

LEGAL SERVICES CORPORATION

REAUTHORIZATION COMMITTEE HEARING

April 5, 1991

8:55 a.m.

Olympic Room
Pan Pacific Hotel
500 Post Street
San Francisco, California 94102

Committee Members Present

Basile J. Uddo, Committee Chairman
Howard H. Dana, Jr.
William L. Kirk
George W. Witgraf, Board Chairman

Board Members Present

L. Blakeley Hall
Jo Betts Love
Jeanine Walbeck

Staff Present

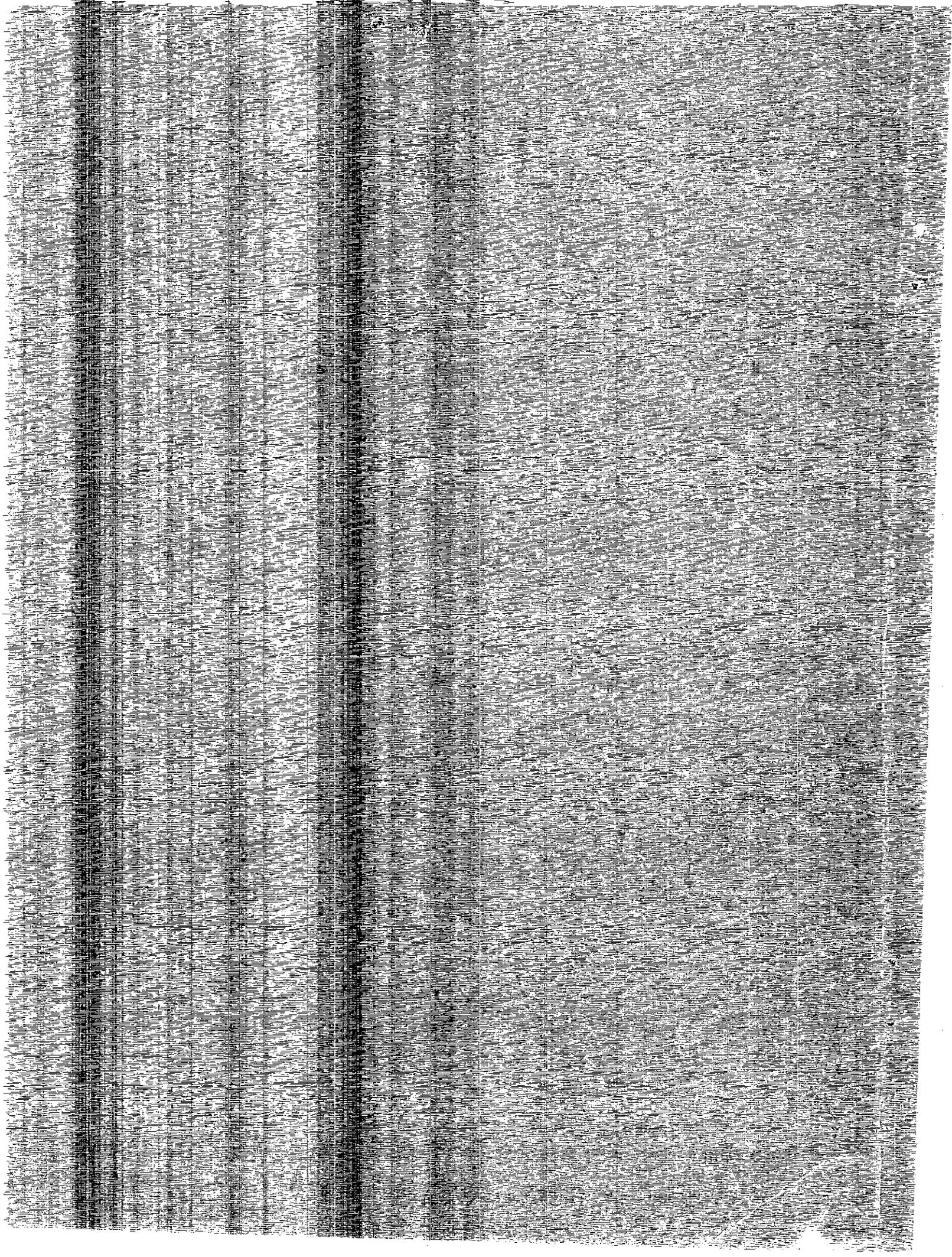
David H. Martin, President
Patricia Batie, Secretary
Kenneth Boehm
Christopher Dowe
Victor Fortuno
Maureen Gawler

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WASHINGTON, D.C. 20005

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C O N T E N T S

	PAGE
Opening Statement Basile Uddo, Committee Chairman	3
Statement of Robert Gnaizda for California Council of Urban Leagues League of United Latin American Citizens Mexican-American Political Association Philippine-American Political Association American GI Forum	8
Statement of Edward Kallgren for California Bar Association	18
Statement of Steven Brick for San Francisco Bar Association Los Angeles County Bar Association	34
Statement of Dean Jeffrey Kupers for John F. Kennedy Law School	56
Statement of Russell Koch for Tulare-Kings Counties Legal Services	69
Statement of Lynn Murphy for California Right to Life Association	88
Statements of Robert Cohen, for Legal Aid Society of Orange County, and James Meeker, for Program in Social Ecology, University of California at Irvine	96
Statement of Victor Geminiani for Legal Services of Northern California	128
Statement of Manuel Romero for Mexican American Legal Defense and Education Fund	143
Statement of Phillip Burtenthal for Contra Costa Legal Services Foundation	156

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Statement of Robert Hawley Landalls, Ripley and Diamond	170
Statement of Jeanne Garvey for American Bar Association Standing Committee on Legal Aid and Indigent Defense	187
Statement of Ann Bartsch for American Bar Association Commission on Lawyers' Trust Accounts	192
Statement of James W. Head for National Economic Development and Law Center	207
Statement of Peter Reid for Legal Aid Society of San Mateo County	222
Statement of Linda Jones for Concerned Women for America	233
Statement of Jose Padilla for California Rural Legal Assistance	245
Statement of Roberto Calderon Migrant Program	246
Statement of Roberto Trujillo for Farm Workers	248
Statement of Dick Barnholt for The Consulting Group	256
Statement of Jeffrey Brown San Francisco Public Defender's Office	264
Statements of Ralph Abascal, for Assemblyman Terry Friedman, and Senator Nick Petras, 9th Senate District	270
Statement of James Giller for California Attorneys for Criminal Justice	293

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P R O C E E D I N G S

1
2 CHAIRMAN UDDO: We want to begin promptly at 9:00,
3 as scheduled, since we have a fairly long list of folks who
4 are coming to testify today.

5 I think the first thing to do, since this is the
6 first meeting of the Legal Services Corporation
7 Reauthorization Committee, is to call it to order and to
8 welcome you all to the meeting. We do not have minutes to
9 approve, obviously, because we've never met before, but we do
10 have an agenda to approve.

11 The agenda is quite simple: It is to take public
12 testimony on the question of the reauthorization of the Legal
13 Services Corporation, but I would entertain a motion to
14 approve the agenda at this time.

M O T I O N

15 MR. WITGRAF: So moved.

16 CHAIRMAN UDDO: Is there a second?

17 MS. LOVE: Second.

18 CHAIRMAN UDDO: Moved and seconded. All those in
19 favor of approving the agenda please signify by saying aye.
20

21 (Chorus of ayes.)

22 CHAIRMAN UDDO: All those opposed?

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1 (No response.)

2 CHAIRMAN UDDO: There weren't many ayes, but there
3 were no nays, so I guess the ayes have it.

4 Our purpose in being here this morning, for those of
5 you who are here to testify before the committee, as you well
6 know, is to try to gather as much comment and information from
7 the public and from interested individuals and organizations
8 who have something to say about the reauthorization of the
9 Legal Services Corporation, which is something that hasn't
10 occurred in quite a long time, therefore making it an even
11 more significant opportunity than ordinarily would be the
12 case.

13 Our purpose is to give you an opportunity to put on
14 the record your thoughts, your observations, your comments,
15 your criticisms about what the reauthorization of the Legal
16 Services Corporation should look like. We have about 23 folks
17 who have signed up to testify today, and that gives us a
18 pretty crowded agenda; therefore, there are a couple of
19 guidelines and rules I guess I will have to repeat throughout
20 the day, since people will be coming and going.

21 I would ask of those of you who testify that you
22 keep a couple of things in mind: One is that we do have a

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1 very crowded hearing schedule, and we need to keep the
2 comments as brief as possible. We would like to try to keep
3 the comments to 10 or no more than 15 minutes.

4 That is not in any way to indicate that we are not
5 interested in all that you have to say. We will have these
6 hearings transcribed and any written testimony or comments
7 that you want to submit will be made a part of the record, and
8 all the members of the committee will be provided with any
9 written testimony or comments that you submit.

10 Therefore, my feeling is that your comments today
11 should focus on and emphasize the highlights of what you are
12 concerned about with respect to the reauthorization of Legal
13 Services, and, if you have more detailed comments, please do
14 submit them in writing.

15 Let me welcome the members of the committee. In
16 addition to myself, there are three other members of the
17 committee here today: Mr. Bud Kirk is a member of the
18 committee -- and I'm sure that the name plates show you who
19 all these folks are -- Mr. Howard Dana; and our board
20 chairman, Mr. George Witgraf, are all members of the
21 committee, and the record should reflect that they are all
22 here. The only absent member of the committee is Ms. Pullen,

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1 Ms. Penny Pullen.

2 We have three other members of the board: Mr.
3 Blakeley Hall is here; Jeanine Walbeck; and Ms. Jo Betts Love
4 are members of the board who are joining us today to hear your
5 comments and to help inform themselves about this
6 reauthorization process, and we welcome them today.

