that we can renegotiate the area of access to personnel  
17 records and the union objects to our taking that position, that  
18 that would be an unfair labor practice that we have committed if  
19 the union presses it.

20 I wanted to clarify to the board that that is the  
21 situation that we presently face vis-a-vis our union. We are  
22 hoping that this matter could be resolved without having to

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1 research that issue based upon discussions between Mr. Shea and  
2 Mr. Miller and Mr. Houseman.

3 I would also like to mention that there was some  
4 references as to, I believe the term was, "problematic  
5 programs." The Middlesex program was created under the OEO in  
6 1966 and has continuously operated from 1966 to the present. It  
7 has been a stellar program which has received numerous awards  
8 and commendations.

9 When it was formed in 1966 it was 100 percent  
10 federally funded. When there became cutbacks in federal funding  
11 in 1981, at which time the program was 70 percent federally  
12 funded, the program, because of its reputation, was able to get  
13 funding sources from other private and public sectors to the  
14 point where the LSC grant, which is now \$322,000, represents  
15 approximately 30 percent of the funding of the program.

16 In spite of this, the program has not reached a full  
17 strength in size and ability to serve its constituents compared  
18 to the size of the program in the late '60s, early '70s. It is  
19 a smaller program, but it is a good program.

20 I think the board should consider that in terms of  
21 taking any position that was recommended by Mr. Wear as to  
22 defunding.

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1           CHAIRMAN WITTGRAF:    I think Mr. Wear has already  
2 stated that nobody is going to be cut off for the moment. Let  
3 me let him reiterate his position for just a moment.

4           MR. WEAR:    I believe that is accurate, Mr. Chairman.  
5 Let me also ask that if Mr. Houseman or Mr. Loines, or any of  
6 you gentlemen from the three programs that are concerned here,  
7 have any comment or specific issue to take with regard to the  
8 Corporation's position that you reduce that to writing and give  
9 it to us ten days prior to the board meeting so that we can get  
10 it distributed to the board members and have an opportunity to  
11 look at it.

12           CHAIRMAN WITTGRAF:    I think what we would like to do  
13 is to take a block of time, up to a couple of hours if we need  
14 it, to go into this in some detail. There are members, Mr. Dana  
15 as he has indicated, Mr. Guinot as he indicated, who do have  
16 strong interest in this. I think that will do more justice to  
17 the concerns on both sides.

18           I have got kind of an incidental question, perhaps for  
19 Mr. Loines. I have, as I think at least the board members do,  
20 before me an attachment of something, a memo from Iron City  
21 Legal Assistance Workers, dated April 18th of this year. Have  
22 you seen this, Mr. Loines?

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1 MR. LOINES: It is possible that I have. I don't  
2 recall right at this second. If you want me to look at it --

3 CHAIRMAN WITTGRAF: Yes. Just take a quick look if  
4 you would.

5 MR. HOUSEMAN: Could I interrupt one second? It would  
6 help me -- I will be glad to comply with any time limits that  
7 the board sets. That is not a problem at all. I would -- we  
8 are prepared to stay and talk about specific proposals that  
9 anybody wants to make to resolve this issue. If all we are  
10 going to do is exchange legal memorandum and hear it out at the  
11 board, fine.

12 But I just want to reiterate, there is no proposal  
13 from the Corporation on the table to discuss at the moment. We  
14 are prepared to put one on the table and we will respond to  
15 whatever they say. But they have not proposed anything to  
16 respond to other than that they want the access of all these  
17 files regardless.

18 CHAIRMAN WITTGRAF: Let me go back to Mr. Loines for  
19 just a moment and then I think Mr. Wear has a comment.

20 MR. WEAR: Yes.

21 CHAIRMAN WITTGRAF: I don't know if you have seen that  
22 before or not, Mr. Loines.

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1 MR. LOINES: Could I comment?

2 CHAIRMAN WITTGRAF: I am not sure if the board members  
3 even know what I am referring to right now. On the back of  
4 attachment 1 to the memo from Mr. Shea, dated April 27th,  
5 regarding current disputes over the EVA files. This is the  
6 memo, as I said, dated April 18th from the Iron City Assistance  
7 Workers.

8 I think most of us, as new board members, I think all  
9 of us as new board members, are attempting to approach this as  
10 openly, and I would like to think as respectfully and I would  
11 like to think as professionally as possible. I don't hold you  
12 responsible for this, Mr. Loines, but I am really offended by  
13 the tone of that particular memorandum.

14 Somebody might disagree with Mr. Wear and somebody  
15 might disagree with Mr. Wittgraf, or with any of us, but I would  
16 refer today, as I did last month, to what I think is inevitable.  
17 Hopefully, more or less, healthy tension between perhaps the  
18 Legal Services Corporation and its staff in Washington and  
19 program grantees.