7 For our internal rules of the committee, what I
8 would suggest is two things: one, because we have such a
9 crowded agenda, I think that the committee and the other board
10 members ought to attempt to keep the questions to a minimum,
11 because I've been through these kinds of things before, you
12 can get started on asking questions and eat up an hour with
13 one person.

14 That really is unfair to people at the end of the
15 day who will either be rushed or maybe won't have time to
16 testify at all, because we do have a time deadline of 4:30 to
17 vacate this room. So I would ask the committee and the other
18 board members to please be very judicious with their
19 questions.

20 If you have questions that you think are going to be
21 involved and may take some time for a person testifying to
22 answer, there is no reason why we cannot ask them to submit an

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1 answer in writing. It is commonly done, and it will give us
2 an even fuller record. So, if you have a question and you do
3 think it is going to be somewhat involved, or if the person
4 testifying indicates it is going to be involved, I think that
5 we can ask them to submit their answer in writing and make it
6 a part of the record.

7 Also, if after these hearings are over you decide
8 that there are some questions that occurred at the end of the
9 hearings or after hearing everyone testify, I would hope that
10 all of you who testify today would be amenable to answering
11 written questions, if any of the members of the committee or
12 the board have such questions and they are submitted to you.

13 My procedure will be to allow the person to testify,
14 as I say, cautioning them to stay within 10 or 15 minutes, and
15 then I will ask the committee members first if they have any
16 questions.

17 We welcome questions from the other board members
18 who are not members of the committee but ask them to be
19 particularly judicious, because we have a five-person
20 committee, and I would like to make sure that all of the
21 members of the committee have the time to get their questions
22 answered, because they are going to actually have to

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1 deliberate on a recommendation to the board on April 20, at
2 our next meeting in Chicago.

3 So, without further delay, we do have some folks
4 here who are prepared to testify.

5 Mr. Gnaizda, Mr. Bob Gnaizda, if you would, just
6 come up to the microphone and identify yourself and who you
7 represent.

8 STATEMENT OF ROBERT GNAIZDA

9 MR. GNAIZDA: Good morning. My name is Bob Gnaizda.
10 I'm a senior partner and a founder of a public interest law
11 firm, Public Advocates.

12 I'm here on behalf of the following organizations:
13 the largest black organization in California involved in
14 economic self-sufficiency, the California Council of Urban
15 Leagues. I'm the national civil rights advisor for the
16 nation's largest Hispanic membership organization: the League
17 of United Latin American Citizens, with 109,000 members in 43
18 states.

19 I'm also here on behalf of the nation's largest
20 Hispanic political organization: the Mexican-American
21 Political Association. I am here also on behalf of the
22 nation's largest Philippine-American organization: the

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1 Philippine-American Political Association. And, lastly, I'm
2 here on behalf of the American GI Forum, the nation and the
3 state's largest Hispanic veterans organization.

4 To appreciate what I have to say, I would like to
5 just briefly introduce my background. I have practiced law
6 and litigated in the State of California for just over 30
7 years. I was a tax lawyer in California. I then was the
8 first director of litigation statewide for California Rural
9 Legal Assistance and spent most of my time, during that five-
10 year period, in Salinas.

11 During that time, CRLA played a fundamental role in
12 achieving the goals of our society. It fought the shame of
13 hunger in this nation, being the program that produced, for
14 example, food stamps throughout the nation, the free school
15 lunch program, and the subsidized free milk program.

16 I then founded Public Advocates. Public Advocates
17 was the first public interest law^h firm established in the
18 Western United States. I was also the deputy secretary for
19 health and welfare in California, including responsibility for
20 employment, prisons, health, and welfare. I was the State Bar
21 Board of Governors' elected member of the Judicial Selection
22 Commission between 1977 and 1980.

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1 Our firm is nonpartisan. We are now proudly working
2 with Governor Wilson, for example, on resolving the problem of
3 automobile insurance for the poor.

4 I want to share two of my biases, because they are
5 biases I believe you share too. I believe strongly in a level
6 playing field, and I believe strongly in quality justice and
7 equal access to justice. H.R. 1345 will not produce that.

8 I want to just restrict my comments to two
9 interrelated sections: Section 6, which prohibits anyone in
10 Legal Services, directly or indirectly, having anything to do
11 with any legislation; and Section 9, which takes an
12 unprecedented step of also interfering with any outside funds,
13 such as IOLTA funds, that might be used to influence
14 legislation.

15 I believe this is part of what I would call the
16 unilateral disarmament of the poor. The poor now have water
17 pistols to combat multimillion-dollar law firms that have
18 guided missiles. We should be focusing on how we rearm the
19 poor so that they can properly litigate within our litigation
20 system, and "within our litigation system" includes the
21 opportunity to influence legislation, as most large law firms
22 in Washington, D.C., do quite frequently.

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1 I believe what we are now embarked upon will
2 eventually help create legal service eunuchs. We have done
3 that in part by the low salaries, salaries now for legal
4 service attorneys that are below that for auto mechanics who
5 are untrained.

6 I want to put this bill in the context of the
7 realities that low-income people face in this country, and I
8 want to put it in the context of an undisputed fact that less
9 than 20 percent of those eligible for legal services receive
10 any type of legal services, much less the opportunity for the
11 legal services that the wealthy receive.

12 In 1989, \$12.3 billion in revenue was received by
13 the largest 100 largest law firms in this nation. In
14 contrast, in that year approximately \$320 million went to 55
15 million persons eligible for legal services. So we are
16 talking about 50 cents per month for those eligible for legal
17 services.

18 This morning in the New York Times it put that in
19 proper context. You saw the front-page article on the FDIC?
20 Kravath, Swain and Moore will be eligible for up to \$600 an
21 hour. At 50 cents a month, that will buy you 3 seconds of
22 Kravath, Swain and Moore's senior partners' time. How can you

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1 justify that in the context of some of the outstanding lawyers
2 in Legal Services?

3 Here in California, for example, you have an
4 attorney who is the chief litigator for California Rural Legal
5 Assistance, Ralph Santiago Abascal, who is more qualified than
6 Tom Barr, who will be getting \$600 an hour. Mr. Abascal has
7 won more cases; he has tried more cases in the state court and
8 the federal court than Mr. Barr and has been in court more
9 than Mr. Barr, yet he will receive approximately \$12 an hour
10 for his work at CRLA.

11 This \$12 billion that is received by the 100 largest
12 law firms constitutes a \$4 billion tax subsidy. I want to
13 explain that. The subsidy works this way: All the expenses
14 of corporations that employ the 100 largest law firms, all
15 their legal expenses are tax deductible. Assuming a 34
16 percent corporate rate, we are talking about \$4 billion a
17 year, and I am not even including the state subsidy where
18 there is a state income tax.

19 In California, for example, the five largest law
20 firms, in 1989, received over \$1 billion, \$1,013,000,000 in
21 revenue. That's 33 times more than the total legal service
22 budget in California. They received a \$400 million tax

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1 subsidy, their clients, or 13 times the legal service budget.

2 I believe we have to look at these kinds of
3 subsidies and these kinds of inequities in judging the
4 fairness of any of the proposed changes, lobbying and others.
5 I offer you a couple others regarding lobbying.

6 Some of you may be familiar, in 1988, the insurance
7 industry, for one set of initiatives, spent \$70 million in
8 lobbying in the State of California alone to help
9 unsuccessfully defeat Prop. 103. The Japanese Government
10 spends more than \$100 million a year in lobbying. Kuwait
11 spent over \$4.3 million on one lobbying firm for the months of
12 August, September, and October of 1990.

13 And let us look at the subsidies. The agricultural
14 industry, in part not to produce any crops, receives subsidies
15 of over \$20 billion a year. Yet the poor, to have the
16 opportunity to be in court, receive only \$300 million a year.

17 As a result of this disparity, I believe we have--
18 and that is the view of groups such as the California Council
19 of Urban Leagues -- that we have produced a segregated justice
20 system, a separate -- and unlike Plessy v. Ferguson -- a
21 separate and unequal justice system.

22 I would like to make a recommendation, one that I

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1 think you may share, because it's consistent with President
2 Bush's volunteer proposal. I believe it is necessary to
3 establish a level playing field. I believe there is no group
4 more qualified and more influential in helping to establish a
5 level playing field than the group that is here this morning,
6 this panel.

7 I urge you, as a first step, to recommend to the
8 President, to the American Bar Association, and to the Legal
9 Services Corporation as a whole that the Legal Services budget
10 be tripled without the addition of additional federal funds,
11 to be tripled by the following method: all large law firms
12 practicing in the United States tithe 3 percent of their
13 revenue to the national Legal Services Corporation.

14 As I indicated earlier, the top 100 firms generated
15 revenue in 1989 of \$12.3 billion. The top 500 firms generated
16 revenue of \$20 billion. Three percent of \$20 billion is \$600
17 million a year, or enough to triple the Legal Services budget
18 and make a dent in the 80 percent of eligible clients who are
19 unserved.

20 In conclusion, I urge you to help end the unilateral
21 disarmament of the poor and arm the poor with the necessary
22 legal weapons so they can confront the problems that confront

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1 them uniquely and the problems that confront our society as a
2 whole.

3 I thank you. I am prepared to answer any questions,
4 and I would welcome them. I do intend to submit, at a
5 subsequent time, written material.

6 CHAIRMAN UDDO: Thank you, Mr. Gnaizda. You set an
7 excellent example: 10 minutes and 20 seconds. That was
8 amazing and an extremely cogent presentation.

9 Are there any questions from members of the
10 committee first? And, again, I caution you, if there are not
11 questions, it is not because there is not interest or
12 questions, but we are trying to stick to a schedule.

13 Are there any questions that anyone would want to
14 ask Mr. Gnaizda? Any members of the board who are not members
15 of the committee?

16 (No response.)

17 CHAIRMAN UDDO: Thank you very much, and we look
18 forward to seeing your written comments that will be made a
19 part of the record.

20 MR. GNAIZDA: Fine. Mr. Chairman, may I just ask
21 one additional question?

22 CHAIRMAN UDDO: Sure.

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1 MR. GNAIZDA: I am curious as to whether any members
2 of this corporation have in fact thought of some national
3 mechanism of securing volunteer tithing or other forms of
4 broad-based monetary assistance to the underfunded Legal
5 Services Corporation?

6 CHAIRMAN UDDO: Yes. The chairman is telling me
7 that, of course, that was the theory, to some extent, behind
8 IOLTA, but it's different from what you're talking about, in
9 that you're talking about the revenues of the firm and not the
10 interest in the trust accounts.

11 I guess I've been on the board longer than anybody
12 here, and a proposal such as yours, I have not heard of a
13 proposal such as yours. That's not to say that someone hasn't
14 discussed it before, but I think it's interesting and
15 innovative, and would be a highly controversial suggestion. I
16 don't think there's any question about that. But I don't know
17 of anyone that has.

18 MR. WITGRAF: I think you will find that the State
19 of Minnesota, through its Supreme Court, is in the process of
20 promulgating a lawyer-by-lawyer assessment. It had nothing to
21 do with the revenues of a given firm, but it has to do with
22 the licensure of lawyers in that state to provide for the

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1 purpose you're describing with monies to be spent much as
2 IOLTA monies are spent in that and other states right now.

3 But I think you are headed in the same direction
4 that many of the judicial and legal leaders of the country
5 are. Whether it will take this route exactly remains to be
6 seen, but I think what you are saying is consistent with where
7 those people on the cutting edge are moving.

8 CHAIRMAN UDDO: You may, Mr. Gnaizda, want to
9 communicate with Mr. Dana, who is the chairman of the Audit
10 and Appropriations Committee, because that may be a better
11 committee to deal with this than Reauthorization. It may be
12 the sort of thing that Audit and Appropriations may want to
13 give some thought to and make a recommendation on.

14 MR. GNAIZDA: Fine.

15 CHAIRMAN UDDO: Thank you very much, Mr. Gnaizda.

16 MR. GNAIZDA: Thank you very much.

17 MR. DANA: Mr. Chairman, just before Bob leaves, I
18 had heard this suggestion in your home town about two years
19 ago from this very same gentleman. I think it was two years
20 ago that you were proposing to the assembled group that all
21 lawyers tithe or -- I'm not sure "tithe" is the right word--
22 but take 3 percent of their income.

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1 I do think that the organized bar is moving in that
2 direction on a voluntary basis, not in any sense to the degree
3 that you're talking about, but, in terms of time, I think
4 probably that is about the nature of the commitment that is
5 being talked about and being urged on all lawyers. And, in
6 terms of the dollar cost, I don't think society or the bar is
7 anywhere near 3 percent. Whether or not you can get us there
8 is another question.

9 CHAIRMAN UDDO: Thank you, Mr. Gnaizda.

10 MR. GNAIZDA: Thank you.

11 CHAIRMAN UDDO: Next is Mr. Edward Kallgren,
12 representative of the California Bar Association.

13 Mr. Kallgren.

14 STATEMENT OF EDWARD KALLGREN

15 MR. KALLGREN: Thank you, Mr. Chairman.

16 Mr. Chairman and members of the committee, my name
17 is Edward E. Kallgren. I am an attorney in private practice
18 in San Francisco and a member of the Board of Governors of the
19 State Bar of California.

20 Charles Vogel, president of the state bar, has asked
21 me to represent him here today, as he has a conflicting
22 appointment that he could not change. On behalf of the

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1 president and the approximately 130,000 lawyers in California,
2 I want to welcome you to San Francisco and to express our
3 appreciation for your coming to hear the views of
4 knowledgeable and concerned Californians on the proposed
5 legislation to reauthorize the Legal Services Corporation.

6 One of the established goals of our state bar is to
7 respond to the need for full and equal access of all persons,
8 regardless of circumstances, to the justice system and to
9 facilitate the delivery of quality legal services to such
10 persons. As a result, we have a long history of support for
11 legal services for poor people and for the Legal Services
12 Corporation.

13 We have consistently opposed actions that would
14 lessen the effectiveness of programs which provide lawyers for
15 the poor. I appear before you today in opposition to the
16 uncalled for restrictions of the McCollum-Stenholm bill, H.R.
17 1345, in the hope that your committee and the LSC Board will
18 oppose these restrictions.

19 Last October, our board of governors went on record
20 against passage of the proposals then known as the McCollum-
21 Staggers-Stenholm bill. The state bar remains opposed to such
22 restrictions as incorporated into the new bill. In addition,

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1 some new proposals in the new bill affecting attorney-client
2 relationships are also contrary to the basic principles that
3 have been approved by the state bar in the past and which
4 raise serious concerns.

5 Before touching briefly on three of these concerns,
6 let me express our overall difficulty with the proposals
7 presently before us. As I have said, the State Bar of
8 California has a long involvement with the provision of legal
9 services to the poor, and, accordingly, it has been a staunch
10 supporter of the Legal Services Corporation.

11 We understand the practical necessity of
12 establishing certain rules of uniform applicability across the
13 country and of assuring that LSC-funded entities are
14 accountable for the monies they receive and expend those
15 monies consistently with the basic purposes of the LSC
16 legislation.

17 However, we sense, in the bill before us and in
18 other proposals that have been put forth in recent years, an
19 atmosphere of distrust, if not overt hostility, toward local
20 legal service providers, an attitude which seems to seek to
21 restrict and inhibit local initiatives and local programs for
22 assistance to the poor in favor of complex and convoluted,

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1 federally-imposed procedural and substantive strictures which
2 have no apparent legitimate purpose.

3 Certainly, where abuses exist they should be curbed.
4 And if a case were made for the existence of widespread
5 abuses, then perhaps comprehensive new regulations are called
6 for, but no such case has been made. Instances of abuse are
7 rare and generally insignificant, and, for the most part, they
8 can be dealt with at the local level. The restraints that
9 would be imposed by the McCollum-Stenholm bill are, on the
10 other hand, comprehensive, pervasive, and deeply intrusive.

11 We find its innate philosophy, as well as numerous
12 of its specific provisions, to be inconsistent with the
13 concept of maximizing the legal services that can be made
14 available to the poor with the limited resources available,
15 and inconsistent with the original congressional policies
16 behind the legislation creating the Legal Services Corporation
17 and the policies of the legislature of the State of
18 California, and I am sure of most other states, with respect
19 to our local Legal Services programs.

20 The State Bar of California's opposition rests
21 principally on three grounds: First, it is the bar's
22 responsibility to promote the availability and improve the

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1 quality of legal services so that the poor in California have
2 full and effective access to the courts and the legal system
3 to protect their legal rights.

4 The McCollum-Stenholm bill would hamper the delivery
5 of legal services to poor people in California and would
6 interfere with the professional responsibility of our member
7 lawyers to serve their clients.

8 Second, the State Bar of California is responsible
9 under law for the administration of the Legal Services Trust
10 Fund Program, California's IOLTA program. The Mc-Collum-
11 Stenholm bill would, for no legitimate purpose that we can
12 ascertain, restrict the use of IOLTA grants in California in
13 ways unintended and unwanted by the California legislature.

14 And, third, the proposals, if passed, would intrude
15 improperly on the right of the boards of Legal Services
16 programs in California to determine local priorities and
17 needs, so as to allocate their resources effectively on behalf
18 of low-income citizens who require legal services.

19 Let me begin with the issue of local control. The
20 State Bar of California, in partnership with local bar
21 associations, makes appointments to the boards of some 12
22 Legal Services programs in California. Both in this

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1 connection and in connection with our administration of the
2 IOLTA program, the state bar has had occasion to think
3 carefully about how Legal Services programs should operate.

4 We believe that most decisions regarding the needs
5 and priorities of the poor can best be made locally, not from
6 the state bar in San Francisco, and not from the Legal
7 Services Corporation or from Congress in Washington.

8 The provisions of this year's McCollum-Stenholm bill
9 regarding the authority of local governing boards, though
10 improved over last year's bill, present local governing boards
11 with some serious and unnecessary problems.

12 The bill would give LSC explicit authority to create
13 a suggested list of priorities. While the bill would not make
14 this list compulsory, we have seen repeatedly that staff of
15 the corporation will take every opportunity to try to force
16 grantees to conform to its own agenda. This history makes
17 even a suggested list ominous.

18 Further, local program staff would be forbidden to
19 undertake matters not already on their priority list except in
20 emergencies, and LSC would monitor such cases. As things now
21 stand, priorities guide the work of the programs but do not
22 bind them to a rigid case selection process. That is how it

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1 should be; otherwise, we may prevent programs from dealing
2 effectively with new and unexpected legal issues and changed
3 circumstances facing their clients.

4 Legal problems don't arise in an orderly,
5 predictable manner, and local boards should not be prohibited
6 by a rigid priority list from dealing with the unexpected.

7 The Legal Services Corporation has in place ample
8 protections to ensure that the boards' programs are diverse,
9 that they represent the local community and needs of clients,
10 and that they operate effectively. To the greatest extent
11 possible, LSC should leave to each local board the authority
12 to allocate resources to best meet local client needs and to
13 decide how best to govern and manage local programs.

14 This kind of system has been in place for many years
15 and has worked well. It is a system that California law sets
16 up for our IOLTA recipients, and much of our monitoring effort
17 for our own IOLTA grantees is aimed at assuring that they have
18 in place a strong and effective board and system of
19 governance. Then we can leave to the organization decisions
20 about what its priorities should be and how they should
21 deliver legal services.