20 But to the extent of my saying something to you and  
21 you can convey that message to somebody else, that is not doing  
22 any of us any good and it is certainly not going to make any

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1 exchange of ideas with any level of respect and professional  
2 responsibility any easier.

3 MR. LOINES: Okay. A couple of points. One, I am not  
4 sure if I have seen this particular document before. But that  
5 is -- I mean I am not --

6 CHAIRMAN WITTGRAF: Well, I am not --

7 MR. LOINES: -- I am not trying to avoid, in a sense,  
8 responsibility. Let me just say this to you, I mean each of  
9 your board meetings I have come before you. I think I have been  
10 very respectful. I intend to continue to be that way. But I  
11 did point out on each occasion how serious this matter was and  
12 how strong the feelings were locally.

13 Now, I know the context in which this letter or memo  
14 was drawn, and I know that there was the impression that this  
15 issue had been resolved. I can tell you that there is a feeling  
16 amongst the workers in that program that in one sense they have  
17 been betrayed.

18 So, there is clearly some strong feelings there. I  
19 can't -- you know, I have to also tell you, I mean if you  
20 haven't been involved in labor management situations, sometimes  
21 things do, unfortunately, get to the point where things are--  
22 where labor management relationships, you know, deteriorate.

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1           Now, as I said to you before, we are -- we feel very  
2 strongly that this is something that if the parties are  
3 approaching this in good faith can be resolved. I will only  
4 reiterate that that is the feeling of the union and that is the  
5 feeling that I want to convey to this board here today.

6           CHAIRMAN WITTGRAF: I appreciate that. I just -- that  
7 tone I think is unfortunate as I have said and it doesn't do  
8 anything to make any of our jobs any easier. It is that kind of  
9 thing, unfortunately, that when put in print and when circulated  
10 comes back to haunt the very grantees and the very staff  
11 attorneys who most of us are trying to defend. To say that, to  
12 use Congressman Atkins' term, the nutbag behaviors are the  
13 exception, we hope the rare exception, and not the rule. That  
14 kind of thing I think is unprofessional and unfortunate.

15           I don't expect you to say anything more on it. But  
16 that sort of thing sure doesn't help any of us in what we are  
17 about here. I hope it can be discouraged to the extent  
18 possible, strong emotions notwithstanding.

19           MR. LOINES: Yes.

20           CHAIRMAN WITTGRAF: I have had my moment at the soap  
21 box. Mr. Wear, you wanted to respond?

22           MR. LOINES: Can I just -- I mean, one, I am not -- I

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1 will be glad to discuss it with you. I am not absolutely  
2 certain what you are precisely referring to.

3 But let me just --

4 CHAIRMAN WITTGRAF: I am referring to the tone of it.

5

6 MR. LOINES: Oh. Okay. All right. Okay.

7 CHAIRMAN WITTGRAF: I was hoping you could see that.

8 MR. LOINES: I looked.

9 (Laughter.)

10 MR. LOINES: I will look at it again. But I want to  
11 address, though, actually Mr. Wear's recommendation, I believe  
12 it is, to the board, which I don't have an objection to  
13 obviously. But what I would like to add is that, you know, we  
14 want -- during this period between now and when we get together  
15 again, I don't know if there is going to be another Middlesex or  
16 another Pittsburgh, or whatever.

17 What I would like to clearly ask the board to do is to  
18 -- and maybe Mr. Wear will join me in this, and that is that we  
19 -- that during this period of time there be, you know, a hiatus  
20 of this kind of activity until we get back together again.

21 MR. MOLINARI: Mr. Chairman?

22 CHAIRMAN WITTGRAF: Mr. Molinari?

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1 MR. MOLINARI: I have got a visitor from Congress here  
2 with me today. My daughter, Susan, who is the newest member of  
3 Congress and the youngest member of Congress. I have to leave  
4 very shortly.

5 But I would like to make the observation and also the  
6 offer to Mr. Loines and Del Johnson from New York. We have had  
7 some conversations at the last meeting, at the conclusion of the  
8 last meeting, and I would like to make the offer, informally, to  
9 sit down with you folks between now and the next meeting subject  
10 to the board's approval.

11 We can have Terry come up and sit with us. I got the  
12 impression in our discussion, Dwight, that there was some  
13 movement possible on your part, some good movement, which would  
14 enable us to settle this kind of dispute and let us go forward  
15 with the task that all the providers have and that we have at  
16 the same time.

17 I would certainly welcome pursuing that dialogue.

18 MR. LOINES: Okay. Incidentally, the document that I  
19 handed up represents a proposal that we came to despite the fact  
20 that we were not able to have much of a dialogue with the staff.  
21 I, too, was under the impression that the staff would be sitting  
22 down with us with the view of working something out as opposed

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1 to simply exchanging documents.