22 One kind of decision a local board can make most

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1 effectively is the manner in which services will be delivered,
2 how resources will be allocated among various delivery
3 systems. We are very troubled by the prospect of competitive
4 bidding, largely because the decisions about delivery systems
5 and providers would be made by bureaucrats, far removed from
6 the responsible local boards which have a direct, firsthand
7 knowledge about clients' needs and circumstances.

8 However, even when decisions are made locally, such
9 as in the criminal field, there are many problems. In an
10 effort to address some of those problems, the State Bar of
11 California, through an appointed commission, conducted a study
12 and prepared a set of guidelines for competition in the
13 criminal defense system in the state.

14 Our study concluded that one indispensable element
15 for providing proper services is a locally-run and adequately-
16 staffed program alongside whatever part of the work is
17 contracted out to other methods of delivering services. Even
18 then, there must be strict guidelines to avoid abuse and
19 ensure quality of service.

20 We would be pleased to provide you with a copy of
21 these guidelines, if you wish.

22 CHAIRMAN UDDO: I would like for you to do that, if

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1 you would.

2 MR. KALLGREN: Okay. Fine. That's done.

3 A second part of the McCollum-Stenholm bill that I
4 want to address is the proposal for widening the LSC
5 restrictions on the use of funds from other sources. We see
6 absolutely no justifiable purpose for such restrictions which
7 would, among other things, effectively regulate use of
8 California IOLTA funds in ways not contemplated by the
9 California legislature and not necessary or appropriate in the
10 view of the California State Bar.

11 California's IOLTA program was created by our state
12 legislature in 1981 in the face of expected dramatic decreases
13 in the available Legal Services funding, accompanied by
14 increased restrictions on the funds that remained. By law,
15 funds generated by this program must be used exclusively for
16 free, civil legal services to the poor, including both direct
17 service and backup support services.

18 No funds may be used for certain restricted
19 purposes, such as services in criminal matters, in fee-
20 generating cases, and services to clients who do not meet
21 eligibility guidelines. Otherwise, the law does not restrict
22 the clients who can be served, the matters that can be

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1 addressed, or the types of legal work to be performed.

2 IOLTA grants in California may be used to provide
3 any eligible poor person with the same kinds of services that
4 any privately-retained lawyer would provide to his or her
5 client. Close to two-thirds of the IOLTA funds in California
6 go to programs that also receive LSC funding.

7 Today IOLTA grants in California are recognized by
8 the Legal Services Corporation as public funds, not subject to
9 the restrictions of the LSC Act. But the McCollum-Stenholm
10 bill would change this and remove the power of the California
11 legislature to decide how two-thirds of California IOLTA money
12 can be used.

13 For example, California law permits recipients to
14 use grant funds to serve noncitizens. Our law contains
15 legislative findings that the legal needs of indigent, non-
16 English-speaking persons are insufficiently addressed, and one
17 of its stated purposes is to increase the availability of such
18 services. By prohibiting the use of other funds to serve
19 aliens, Section 15 of the McCollum-Stenholm bill would limit
20 the use of California IOLTA funds in a way inconsistent with
21 the California legislature's clearly-stated intent.

22 The State Bar of California opposes this change, and

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1 we oppose any federal restrictions that would prevent the use
2 of IOLTA grants in California for the purposes for which they
3 were intended and for which they are granted. Although some
4 of these purposes may be different than those of the Legal
5 Services Corporation, California IOLTA money will not be used
6 for anything other than the highest possible quality legal
7 services for poor people.

8 California delegates responsibility for
9 administering our IOLTA program to the State Bar of
10 California, a responsibility that we carry out through a 25-
11 member Legal Services Trust Fund Commission. That commission,
12 which is made up of lawyers and lay people, including clients,
13 meets regularly and works diligently at its duties. It
14 handles decisions about eligibility for funding and budgeting
15 of grants; it monitors delivery of legal services in
16 California; and it sets overall policy.

17 The commission and the paid staff assigned to the
18 program regularly monitor and evaluate the use of funds by
19 individual grantees. In many cases, they use systems and
20 procedures for tracking grantee activity and monitoring
21 performance that have been adapted from LSC procedures. I can
22 assure you that we, like you, take our responsibility to the

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1 poor, who are the ultimate beneficiaries of our grants, very,
2 very seriously.

3 Finally, let me tell you briefly about the state
4 bar's concerns regarding several of the McCollum-Stenholm
5 proposals that would interfere with the exercise of the
6 ethical and professional responsibilities of lawyers for
7 indigent clients.

8 CHAIRMAN UDDO: Mr. Kallgren, let me just stop you a
9 second. You have about three minutes, and I see it's a
10 prepared statement which could be submitted to us. Would you
11 prefer to finish that on the record and leave no time for
12 questions, or would you like us to take --

13 MR. KALLGREN: Well, I'd just as soon -- I could
14 even talk faster, if you like.

15 (Laughter)

16 MR. KALLGREN: I've been trying to move along.

17 CHAIRMAN UDDO: No, you have been doing fine. But I
18 want to make sure we have a little time for questions.

19 MR. KALLGREN: Okay.

20 CHAIRMAN UDDO: Why don't you go ahead and finish.

21 MR. KALLGREN: I mentioned that the California
22 legislature in the IOLTA law provides that legal service

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1 lawyers are free to provide the same services that any other
2 lawyer would provide to a client.

3 The law goes on to impose certain specific
4 affirmative requirements. For example, all recipients of
5 grant funds must ensure the preservation of the attorney-
6 client privilege; they must promise to protect the integrity
7 of the adversary process from impairment in their furnishing
8 of legal assistance to their client; and they must guarantee
9 that no one will interfere with any attorney's professional
10 responsibility to the client.

11 We believe that the McCollum-Stenholm bill would put
12 LSC-funded lawyers in California at odds with this law, as
13 well as with their other ethical responsibilities under the
14 state bar rules of professional conduct, which govern the
15 legal profession in California. The so-called procedural
16 safeguards for litigation are just the kind of attack on the
17 integrity of the adversarial process that the California law
18 prohibits.

19 Under the proposal, at the earliest stages of their
20 representation by an attorney, clients would be required to
21 provide a detailed, notarized affidavit presenting all
22 relevant facts, which affidavit would be provided both to LSC

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1 and eventually to the opposing party. This is not something
2 that well-to-do clients or their attorneys have to bother
3 with.

4 The effect of this change is not just to impose
5 additional burdensome paperwork; it would discriminate against
6 poor people served by Legal Services programs, possibly
7 deterring them from seeking legal remedies to which they are
8 entitled.

9 Similarly, trying to prevent Legal Services lawyers
10 from using the Civil Rights Attorneys' Fees Award Act and many
11 fee-shifting statutes that are available to private parties in
12 California is an interference with the process that has been
13 established by consistent legislative activity for important
14 public policy purposes to enable people to enforce their civil
15 and constitutional rights.

16 The proposed restrictions on solicitation are much
17 broader than those contained in the California rules of
18 professional conduct and may be unconstitutional, as well.
19 They would hold Legal Services lawyers to a stricter standard
20 than other lawyers, even though court decisions have held that
21 when attorneys undertake work for other than pecuniary profit
22 they are in some circumstances exempt from the prohibitions

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1 against solicitation.

2 The proposed bill's effort to redefine the term
3 "attorney-client" privilege is of particular concern to the
4 state bar. California law, like that of many other states,
5 protects far more of communication between attorneys and
6 clients than would be covered by this proposal. The proposed
7 definition, for example, would not protect communications by
8 the attorney to the client, and it may leave open to
9 disclosure attorney-client communications not initiated
10 specifically for the purpose of seeking legal advice.

11 It is the ethical duty of an attorney in California
12 to maintain inviolate the confidence and at every peril -- in
13 California "to maintain inviolate the confidence and at every
14 peril to himself or herself to preserve the secrets of his or
15 her client." There is indeed peril here. Legal Services
16 lawyers would be in an impossible position: either violate
17 their ethical responsibilities, thus risking their license to
18 practice law, or lose LSC funding.

19 What is the reason for these provisions that
20 interfere with the adversarial process and strike at the very
21 heart of the attorney-client relationship? What evidence is
22 there of abuse? Certainly, we in California are not aware of

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1 any evidence of abuses that would support these drastic
2 changes.

3 Our IOLTA program has regular, systematic, and
4 frequent contact with 35 LSC-funded field offices, support
5 centers, and law schools, along with other entities that
6 receive LSC funds by subcontract. If we saw the kind of abuse
7 of the legal process to which these draconian changes are
8 apparently directed, we would support appropriate, though
9 clearly less intrusive, reforms. But we do not see such
10 abuses.

11 Further, we believe it is wholly inappropriate for a
12 federal agency to try to redefine the ethical rules governing
13 the practice of law in a state which have been carefully
14 crafted by the lawyers, the state bar, the legislature, and
15 our Supreme Court, thus creating two sets of ethics: one for
16 those representing the poor, and another for everyone else.

17 For the foregoing reasons and possibly others, we
18 urge you to oppose the McCollum-Stenholm bill. We think it is
19 an improper and unwise intrusion into the rights of
20 responsible California governmental agencies and the boards of
21 Legal Services programs throughout our state.

22 We are pleased you came to San Francisco and

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1 appreciate the opportunity to address you on this very
2 important topic. We wish you all the best of luck in
3 achieving the goals of your corporation.

4 Thank you very much, Mr. Chairman.

5 CHAIRMAN UDDO: Thank you very much, Mr. Kallgren.

6 Any members of the committee have a question or two?

7 (No response.)