2 In that spirit, that is why we presented that  
3 document. I hope it doesn't offend anybody. But it is a  
4 document that I would like you to view in that context. It was  
5 a proposal for purposes of entering into a dialogue.

6 MR. WEAR: Mr. Chairman?

7 CHAIRMAN WITTGRAF: Does the newest member of Congress  
8 wish to be heard.

9 (Laughter.)

10 CHAIRMAN WITTGRAF: Mr. Wear?

11 MR. WEAR: Thank you, Mr. Chairman. We will be glad  
12 to take up Mr. Molinari's suggestion and we will be glad to meet  
13 with him whenever it is mutually convenient if he believes that  
14 will help us resolve things. We will also eagerly read Mr.  
15 Loines' proposal that we haven't seen yet. My impression was  
16 that you all had not put anything together in that regard. So,  
17 we will certainly look at that and go from there.

18 The Corporation needs access to these materials for  
19 the reasons that are outlined in my memorandum dated April 26th.  
20 It is the Corporation's position that that right to examine  
21 these documents cannot be negotiated away by its grantees. I  
22 believe we will stick by that.

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1 But we will be glad to visit with you all and with Mr.  
2 Molinari and perhaps we will be able to resolve something in the  
3 next three weeks.

4 Mr. Chairman, I think that is everything I had.

5 CHAIRMAN WITTGRAF: We will take this issue and put it  
6 early on the agenda and block a couple of hours so that we don't  
7 end up jammed into the end of the day and do not do justice to  
8 the several perspectives and apparently the very strongly held  
9 views.

10 I guess that is as much as we need to do today. Our  
11 visitors --

12 MR. DANA: Mr. Chairman?

13 CHAIRMAN WITTGRAF: Mr. Dana?

14 MR. DANA: Just to be sure. The memo to which Mr.  
15 Wear has just referred would be shared with all these gentlemen  
16 immediately; correct?

17 MR. WEAR: Mr. Chairman?

18 CHAIRMAN WITTGRAF: Mr. President?

19 MR. WEAR: Thank you, Mr. Chairman. We will provide  
20 copies of the memorandum to the individuals here when we have  
21 had an opportunity to make copies of it.

22 Thank you, Mr. Chairman.

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1 MR. DANA: Thank you.

2 CHAIRMAN WITTGRAF: Mr. Mullen?

3 MR. MULLEN: I have a question in regard to our  
4 funding. The funding status is that we are being funded  
5 indefinitely at this point?

6 CHAIRMAN WITTGRAF: You are being funded indefinitely  
7 through May. A good try.

8 MR. LOINES: And the question of other programs.

9 CHAIRMAN WITTGRAF: That is probably a two-way street  
10 I suspect. There are monitoring visits going on in an ongoing  
11 basis. You probably, Mr. Loines, know those almost as quickly  
12 as Ms. DiSanto and her staff do. Probably more quickly than any  
13 of the members of this board do.

14 I don't know that we anticipate any over the next  
15 three weeks. It is only three weeks until May 21st. If there  
16 are, they, too, will come before the board I gather. That is  
17 why I was trying to get CALS to compare and contrast a little  
18 bit with Middlesex. There are somewhat different situations,  
19 but I am assuming that the principles are generally principles  
20 that are generally the same as it goes from one grantee to  
21 another.

22 So, I would hope on this two-way street that we

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1 wouldn't be forcing the question any place else in the meantime,  
2 if we are getting close to forcing it, three weeks is not a very  
3 long time.

4 Mr. Johnson?

5 MR. JOHNSON: I really have nothing to say at this  
6 point. I would like, to the extent that I can, to aid this  
7 process. I don't know what role I can play however. I am  
8 representing my program. I am not representing any national  
9 interest.

10 With regard to my funding, I think the proof will be  
11 what happens with regard to the creation of these files and  
12 providing access to monitors if they do come back to my program.

13

14 So, the way the preliminary determination of the  
15 suspension of my funding went if you followed the time line that  
16 is provided under the regulations, the earliest my funding could  
17 have been suspended would have been effective June 1st.

18 So, to state that I have one more month, which wasn't  
19 stated, however, because I am under the impression that the  
20 issue as it relates to Legal Services for New York City has been  
21 muted out at this point.

22 With respect to the preliminary determination of my

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1 suspension of funding, what I was asked to do, what my program  
2 was asked to do, we have done.

3 CHAIRMAN WITTGRAF: I think, if I understand the one  
4 month or the continued funding for May, we are talking about  
5 Middlesex and Pittsburgh.