8 CHAIRMAN UDDO: I may have some that I will submit
9 in writing to you.

10 MR. KALLGREN: We would be very happy to answer any
11 questions that the committee or any of its members or other
12 members of the full committee would like to ask.

13 CHAIRMAN UDDO: Yes, I think I will have a few that
14 I will submit in writing, because it will take much too long
15 to discuss right now.

16 MR. KALLGREN: Right. And we will provide you with
17 a copy of those guidelines.

18 CHAIRMAN UDDO: Thank you very much, Mr. Kallgren.

19 Mr. Steve Brick, represents the San Francisco Bar
20 Association.

21 STATEMENT OF STEVEN BRICK

22 MR. BRICK: Good morning, Mr. Chairman, and members

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1 of the committee. It is a privilege to appear before you, and
2 thank you for coming to our fair city on a nice, nonfoggy,
3 nonrainy, day.

4 It is also a privilege to share this microphone with
5 people with Bob Gnaizda and Ed Kallgren. Bob reminded me, as
6 we came in this morning, that I've known him now for 20 years.
7 He really exemplifies the best in public interest law in this
8 country, and I hope you appreciate that. Ed Kallgren is a man
9 for whom I worked when he ran for the Berkeley City Council in
10 the early 1970s, and he exemplifies the best in the organized
11 bar and its interest in providing quality legal services to
12 the poor.

13 I am Steven Brick. I am president of the Bar
14 Association of San Francisco and an attorney with the firm of
15 Warrick, Harrington and Sutcliffe here in San Francisco.

16 The Bar Association of San Francisco is a voluntary
17 bar association. It was founded in 1872. Its primary
18 purposes have always included the promotion of the sound
19 administration of justice for the rich and for the poor.

20 I am speaking here today not only on behalf of the
21 8500 members of our association but also on behalf of the
22 26,000 members of the Los Angeles County Bar Association.

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1 Together, our two associations represent almost 30 percent of
2 the practicing attorneys in California.

3 BASF, as we are known, has encouraged its members to
4 do pro bono work throughout its history. After the 1906
5 earthquake, for example, our predecessors worked with state
6 and local officials to solve the many problems caused by the
7 loss of life and property which devastated our city.

8 Eighteen months ago, when the Loma Prieta earthquake
9 again destroyed hundreds of homes and apartments, our
10 association immediately set up a hotline and began giving free
11 legal advice about how to make applications to FEMA, landlord-
12 tenant problems, insurance problems, and the many, many other
13 legal problems that affected the homeless and those who
14 temporarily became homeless.

15 LSC, you may know, provided our VLSP program with a
16 special grant to help offset the expenses of those efforts.
17 VLSP, or Volunteer Legal Services Program, is a 501(c)(3)
18 corporation affiliated with our association. It is our
19 principal means of delivering legal services to the poor. It
20 is a recipient of supplemental field funding from LSC, and it
21 has been incredibly successful.

22 With a budget of \$1 million last year, VLSP's 3,000

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1 volunteer attorneys and 900 volunteer legal assistants served
2 nearly 12,000 indigent clients. The value of those services,
3 conservatively estimated, was more than \$11 million. This
4 year we expect to do more. As chair of the VLSP Board, I can
5 attest to the quality of the services that VLSP provides and
6 to the commitment of the attorneys involved in the program,
7 both our volunteers and our paid staff.

8 San Francisco Neighborhood Legal Assistance
9 Foundation, or SFNLAF, is the primary provider of legal
10 services to the poor in San Francisco. BASF appoints a
11 majority of the SFNLAF Board.

12 In 1980, SFNLAF had 72 staff members in 7
13 neighborhood offices throughout the city. Today, they have 28
14 staff members and 1 office. SFNLAF, nonetheless, has
15 continued to serve clients in San Francisco's neighborhoods by
16 establishing liaisons with neighborhood agencies and by
17 holding regular clinics in the neighborhoods with the greatest
18 needs. Although SFNLAF is actively seeking additional state
19 and private funds, they are very limited and very difficult to
20 obtain.

21 Programs like VLSP and SFNLAF help to fill an
22 incredible and still unmet need for legal services in our

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1 society. They deserve support and additional funding, yet
2 H.R. 1345, the McCollum-Stenholm amendments, will reduce
3 funding sources, hamper the efforts of Legal Services
4 attorneys, and disrupt proven legal service delivery systems
5 like VLSP and SFNLAF.

6 The bar associations I represent today oppose H.R.
7 1345, and they do so because it conflicts with the
8 congressional purposes underlying the Legal Services
9 Corporation. Those purposes which are enumerated in the Legal
10 Services Corporation Act are worth repeating.

11 It has long been acknowledged that the purposes of
12 the Act are to provide equal access to the system of justice
13 in our country, to provide high-quality legal assistance to
14 those who would otherwise be unable to afford adequate legal
15 counsel, and to ensure that attorneys providing legal
16 assistance have full freedom to protect the best interests of
17 their clients, in keeping with the code of professional
18 responsibility, the canons of ethics, and the high standards
19 of the legal profession.

20 H.R. 1345, regrettably, is incompatible with these
21 goals. Time does not permit me to discuss each of H.R. 1345's
22 provisions today, but I would like to address several specific

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1 aspects of the bill, at least briefly. These provisions
2 concern restrictions on solicitation, special procedural
3 requirements for Legal Services attorneys, local priority
4 setting, the regulation of IOLTA funds, competitive bidding,
5 attorneys' fees, Rule 11, and the definition of the attorney-
6 client privilege.

7 On the solicitation issue, Section 4 of H.R. 1345
8 contains restrictions on legislation that would deny some
9 groups the equal access to the justice system that Congress
10 has envisioned. Here in San Francisco, these restrictions
11 could adversely impact several important projects that VLSP
12 currently administers in conjunction with SFNLAF and other
13 local agencies.

14 The purpose of these programs is to provide outreach
15 and services to the homeless, people with AIDS, and battered
16 women. Each of these groups has significant barriers to
17 access to legal services, and outreach is often the only way
18 that these groups learn about and utilize the services that
19 are available. H.R. 1345, however, might well prohibit VLSP
20 and SFNLAF staff attorneys from engaging in many of these
21 necessary outreach activities.

22 In addition, the solicitation restrictions conflict

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1 with the majority of existing state ethical rules. Under the
2 ethical rules in force in California, for example, Legal
3 Services attorneys may provide legal advice to nonclients and
4 accept legal representation that results from that advice.
5 H.R. 1345 would prohibit acceptance of representation under
6 these circumstances.

7 It would also conflict with the current version of
8 the Legal Services Corporation Act, which prohibits LSC from
9 abrogating state authority to enforce standards of
10 professional responsibility.

11 Let me turn to Section 5. That section contains
12 special procedural requirements over and above those imposed
13 by federal and state procedural rules that apply only to poor
14 litigants represented by Legal Services attorneys. The
15 establishment of these discriminatory requirements is itself
16 objectionable and incompatible with Congress' goal that LSC
17 ensure equal justice for the poor.

18 In addition, these requirements are unworkable and
19 unnecessary. Section 5 would require Legal Services attorneys
20 to create for each complaint they are thinking about filing,
21 and each time they engage in precomplaint settlement efforts,
22 to obtain a signed statement that sets forth all of the facts

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1 on which the case is based.

2 This statement would be available not only to LSC
3 and other federal agencies but also to opposing counsel
4 through the discovery process, thus providing a significant
5 advantage to defendants in actions initiated by indigent
6 litigants.

7 Presumably, the purpose of the statement requirement
8 is to ensure that Legal Services attorneys are not bringing
9 unfounded claims, but we are not aware of any evidence that
10 Legal Services attorneys bring unfounded claims or fail to
11 investigate claims sufficiently before filing them. To my
12 knowledge, and we have investigated this, no Legal Services
13 attorney has ever been sanctioned or a sanction upheld for a
14 violation of Rule 11 or a state law equivalent.

15 Why then should Congress or the LSC require counsel
16 to create a document which the defendants will seek to use to
17 their advantage and which they are not required to prepare
18 before filing the answer?

19 Such a provision goes directly against the purposes
20 of providing equal access to the system of justice in our
21 nation and of affording attorneys who serve the poor full
22 freedom to protect the best interests of their client. It's

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1 the opposite of the level playing field that Bob Gnaizda spoke
2 to you about.

3 Let me turn to local priority-setting. President
4 Reagan said that federalism is one of the most essential and
5 underlying principles of our Constitution. Local control is
6 also the guiding principle for the system of delivery
7 established by the Legal Services Corporation Act. Under the
8 Act, local boards composed of attorneys and clients from
9 within a community set general priorities for the types of
10 cases that the community's program will undertake.

11 Section 8 of H.R. 1345 interferes with this
12 principle by requiring LSC to provide local boards with a
13 suggested list of priorities that boards may use in developing
14 local priorities. While use of LSC's priorities is not
15 required, it is questionable whether such a list is necessary
16 or appropriate.

17 As chair of VLSP's board, I can tell you that we
18 work long and hard at determining the kinds of cases generally
19 that will best serve the needs of our community. With all due
20 respect, VLSP's board and the local boards of other programs
21 are better qualified than LSC staff people in Washington to
22 determine the needs of our local communities.

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1 Let me turn to regulation of IOLTA funds, and I'll
2 be brief, because Ed spoke very well to this. The bar
3 associations that I represent strongly oppose this provision.
4 In a time when an estimated 80 percent of the legal needs of
5 the poor go unmet, every funding dollar for legal services is
6 essential.

7 By making IOLTA funds subject to federal law, H.R.
8 1345 will, at best, discourage the states from funding legal
9 services that are not funded by the federal government. These
10 include services for the nonindigent elderly and the
11 handicapped, for illegal aliens, and for nonindigent racial
12 and ethnic groups. At worst, this provision will force Legal
13 Services programs like ours to choose between accepting LSC
14 money or state funds.