6 MR. JOHNSON: Yes.

7 MR. WEAR: Mr. Chairman?

8 CHAIRMAN WITTGRAF: Mr. President?

9 MR. WEAR: Thank you, Mr. Chairman. With regard to  
10 the gentleman's question, I anticipate that the monitors from  
11 the Legal Services Corporation will be up to examine the EVA  
12 files for the New York program prior to our May meeting. So,  
13 that will resolve our problems here.

14 MR. JOHNSON: Mr. Chairman?

15 CHAIRMAN WITTGRAF: Yes.

16 MR. JOHNSON: May I make a comment? I think under a  
17 lot of circumstances that would be a reasonable approach to  
18 take. However, I would like to have the opportunity to speak to  
19 Mr. Shea and speak to the president and explain to them the  
20 difficulties that that creates for me to have the monitors come  
21 up during this month of May to look at the files that were not  
22 created before. I can go over in great detail with them what

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1 files will have to be copied and transferred into one location,  
2 because again we have nineteen locations.

3           When the monitors visit New York City, separate  
4 monitoring teams visit all nineteen locations. It means we have  
5 to get files from the central office out there to the field. We  
6 have to match it up person by office. That is going to take a  
7 little while.

8           A degree of good faith has to be envisioned in this  
9 process. I went through a two week monitoring period in March  
10 with a 26 member monitoring team up on both weeks. I had eight  
11 monitors in my shop during the first week. Ten in the second.  
12 I have a staff of eleven people.

13           The following week two more monitors came up to look.  
14 Following that two week period, in the third week, two monitors  
15 came up to examine one of my local offices on a separate matter.  
16 The following week I had a surprise visit from the inspector  
17 general's office regarding another office that I had. Last week  
18 no one came from the Legal Services Corporation. This week two  
19 monitors are coming up on Thursday and Friday of this week to  
20 look at a program. I have to get some work done in that  
21 office.

22           CHAIRMAN WITTGRAF:     On that point, it is my

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1 understanding, I have been led to believe that monitoring  
2 generally, and not counting the inspector general, that  
3 monitoring generally occurs approximately once every 20 months.  
4 Is that your understanding?

5 MR. JOHNSON: Once every 20 months.

6 CHAIRMAN WITTGRAF: Is that your experience?

7 MR. JOHNSON: We have been monitored two times and  
8 there has been about an 18 months gap in there. Yes.

9 CHAIRMAN WITTGRAF: I mean I don't doubt that you are  
10 going through a difficult period right now. But it is not  
11 something that you are going through month after month, month in  
12 and month out.

13 MR. JOHNSON: To the contrary. It has been since  
14 March. What I am stating is that my program really does need a  
15 reasonable break in order to put these records together. I am  
16 not saying that we can't handle the monitoring visits. We have  
17 and we will continue to do that and get our work done.

18 But I am saying that it is a bit unrealistic. It is  
19 an unrealistic time frame for us to gather these documents and  
20 do what we have to do. I will sit down with anyone. Whether it  
21 is President Wear, Mr. Shea or any of the board members, and  
22 take you step by step what has to be done. If you say it can be

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1 done by May something, I will get it done. I will move heaven  
2 and earth to get it done. I just think it is unreasonable and  
3 unnecessary to place us under that type of pressure and time  
4 frame right now.

5 CHAIRMAN WITTGRAF: Mr. Wear?

6 MR. WEAR: Mr. Chairman, thank you. Mr. Chairman, we  
7 will be glad to work with Mr. Johnson on this.

8 But I don't want another situation like we had with  
9 Pittsburgh. We thought we had a deal with Pittsburgh. They  
10 said they were going to create the files and give us access. I  
11 said, "Great. That's all we want." Then the next thing I got  
12 was a note from them saying, "Oh, by the way, we are not even  
13 going to give you access to the files that we would have given  
14 you access to back in February."

15 I don't want that sort of situation. Now, we will be  
16 glad to work with you and help you in whatever way that you need  
17 help with. But I don't want another situation like that.

18 If we are going to have that, we are going to resolve  
19 that next month at the board meeting, and if that means that  
20 some programs are defunded, that is what will happen.

21 MR. JOHNSON: I wish, Mr. President, I could tell you  
22 right now I won't do what Pittsburgh did to you. But I don't

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1 know what Pittsburgh did to you.

2 MR. WEAR: Well, I am telling you what they did to me.  
3 They said we had a deal and then they said we didn't.

4 MR. JOHNSON: What deal you have with me, I will live  
5 up to. I will create those EVA files and I will do it  
6 expeditiously. I sent out a memo last week to all of my project  
7 directors telling them specifically what we will do and  
8 everything was immediately, immediately, immediately,  
9 immediately and as soon as possible, what I will give them, what  
10 they will give me, how we will proceed from this point on. The  
11 files will be created. The access question, I will provide  
12 monitors will access.

13 The next step once those files are created will be up  
14 to LSC and the reaction from the union, if any. I can tell you  
15 what we will do at Legal Services for New York City, which is  
16 create the files and give you access.

17 MR. WEAR: Okay. Well, I thought that that was the  
18 deal --

19 MR. JOHNSON: That is the deal.

20 MR. WEAR: I thought that was the deal I had with  
21 Pittsburgh and found out it wasn't.

22 MR. JOHNSON: All I am asking for is a reasonable -- I

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1 beg your pardon.

2 MR. WEAR: I say that is the deal I thoguht I had with  
3 Pittsburgh and it wasn't.

4 MR. JOHNSON: All I am asking for is a reasonable  
5 period, a time limit for the information. For you folks to have  
6 information so that you can determine whether my request is  
7 reasonable, I am willing to sit down and give you that  
8 information to put you in the position to make that judgment.

9 MR. MILLER: I want to make one comment, I guess, to  
10 really seek a better clarification. We appreciate very much  
11 your suggestion that there will a couple of hours set aside and  
12 that it will be at the beginning and that it will be debated in  
13 a broader scale.

14 But I think just the colloquy here in the last 20  
15 minutes or so suggests the need to be sure that we are able to  
16 address this as a policy issue, try to get up to the level of  
17 what principles and general policy guidelines need to be set out  
18 rather than having it be debated solely or even principally in  
19 the context of a specific situation here or there, either in the  
20 programs that already are afflicted or in ones that might emerge  
21 over the next three weeks.

22 CHAIRMAN WITTGRAF: I think we want to begin on that

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1 basis. The only difficulty is we do have to give some thought,  
2 I gather, to practical applications. That is again why I was  
3 trying to get CALS and Middlesex compared and contrasted.

4 MR. MILLER: Right.

5 CHAIRMAN WITTGRAF: But, yes, we will begin from the  
6 standpoint of principle with Mr. Shea and then with you, Mr.  
7 Houseman, Mr. Loines and go from there and we will allow  
8 adequate time. We should have adequate time.

9 Mr. Loines?

10 MR. LOINES: Yes. I don't want to also through a  
11 monkey wrench into this, but I have got to tell you we have -- I  
12 have been informed today, I think the president of the local in  
13 New York was informed a day or so ago of the resolution that was  
14 reached between CALS and LSC. We haven't examined it.

15 CHAIRMAN WITTGRAF: You have not examined it.

16 MR. LOINES: We have not examined that resolution.  
17 So, I am not -- as I said before, we want to and we will do  
18 everything that we can to resolve this on the level that we have  
19 been addressing it, I believe, today. But we do have to examine  
20 it from the point of view of the interest of the union. So, I  
21 just say that for the record.

22 CHAIRMAN WITTGRAF: Thank you, gentlemen.

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1 MR. LOINES: Thank you.

2 CHAIRMAN WITTGRAF: We have one more agenda item, a  
3 brief review of the FY90 consolidated operating budget through  
4 February of 1990. Mr. Wear, when you are ready, then Mr.  
5 Richardson, and then we will turn to public comment.

6 MR. WEAR: Thank you, Mr. Chairman. If I may, Mr.  
7 Richardson, I would like to ask you to refer to the specific  
8 items in the board book and to give us a very brief summary of  
9 the materials that show up there.

10 MR. RICHARDSON: Okay. Let me refer you to page 33  
11 through 39 for my comments.

12 Again, for the record, my name is David Richardson. I  
13 am the treasurer-comptroller of the Corporation.

14 A very quick overview of the situation where we stand.  
15 At the last meeting you adopted a budget that totaled  
16 \$320,000,593 approximately. For that, we have budgeted  
17 \$292,200,000 for the direct delivery of legal assistance. We  
18 have contracted \$271,593,000 of that money.

19 The majority of the remaining funds, the \$20,000,600  
20 is for the month to month grantees. Those that we have been  
21 speaking about today who are on administrative action. With the  
22 exception of the program development money, the \$300,000 that

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1 has been set aside for the implementation of timekeeping on the  
2 behalf of the programs. Also, the money for the law school  
3 clinics, which we are in the process at this time of reviewing  
4 the applications for those funds.

5 On page 35, caption two is the support for delivery  
6 assistance. The budget is \$17,700,000. We have contracted or  
7 spent to date, \$16,800,000. Again, the remaining portion of  
8 that 876 is for month to month funding. There is a little bit  
9 of money for program development that is not earmarked for a  
10 particular program.

11 The national state support lines do have some money  
12 set aside as contingencies, but for the most part the money has  
13 been earmarked for particular programs.

14 Within the Corporation management administration, at  
15 this point we should have spent approximately 42 percent of our  
16 funds and to date we have spent 37 percent. We do have some  
17 ongoing initiatives which will increase the funding over the  
18 summer. To include, for instance, the board video and, of  
19 course, the monitoring, which is the major portion of our  
20 funding, will continue.