15 By the way, out of our \$1 million we get less than
16 \$30,000 from LSC.

17 Competitive bidding: We also oppose Section 11 of
18 H.R. 1345, which provides for the institution of competitive
19 bidding by LSC. Although inadequately funded, the current
20 system for the delivery of legal services to the poor works
21 well. It has permitted Legal Services programs and individual
22 attorneys to build up the substantive law expertise that is

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1 necessary for providing efficient and effective legal services
2 to the indigent.

3 It has also permitted programs to attract the
4 personnel that can meet the special needs of certain client
5 groups, such as migrant farm workers, children, and the
6 elderly. Moreover, past experiments with competitive bidding
7 in the legal services field have not been successful.

8 In the area of criminal defense, competitive bidding
9 has increased costs dramatically, while the quality of
10 services has declined. Clients services were disrupted when
11 contractors changed or simply stopped providing services.

12 Finally, a competitive bid program will undermine
13 the effects of programs like ours to attract volunteer
14 attorneys. VLSP cannot deliver \$11 million worth of legal
15 services without the commitment of thousands of attorneys and
16 legal assistants who donate their time. Since the LSC has
17 inadequate funds to replace the value of this work,
18 competitively bidding could significantly decrease the amount
19 of legal services available to the poor in San Francisco.

20 In the absence of evidence that the current delivery
21 system can be substantially improved through competitive
22 bidding, we should not risk its destruction.

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1 Turning to attorneys' fees, we also oppose Section
2 12 of H.R. 1345, which provides that recipients of LSC funds
3 may not claim or collect attorneys' fees from nongovernmental
4 defendants. Congress and the legislatures of many states have
5 purposely provided for recovery of attorneys' fees to
6 encourage private enforcement of specific laws. Section 12
7 frustrates that purpose.

8 In states like California, it would also permit
9 parties who include attorneys' fees provisions in their
10 contracts to avoid their obligations. Please remember that in
11 order for a party to recover attorneys' fees, he or she must
12 first prevail. How does it serve the purposes of Section 1001
13 of the Act to allow someone guilty of sexual harassment, or
14 age or race discrimination, or breach of contract to avoid
15 their obligations? We can see no justification for this kind
16 of discrimination against the poor.

17 Another troubling provision of Section 12 gives the
18 president of LSC the power to determine whether or not a Legal
19 Services attorney has violated the standards of Rule 11 in a
20 particular action and to award attorneys' fees and costs from
21 LSC funds to the defendant in that action.

22 We strongly oppose this provision for three reasons:

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1 First, this provision wrongly assumes that Legal Services
2 attorneys need additional monitoring for ethical violations.
3 That is simply not the case.

4 Second, this provision assumes that federal judges
5 cannot adequately enforce Rule 11 when such enforcement is
6 necessary. We have no reason to believe that that assumption
7 is correct, and there is no evidence that the courts have
8 failed to enforce Rule 11. Indeed, you may be aware of much
9 discussion in the legal community that it is overenforced.

10 Finally, in light of past problems with LSC's
11 administration, we question whether this additional layer of
12 enforcement will further Congress' goal that Legal Services
13 attorneys have full freedom to protect the best interests of
14 their clients or whether it will in fact lead to harassment of
15 Legal Services attorneys.

16 The definition of attorney-client privilege: We
17 question the purpose of Section 21 of the bill in establishing
18 a more limited attorney-client privilege for the poor than
19 exists for every other member of our society. Further, we
20 question the authority and the wisdom of the federal
21 government in establishing the parameters of the privilege
22 that will be in effect in state courts.

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1 Here again, H.R. 1345 would be an unwarranted
2 intrusion on the authority of the courts and the state
3 legislatures and the state bars to establish and enforce their
4 own ethical and evidentiary rules.

5 In conclusion, we urge you, when you consider this
6 bill, to ask yourself how it measures up against the three
7 congressional goals of equal access, high-quality legal
8 assistance, and the freedom of Legal Services attorneys to
9 protect the interests of their clients.

10 We do not see the provisions in this bill that
11 enhance services, that increase access, or that give Legal
12 Services more tools to serve their clients. Instead, we see
13 restrictions on nonfederal funding, more limitations on the
14 services that can be offered, and restrictions on attorney
15 autonomy.

16 For these reasons, the bar associations of San
17 Francisco and Los Angeles oppose this bill, and we ask that
18 you do so, as well.

19 Thank you very much.

20 CHAIRMAN UDDO: Thank you, Mr. Brick.

21 Any questions from the committee?

22 MR. KIRK: I have just a couple of comments. I

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1 don't think we have time for my questions to be answered, but
2 maybe others can address them or maybe you can furnish me some
3 information later.

4 "Level playing field" has been a byword of the first
5 three presentations, and I'm a frequent user of that term
6 myself, although I must tell you that not all the time is
7 there a level playing field for anyone. Whether it's the rich
8 or the poor, we can oftentimes find aspects that are not
9 level.

10 I'd like to see if you can, and maybe some future
11 people can, address some specifics. For example, I understand
12 that if you have to fill out a form before you file your
13 complaint, that's not the same as the person that has to file
14 that answer, but does it make a difference? Yes, I understand
15 it's not level, but I'm not buying into, "Oh, it's not level;
16 therefore, it's bad."

17 I'd like to hear what the specifics are. I'd like
18 to hear some thoughts on if in fact some advantages can be
19 gained by restricting the use of IOLTA funds. How do we know
20 that other comparable agencies won't be able to come in and
21 fill those needs?

22 Another question I had involved a comment you made

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1 regarding Rule 11 that there may be some information that Rule
2 11 is being overenforced. I can only tell you that in the
3 circle of conversations that I have is that it is not being
4 enforced very much by the courts. I'd be interested in your
5 furnishing me that information.

6 So those are just a couple of comments. I mention
7 them to you to the extent that you can furnish them to me on a
8 break or something and that other people can address them
9 later on.

10 MR. BRICK: I'm pleased to, at your pleasure, to
11 speak now or talk with your privately.

12 CHAIRMAN UDDO: Actually, I think those kinds of
13 questions may justify a written response that could be
14 circulated to the members of the committee. I think Mr.
15 Kirk's questions, particularly the one about a level playing
16 field, is probably one that ought to be given a thorough and
17 careful answer, as I understand the way he's asking the
18 question.

19 MR. BRICK: I think that's a good question. If I
20 can take one minute, I'd like to --

21 CHAIRMAN UDDO: Sure.

22 MR. BRICK: I am a trial lawyer. I don't know your

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1 backgrounds, and I don't know who among you may be trial
2 lawyers.

3 CHAIRMAN UDDO: He is.

4 MR. KIRK: I am too.

5 MR. BRICK: All right. Well, then, Mr. Kirk, you
6 fully appreciate that every time a witness gives a statement,
7 particularly at the outset of a case, and writes it down and
8 becomes committed to it, that that statement can then be used
9 to cross-examine that witness later in deposition and later at
10 trial.

11 And I know you appreciate that witnesses'
12 recollections will differ in insignificant details, and yet
13 able attorneys on the other side will take those insignificant
14 details and use them to create a question of credibility about
15 the truth of the witness' statement at all.

16 Now, is it fair to ask for that kind of a statement
17 and put that kind of a weapon into the hands of the
18 defendants, when the plaintiffs will not have the same kind of
19 ability to get such a statement? Why would you want to do
20 that? What would be the need for doing that? That's the
21 problem I have with this.

22 MR. KIRK: Well, representing defendants a lot, I

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1 might note that only you know that the suit is going to be
2 filed in advance; is that correct?

3 MR. BRICK: You're saying the plaintiff and his or
4 her attorney are the only ones who know they're going to file
5 the suit?

6 MR. KIRK: So you have a great opportunity for fact-
7 gathering in advance.

8 MR. BRICK: Not necessarily.

9 MR. KIRK: And you may have the ability to go and
10 obtain statements prior to the suit being filed without the
11 other attorney being there, and that is an advantage that you
12 naturally have as a plaintiffs' attorney. But that doesn't
13 mean because the field isn't always exactly level that it puts
14 you at substantial advantage.

15 I will agree that what you say is, yes, it's another
16 statement that somebody can use against you, just like, you
17 know, when you give your statement to the police, or you give
18 this statement or that statement, or an investigator comes out
19 and talks to you, likewise.

20 MR. BRICK: Well, I'd ask you to think, Mr. Kirk,
21 about what legitimate purpose requiring that that statement be
22 put in writing and given to the defendant serves.

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1 I mean, the purpose of the Legal Services
2 Corporation Act is not to make life easier for the defendants,
3 much as we would like it to be, perhaps -- I represent more
4 defendants than plaintiffs myself -- but it is to make it
5 easier for the poor to be represented in court and to have
6 equal access to the system.

7 Giving the defendants yet another tool that could be
8 harmful to the plaintiff, and depriving the plaintiffs of that
9 same tool, perhaps -- if it were going to be required that
10 this be turned over, at minimum, you should require that
11 before an answer be filed that the defense key witnesses be
12 required to create a comparable statement and that that too be
13 available to the plaintiffs in discovery.

14 MR. KIRK: Two final comments: One, your initial
15 point was a good one, and I appreciate it. My response to you
16 is that of any attorney that always has to answer the
17 statement. But you did go back to saying, you know, what is
18 the purpose of it? And I'm not debating the purpose of it or
19 anything like that, I just would like to be able to hear more
20 of your specific examples of the disadvantage that it does put
21 people to.

22 CHAIRMAN UDDO: That's why I think a written

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1 response would be appropriate, and you could do a burden
2 versus benefit analysis of that particular provision, because
3 it's an important one. It has come up, I think, in everyone's
4 presentation this morning and probably will continue to come
5 up. It may be something that all the folks who are testifying
6 on may want to give us an analysis of.

7 One of my concerns about the hearings is that
8 there's only so much that we can get from your comments and
9 even our questioning. I think some thoughtful analysis on
10 paper will help the committee when it reaches its final
11 deliberations.

12 MR. BRICK: We'll be happy to assist.

13 CHAIRMAN UDDO: Mr. Dana.

14 MR. DANA: Steve, your presentation was excellent.
15 One of the reasons that some congressmen support a limitation
16 on non-LSC funds, or support the congressional restrictions on
17 all non-LSC funds, is because they feel, not necessarily that
18 they invented legal services, but the Legal Services program
19 out there is their program.

20 They say they're afraid that when Congress wants
21 only certain things done by "their" program, that when other
22 funds are used to do other things, that reflects poorly on

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1 them as congressmen, and so they want to have their programs,
2 these federal programs that they take ownership of, to only do
3 what they have permitted be done with federal funds.

4 I would like your considered response to that
5 congressional attitude. Mine is almost unprintable, but I
6 would rather hear it from you.

7 MR. BRICK: Okay. We will submit that as well.

8 CHAIRMAN UDDO: Thank you, Mr. Brick.

9 MR. BRICK: Thank you very much.

10 CHAIRMAN UDDO: Mr. Brick, will you take another
11 seat. Mr. Witgraf has a question.

12 MR. BRICK: I'm sorry.

13 MR. WITGRAF: One brief request, Mr. Brick, and
14 thank you for providing us with a copy of your text. It was
15 very helpful.

16 Going beyond the two areas that have been touched on
17 by Mr. Kirk and Mr. Dana, I'm interested particularly in your
18 comments regarding competitive bidding.

19 Before I make my request, let me say, by way of
20 background, that as I look at the issue or the possibility of
21 competitive bidding, I don't look so much to the San Francisco
22 area, which is one of the bastions of the provision of legal

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1 services both by federally-assisted grantees and on a pro bono
2 basis, but rather I look to rural parts of the country, and
3 particularly to the Southeast part of the United States, where
4 the provision of legal services is much less effective and
5 much less widespread.

6 In fact, there are not strong Legal Services
7 grantees in some of those areas, and those that exist probably
8 need to be challenged if not replaced. Beyond that, you make
9 the comment at the bottom of page 8 that a competitive bid
10 program will undermine the efforts of programs like yours to
11 attract volunteer attorneys.

12 I guess I have a hard time understanding what the
13 basis for that allegation is. As Mr. Kirk would say, any
14 information or any specific examples that you can provide in
15 that regard would be very helpful to me in my thinking, why it
16 is that you've made that allegation and reached that
17 conclusion.

18 Thank you.

19 MR. BRICK: Thank you.

20 CHAIRMAN UDDO: Thank you, Mr. Brick.

21 MR. BRICK: Thank you.

22 CHAIRMAN UDDO: I just realized that I may have

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1 overlooked introducing our president, Mr. Martin, when I was
2 indicating who was here. So let me correct that oversight.
3 The gentleman to my left is Mr. David Martin, the president of
4 Legal Services Corporation.

5 Dean Jeffrey Kupers?

6 MR. KUPERS: Kupers.

7 CHAIRMAN UDDO: Kupers. Of the JFK Law School.

8 After Dean Kupers, we're going to take a five-
9 minute break just to give everyone a chance to run to the
10 men's room, ladies' room, whatever. But after Dean Kupers,
11 Ms. Lynn Murphy would be next, just so that we have some idea
12 of the direction in which we're going. Excuse me. I'm sorry.
13 Russell Koch would be next.

14 Thank you, Dean. Go ahead.

15 STATEMENT OF JEFFREY KUPERS

16 MR. KUPERS: Thank you, Mr. Chairman. I appreciate
17 the opportunity to appear before you today.

18 I would like to address three issues that I think
19 are of great importance in the matters that you have before
20 you for consideration. The first is the quality of lawyering
21 that is provided to the poor and how the Legal Services
22 Corporation can support high-quality lawyering in every way.

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1 MR. KIRK: Could you answer a question? Where is
2 JFK Law School.

3 MR. KUPERS: It's in Contra Costa County. It's
4 about 30 miles east of here. The city is Walnut Creek.

5 MR. KIRK: Private school?

6 MR. KUPERS: Yes.

7 MR. KIRK: There were three of us asking that at the
8 same time.

9 CHAIRMAN UDDO: Is this your written statement?

10 MR. KUPERS: This is the statement that I'd like to
11 read in a moment from the president of our bar association in
12 Contra Costa County.

13 CHAIRMAN UDDO: Oh, okay. I was confused with the
14 name at the top who that came from. Okay. Thank you.

15 MR. KUPERS: The second issue is the matter of
16 setting priorities for the work of the Legal Services
17 programs, and the third is the competitive bidding issue.

18 If I may, though, I would like to begin with a
19 statement by the president of the Contra Costa County Bar
20 Association, who asked me to read this on his behalf. I have
21 presented copies to the panel.

22 As an attorney in Contra Costa County and the

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1 current Contra Costa Bar Association, I am concerned about
2 provision of legal services to all members of our community,
3 including those who cannot afford to hire a private attorney.

4 We are very fortunate in our county to have an
5 effective provider of civil legal services to the poor, Contra
6 Costa Legal Services Foundation. They have a dedicated board
7 of trustees, an experienced professional staff. I believe
8 that any dilution of the CCLSF Board's ability to set local
9 priorities for the program is a barrier to effective provision
10 of legal services.

11 It is essential that any reauthorization legislation
12 respect the authority of board members appointed by local bars
13 and other local organizations to set and evaluate program
14 priorities.

15 Section 9 of the McCollum-Stenholm reauthorization
16 bill would hamper CCLSF's board's ability to set priorities by
17 restricting their ability to raise funds by applying LSC
18 restrictions to all program funds. This provision would also
19 inhibit the board's ability to set priorities based on the
20 needs of the poor in our county.

21 I urge you to not support this provision of the
22 McCollum-Stenholm bill or any provision that would dilute the

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1 ability of local boards to set program priorities or policies.

2 I would like to begin my remarks by mentioning the
3 basis upon which I am appearing today. First, I appreciate
4 the interest in John F. Kennedy Law School. And, certainly,
5 as a law school dean, as a legal educator, I'm very interested
6 in the provision of legal services and the support for the
7 people who are doing it, as well as the training of those
8 people while they're still in law school.

9 Secondly, I'm a member of the Board of Trustees of
10 the Contra Costa Legal Services Foundation and, thirdly, in
11 the past, a director of a Legal Services program in
12 California. In those three areas, I want to share with you my
13 concerns in the three subjects I mentioned about the pending
14 legislation and, in general, about the role of the board and
15 of Legal Services Corporation.

16 We at JFK, and I'm sure this is true at every other
17 law school in the country, we are very concerned about the
18 quality of the lawyers in this country, the quality in terms
19 of their legal skills in representing their clients, the
20 quality in terms of their ethical and moral standards, of the
21 integrity of their law practice, and the quality in the sense
22 of their commitment to representing people not only who have a

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1 lot of money but also who don't, and finding some space in
2 their lives to make a commitment to the poor who cannot afford
3 the usual lawyers' fees.

4 What I'm concerned about in this legislation and in
5 other things that have been happening in recent years is that
6 the things that we're teaching people in law school, in terms
7 of how to do their job effectively, are being restricted when
8 those people go to work for the poor. And I want to give you
9 some examples.

10 One is the types of problems that the people are
11 authorized to handle. In some regard this affects the issue
12 of setting of priorities; in another regard, it just affects
13 the role of a lawyer in representing a community. To the
14 extent that restrictions are put on the types of cases that
15 lawyers can handle, what we're saying to those lawyers is,
16 "You have to exclude a segment of the population, or at least
17 a segment of the people facing those particular problems, who
18 otherwise should have an attorney."

19 When someone with money goes to a lawyer, the lawyer
20 may refer them to someone else if it isn't in the area of
21 specialty, but the lawyer is not going to say, "No matter how
22 much money you have, we're not going to provide you a lawyer

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1 in that area of concern that you have because that's just our
2 policy or our procedure." And yet in Legal Services, that's
3 what it tends to be moving toward.

4 I would suggest to you that, just to pick a couple
5 examples, and there are many, the area of desegregation cases,
6 the area of amnesty issues, of affirmative action issues, of
7 local legislative redistricting issues, that these are things
8 that affect people's day-to-day life, people without money,
9 the poverty community, and it's an area that lawyers should be
10 entitled to get into in the representation of those clients.

11 A second thing is the legal tactics that we allow
12 our Legal Services attorneys to use in their litigation. Mr.
13 Gnaizda gave the example of the Kravath Swain agreement with
14 the government that was announced.

15 In addition to the issue of the money, I just want
16 to suggest to you that it's very unlikely that whoever made
17 that deal for the federal government told the partners of the
18 law firm that, if in their judgment a class action was the
19 appropriate type of format for litigation, based on the facts
20 that they had before them, that they could not use that
21 approach. It's just not going to happen in that setting.

22 And they're not going to say to them that although,

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1 with your other clients, there's a certain nature to the
2 attorney-client privilege that protects communications in both
3 directions, while you're working for the government, we're
4 going to restrict that attorney-client privilege, and your
5 records are going to be opened up in ways that would otherwise
6 be protected by that attorney-client privilege.

7 What I'm saying is that we should not be tying the
8 hands of the people who are already at great odds in the
9 provision of legal services. We should be giving them the
10 same methods that we teach them in law school, the same
11 methods that they learn by going to continuing legal education
12 programs and by participating in their law firms or in their
13 Legal Services offices in training. We should give them the
14 whole array of tactics and techniques and approaches that the
15 courts allow for resolving these issues.