21 Also, I would be glad to answer any questions you may  
22 have. I know that is a very quick overview. One other item

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1 that I may mention, page 37, we have a caption as other funds  
2 available, and you will see at this time we have collected as  
3 grant recoveries, and that goes into two categories, the  
4 questioned cost and also the recovery of fund balances,  
5 \$170,000. Interest income on our funds is \$142,000 and  
6 miscellaneous income is approximately \$1,000.

7 CHAIRMAN WITTGRAF: Questions for Mr. Richardson?

8 (No response.)

9 CHAIRMAN WITTGRAF: Hearing none, thank you.

10 MR. RICHARDSON: Thank you.

11 CHAIRMAN WITTGRAF: At this time the Chair is prepared  
12 to recognize any members of the public who have not been  
13 recognized previously and who might wish to make comment. One  
14 member who has indicated is the executive director of the Legal  
15 Services program headquartered out of Minneapolis, Mr. Lane.  
16 You have at the moment five of us and the president.

17 MR. LANE: I will talk fast before they disappear.

18 CHAIRMAN WITTGRAF: Your local board member may be  
19 back. Her materials are still here.

20 MR. LANE: Her, I can talk to at home. I am Jeremy  
21 Lane and I appreciate the brief moment here to talk about some  
22 things that have come up today that I would like to comment on

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1 from a field perspective out there outside the Beltway.

2           When drugs were being discussed there seemed to be a  
3 casual equation of the right to receive public housing with the  
4 right to apply for public housing. They are two very different  
5 things and the difference is critical.

6           It is my understanding that one of the cases that the  
7 Corporation staff was critical of involved assertion of the  
8 right to apply for public housing. The right to apply for a  
9 government benefit is an extraordinarily important right. If  
10 there is a formal application there must be a formal decision,  
11 and if that decision is a denial it triggers the right to be  
12 told why you are being denied and that you have a right of  
13 appeal. That right of appeal may be asserted totally  
14 independent of any representation by a Legal Services program  
15 attorney.

16           In my state on an unfortunately rather substantial  
17 number of occasions, welfare department employees actively  
18 discourage people from filing formal applications by saying you  
19 will just be turned down. Many people take that at face value.  
20 There is never a formal turn down. They never even know that  
21 they had a right of appeal and they can never exercise it with  
22 or without representation from an attorney. In many of the

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1 cases that have gotten to us, those people have, in fact, been  
2 eligible.

3 In Minneapolis, the housing authority routinely  
4 refused to take applications from any person with a history of  
5 mental health problems regardless of how serious, regardless of  
6 whether they were under control. Those persons were never being  
7 informed of a right of appeal. It required legal action on our  
8 part to assert simply their right to apply. It is a very basic  
9 right.

10 On more than one occasion over my 20 years in Legal  
11 Services, I have declined to represent someone in a government  
12 benefit appeal because I thought the probability of success was  
13 so low that it didn't justify using program resources. Happily  
14 infrequently, but often enough to keep me humble, I have been  
15 wrong. Somebody went ahead and appealed without my  
16 representation and prevailed.

17 So, that right to know why you are being turned down,  
18 that right to appeal, with or without a lawyer, is a critical  
19 right. If that issue came up in my program, I might very well  
20 take a case where I didn't think ultimately the person might be  
21 eligible for a public benefit, but where they were being denied  
22 the right to even apply formally, because that right is so

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1 basic.

2           With regard to what I saw as an equation between an  
3 accusation of drug dealing and the reality of drug dealing, I  
4 think language has been very careless here on the part of some  
5 of the people who have spoken to you.

6           By way of personal history, I am violently opposed to  
7 illegal drug use. One of my brothers died directly as the  
8 result of illegal drug use, so I have zero tolerance for drug  
9 use and I hate drug dealers. At the same time I am very  
10 troubled by the implication that merely saying that someone is  
11 dealing drugs means they are.

12           Within this past month, my program represented a  
13 person, a grandmother, who had custody of six minor children,  
14 some of them were her grandchildren, some were other people's  
15 children whose parents couldn't take care of them.

16           She faced eviction allegedly on the basis of drug  
17 dealing. Her apartment was raided. The name on the warrant was  
18 not her's. It was not the name of anyone living in her  
19 apartment.

20           It was the name of the father of one of those children  
21 of whom she had custody. He didn't live there. He had never  
22 lived there. There were no drugs in the apartment. There was

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1 no drug paraphernalia in the apartment.

2           They proceeded to try to evict her anyway, because--  
3 not that she would use, not that she would let him use in the  
4 apartment, but that he might come into the project to visit the  
5 child and while in the project he might deal drugs and she  
6 couldn't stop him. They actually proposed to evict her for that  
7 reason.

8           So, I implore you to be very careful when you hear  
9 stories, to listen and to find out what is really going on,  
10 because the accusation is very different from the reality.  
11 Statistics that may be given to you about programs' involvement  
12 in cases in which drugs are alleged really doesn't tell you  
13 anything useful about whether drugs are being used or whether  
14 the client of a Legal Services program is a drug dealer or even  
15 an alleged drug dealer.

16           In the process of evicting people, in Minneapolis at  
17 least, the housing authority asserts the right to use in  
18 grievance procedures anonymous third party allegations as  
19 evidence. They will say at an informal hearing one of your  
20 neighbors, and we won't tell you who, says that you did thus and  
21 such. The rules of evidence don't apply. Even if you think  
22 that is pretty appalling to a lawyer, the fact is that this is

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1 done in informal grievance procedures.

2 Our program takes second place to none, I think, in  
3 our concern about drugs. One of my litigation directors wrote  
4 one of those letters to the clearing house last summer about the  
5 need for programs to get involved in figuring out how we can  
6 help tenants. We know from long experience what a scourge drugs  
7 are to our clients and we care about them.

8 But I am not sure that some of the methods that have  
9 been proposed here in terms of telling us how our money has to  
10 be spent not only in Minneapolis, but in small towns like  
11 Cambridge and Marshall, Minnesota where drug dealers are not a  
12 significant problem. We are concerned about it. I just ask you  
13 to go very carefully in looking at those issues.

14 On the issue of tainting of private money. Mr. Hall,  
15 you raised a couple of questions. I gather you had had an  
16 instinctive reaction against essentially applying LSC  
17 restrictions and prohibitions to all private funds. I think  
18 that instinctive reaction was a good one, because the problem is  
19 not so much that you will tell other people how to spend their  
20 money. The problem is that they will stop giving it to us.

21 My program has received hundreds of thousands of  
22 dollars from the General Mills Foundation and from the McKnight

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1 Foundation, which is 3M money, and they have been very  
2 supportive to us. But they give us money for purposes different  
3 from the purposes for which you give us money. They have been  
4 quite blunt about the fact that they will simply turn off the  
5 faucet if the Legal Services Corporation in Washington tries to  
6 tell the General Mills Foundation in Minneapolis how its money  
7 may and may not be spent. There is a real concern about that.

8 My program has been receiving United Way money for 75  
9 years. It receives in Minneapolis more than twice as much money  
10 as the Legal Services Corporation provides. I think they would  
11 quite rightly take serious umbrage at being told how they must  
12 spend their money or that they couldn't give it to this program,  
13 which they have been funding for 50 years before the Legal  
14 Services Corporation was created.

15 An argument can be made that if anybody has the right  
16 to dictate, they have a lot better right to dictate maybe how  
17 your money gets spent in Minneapolis. I assume that you would  
18 take serious umbrage at that if they tried to say not only may  
19 you not use our funding for child support enforcement, but you  
20 can't use anybody else's money for that purpose. I think there  
21 is a fundamental unfairness that would be involved in that and  
22 it is a two-way street.

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1           With regard to earmarking for child support, there was  
2 an unspoken question that I haven't heard asked yet today. That  
3 is not what should we do, but what should we stop doing if we  
4 are going to spend money on child support that we are not  
5 spending on it now? What are we going to stop doing?

6           My program spends one-third of its resources on family  
7 law. Almost none of that goes to child support except in the  
8 context of divorces where, of course, we seek child support  
9 along with other remedies for our clients.

10           But the fact is if we are told we now have to spend  
11 funds on child support, somebody is going to have to tell us  
12 what to stop doing. I think that is an extraordinarily  
13 difficult thing for you to do here in Washington.

14           You know, if you want to come out and tell the  
15 battered women we are representing that we have to stop doing  
16 battered women's cases because we are going to do child support,  
17 I would be most grateful, because I really don't look forward to  
18 that decision. I think my board of directors wrestles with that  
19 and finds it very difficult when you are dealing with battered  
20 women, you are dealing with people being denied unemployment  
21 compensation, people being denied disability benefits, people  
22 being evicted illegally from their apartments, consumers being

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1 prayed on.

2           They have to wrestle with not only what we will do,  
3 but what we won't do. I think it is very difficult, if not  
4 impossible, to do that kind of priority setting in the negative  
5 sense long distance.

6           Last, but perhaps not least, access to records. There  
7 is another issue that I haven't heard raised here and that is  
8 what happens if this power struggle is resolved once and for all  
9 in favor of LSC. It is clearly established that the monitors  
10 have the right of access to all of my evaluation records, all of  
11 my grievance records.

12           When I became the director nine years ago, our  
13 evaluation process was not very good. In fact, it was pretty  
14 poor. It was summary. You could answer a lot of yes/no  
15 questions. It complied with whatever regulations there might  
16 be, but it wasn't very good. People didn't trust it  
17 particularly. They didn't spend time on it.

18           I spent years working with staff to revise it, making  
19 as a centerpiece of it honesty in terms of evaluating your own  
20 shortcomings and honest in terms of evaluating the shortcomings  
21 of your friends. That is very hard to do. I have a program  
22 with a lot of good lawyers in it, but even the good ones could

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1 be better. It has been very hard for me to get people to be  
2 really honest. They do that now. They trust me and they trust  
3 the process, but it took a very long time.

4 When they found out that the possibility existed that  
5 those personnel files which include evaluations might be turned  
6 over to monitors, the reaction was uniformly one of dismay.  
7 Although my program hasn't had as bad a monitoring experience  
8 over the years as some have. We have had a few monitors who  
9 have left our program in a situation where they don't trust all  
10 the monitors who come.

11 I know what is going to happen is if people are told  
12 your evaluation may be turned over to a monitor, the honesty is  
13 going to go out of the process so that LSC might win a battle of  
14 access and my program my lose the war of program quality to  
15 which I think a meaningful evaluation process is critical. I  
16 think it has been one of the most important things I have done  
17 as a program director and it works very well.

18 I am really worried that what may get lost in the  
19 power struggle here over who has the right to see what and who  
20 has the right to protect what, the ability of my program to do  
21 meaningful evaluations may go down the tube. I think ultimately  
22 that would be a loss for my clients. I think that should be the

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1 ultimate factor that is used in measuring how you can balance  
2 those competing interests. How will the clients of the program  
3 be best served?

4 The same is true of some grievance files. I have set  
5 up a sexual harassment grievance procedure. In the process of  
6 doing that we spent time talking to experts in the field,  
7 including women who have been sexually harassed and what I  
8 learned is that it is extraordinarily difficult for people to  
9 make complaints, especially about a fellow employee. There is  
10 an extreme reluctance to do it.

11 In some cases there is an extreme reluctance because  
12 they are fearful of harming the career of a fellow employee.  
13 Sometimes what goes on is inappropriate behavior, perhaps  
14 inappropriate jokes, or something like that, that falls far  
15 short of any sort of an assault, but that clearly shouldn't be  
16 going on and should be stopped. But people want it to stop,  
17 they don't want to get somebody fired.

18 There is clearly a fear on the part of people that if  
19 the process is not confidential in terms of naming who did what  
20 and how serious and how often, people will be even more  
21 reluctant to utilize that procedure.

22 I think in resolving these questions, that factor has

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1 to be considered. How can we help the programs do their job  
2 without crippling the ability of LSC to do its job.

3 All I ask as a program director trying to make these  
4 policies and procedures work, to try to make my program work, is  
5 that you think about what is going to happen depending on what  
6 policies get written here.

7 Thank you.

8 CHAIRMAN WITTGRAF: Questions for Mr. Lane?

9 MR. DANA: Just a statement.

10 CHAIRMAN WITTGRAF: Mr. Dana?

11 MR. DANA: Thank you very much. That is more light  
12 than has been shed upon this issue in the last three or four  
13 minutes than has been shown for a long time. I hope that your  
14 comments and your observations are heard by the people in this  
15 room and are used by them when they sit down with Mr. Molinari  
16 and try and work this issue out. It raises the consequence of  
17 this thirst for minute detail about the employees of our  
18 grantees that gives me pause and you have now confirmed my  
19 concerns.

20 MR. LANE: Thank you, Mr. Dana.

21 CHAIRMAN WITTGRAF: Other questions or comments?

22 (No response.)

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1 CHAIRMAN WITTGRAF: Thank you, Mr. Lane. Further  
2 public comment?

3 (No response.)

4 CHAIRMAN WITTGRAF: Hearing none, the Chair is  
5 prepared to entertain a motion to adjourn. Before the Chair  
6 entertains such a motion, the consensus of the board members  
7 present now and present earlier seems to be that we will be  
8 reconvening at 9:30 a.m. on Monday, May 21, 1990.

9 Board members keep in mind that we are to appear  
10 before the House Judiciary Subcommittee regarding the matter of  
11 reauthorization on Wednesday, May 23. So, Ms. Bozell will  
12 communicate with you further in that regard. To the extent you  
13 are able to stay, think in those terms. But apparently the 22nd  
14 was not going to work as a meeting date for everyone.

15 Having said that, the Chair now is prepared to  
16 entertain a motion to adjourn.

17 M O T I O N

18 MR. HALL: So moved.

19 MR. ERLBORN: Move we adjourn. Second.

20 CHAIRMAN WITTGRAF: Moved, seconded. Those in favor,  
21 signify by saying aye.

22 (A chorus of ayes.)

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