16 Another example that I might add is the question of
17 legislative lobbying. I'm sure that when the average
18 corporation goes to a private lawyer or private law firm, they
19 do not say to them, "Here's our money. You can use it to
20 litigate, but we don't want you talking to any representatives
21 in the legislature, if that would be a more effective way to
22 get the result that we're looking for." It just doesn't

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1 happen.

2 In fact, in terms of the enormous problem with the
3 congestion of our courts, it might very well be that a Legal
4 Services attorney who attempts to resolve something through
5 working with elected officials might be doing a much greater
6 service than by filing a number of lawsuits and trying to
7 resolve issues through litigation. It might be a much better
8 result for the courts, for the clients, for the government,
9 financially, in all ways.

10 I just want to urge you, in appearing here today, to
11 do everything you can to eliminate and prevent new
12 restrictions upon attorneys in the jobs that they're trying to
13 do in representing their clients.

14 I would give as an example, my legal practice has
15 been mostly in the area of criminal defense work, other than
16 the legal services work. Public defenders, when they
17 represent people, are paid by the government, but they're not
18 told that you can't file a suppression motion or that you
19 can't represent a certain class of defendants.

20 If a person needs a lawyer, they get the lawyer, and
21 the lawyer is entitled to use all of the aspects of practicing
22 law that are at their disposal for trying to represent that

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1 client fully, and that's regardless of whether any particular
2 member of Congress or any particular public group has a
3 particular position on that particular crime that the person
4 might be charged with. That's not the issue.

5 The issue is the quality of the lawyering and the
6 quality of the representation of the client. That's what I
7 think is in the highest tradition of legal services in this
8 country is to provide full, quality representation to the
9 client.

10 The second area, in terms of priorities, is very
11 important to me because I sit on a board that has to set
12 priorities. It's no surprise to all of you, from your work
13 with Legal Services, that there's enough money to go around,
14 that there's never a case that Contra Costa Legal Services
15 would take that we shouldn't be taking, because we don't have
16 any extra room in our budget to take unworthy cases or to do
17 work that's not important in our county, and we can't even do
18 all the cases that are worthy.

19 So we have to select out some areas. We have to
20 make some judgments about turning away an enormous number of
21 people, even though we want to represent them. How should we
22 set the priorities? We do it by talking to all the community

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1 groups in the organization, by doing surveys, by working with
2 local groups, such as the United Way, in surveys that they do.
3 What are the problems facing people in Contra Costa County?

4 Those are going to be very different problems,
5 obviously, from counties elsewhere in the country, rural
6 counties, counties with larger urban areas than we have,
7 counties with totally different types of industries. It's
8 going to be different all over the country, and that's no
9 secret to anyone.

10 The question is: How do we decide what to do? To
11 the extent that there is some mandated national set of
12 priorities, even if they're suggestions -- I think we all know
13 the way that funding is done, and the way these issues are
14 pushed and argued about and lobbied for -- is that it's going
15 to set some type of pressure, some type of restriction on the
16 local entities to do their job and to choose as priorities the
17 things that are most important in that area.

18 We do still have the system of providing legal
19 services on a county basis, and that's the way we should also
20 be setting the priorities.

21 The other problem in priority-setting has been
22 addressed, and I'll only mention it in this context, and

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1 that's the restriction on non-LSC funds. It's another method
2 of interfering with the setting or priorities.

3 To whatever extent each of you believes that LSC
4 should be setting restrictions or Congress should be setting
5 restrictions on the funds that are provided by Congress, it
6 just does not connect that those same restrictions should
7 apply to funds that we raise locally, that come from IOLTA
8 funds, that come from other sources; for example, local block
9 grant funds.

10 We are answerable to those bodies that provide the
11 funds. When I go out and fund-raise for our legal services
12 foundation, those people want to know what we're doing with
13 the money. When we take IOLTA funds, we have to justify to
14 the California State Bar our use of the money. So it's not
15 that there's not a very active supervisory process in our use
16 of those other monies.

17 But to place national restrictions upon monies that
18 we're able to obtain from other sources is unnecessary, and
19 it's overly restrictive, and it's interfering with our ability
20 locally to get the job done.

21 CHAIRMAN UDDO: Dean Kupers, I can give you about
22 two more minutes. If you want to sum up or stop for questions

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1 and submit the rest of your comments in writing, it's up to
2 you.

3 MR. KUPERS: Thank you. I'll just use a small part
4 of that in mentioning that on the competitive bidding issue,
5 which is the third issues that's very important to me and to
6 our county and to our legal services foundation, other people
7 will be speaking to that.

8 What I want to point out to you is, from the
9 standpoint of trying to encourage people to do this work and
10 trying to do long-term planning, it is very difficult for us
11 to conceive of how we can do that without knowing, on a long-
12 term basis, that we're able to have that funding and do it.

13 I can assure you that our program and every other
14 program that I know of is very, very careful in the
15 expenditure of funds, and there is no advantage that is going
16 to be gained by competitive bidding in terms of providing
17 legal services to the poor.

18 So, just to sum up, what I want to urge you do is to
19 have Legal Services Corporation stand for something different
20 from a sense that has been growing in recent years, which is
21 an antagonism by the federal government, by the national
22 leadership, toward the provision of legal services.

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1 Instead of the emphasis being on restrictions, on
2 cutting back, on narrowing, I would love for us to have
3 hearings where we talk about how can we raise more money, how
4 can we expand the power of legal service attorneys who are
5 working for close to nothing and who are very limited already
6 in what they are able to do, how can we support them, how can
7 we expand their ability to represent the clients.

8 That's the focus that I think will make people have
9 more faith in the system and will certainly provide for the
10 needs of the clients in a much stronger way.

11 I'll stop there and be glad to respond to questions,
12 if there are any.

13 CHAIRMAN UDDO: Any members of the committee have
14 questions for Dean Kupers?

15 (No response.)

16 CHAIRMAN UDDO: Any members of the board?

17 (No response.)

18 CHAIRMAN UDDO: Thank you very much, Dean Kupers.

19 MR. KUPERS: I thank you for your time.

20 CHAIRMAN UDDO: As promised, a five-minute break,
21 and we will come back with Mr. Koch.

22 (A recess was taken.)

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1 CHAIRMAN UDDO: Our next speaker is Russell Koch.
2 And if you would identify the -- is it Tulare?

3 MR. KOCH: Tulare-Kings Counties Legal Services.

4 CHAIRMAN UDDO: Okay. Welcome to the committee.

5 STATEMENT OF RUSSELL KOCH

6 MR. KOCH: Thank you, Mr. Chairman, members of the
7 committee.

8 My name is Russell -- it's pronounced "Cook," but
9 it's certainly understandable how you would mispronounce it.

10 CHAIRMAN UDDO: I'm sorry.

11 MR. KOCH: That's all right.

12 CHAIRMAN UDDO: Isn't that how Mayor Koch spells his
13 name?

14 MR. KOCH: Yes, and I pronounce it differently.

15 CHAIRMAN UDDO: Okay.

16 MR. KOCH: I think everybody in our family
17 pronounces it differently.

18 I am the executive director of the Tulare-Kings
19 Counties Legal Services, which is one of the hundreds of
20 medium-sized Legal Services projects. We're located in the
21 vast, beautiful Central Valley of California.

22 First, let me thank you for this opportunity, as a

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1 representative of one of the front-line services, to have this
2 opportunity to present some input to you prior to Congress'
3 action on reauthorization.

4 I have been a practicing attorney in California for
5 some 39 years; 10 years in private practice, 15 years in
6 government service, in the county government, and 14 years in
7 Legal Services programs in California. My Legal Services is a
8 little different than many others. My Legal Services has been
9 somewhat split.

10 As a young lawyer, I was in at the birth of Legal
11 Services, when legal services to the poor was first proposed
12 as part of the war on poverty. From 1958 to 1964, I was one
13 of a two-lawyer Legal Aid Society office struggling to provide
14 some minimal degree of legal assistance to a large, poor,
15 urban population. In 1965, we were funded with war on poverty
16 money in an amount which, at that time, almost boggled the
17 mind.

18 The birth of Legal Services, as many will recall,
19 was not an easy one. Opposition and misgivings, particularly
20 from local and state bar associations, was the order of the
21 day. Legal Services has come a long way since those early
22 days of more than a quarter of a century.

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1 After private practice and 15 years in county
2 government, I returned to Legal Services in 1984. I was more
3 mature and so was, I am pleased to say, legal services to the
4 poor. Opposition and misgivings by local and state bars has
5 almost universally turned to enthusiastic support.

6 One of the reasons for this support is the clear
7 evidence that while over the past quarter of a century the
8 poor may still not have -- and I hesitate to use this phrase
9 -- as complete a level playing field as many of us would like,
10 the contrast with pre-Legal Services days is incredible,
11 particularly with those of us old enough to remember the sad
12 state of legal services before the advent of federal support.

13 I really appreciate your indulgence, because of the
14 time limitations, for what I think is a personal reminiscence,
15 but I hope perhaps this will lend some credibility to what I
16 want to say briefly about one of the major issues that is
17 involved in reauthorization; that is, competitive bidding.

18 I will be 65 in July, so I think I can honestly say
19 that I don't have any long-range personal stake in the
20 reauthorization battle, at least so far as my own future
21 career is concerned.

22 From my perspective, I view the McCollum-Stenholm

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1 bill, in many of its aspects, at best, the result of a
2 misconception of what the vast majority of Legal Services
3 programs are all about, and, at worst, an attempt to turn back
4 the clock on legal services to the inadequate pre-war-on-
5 poverty days, with which I am so very familiar.

6 While I feel many provisions of the McCollum-
7 Stenholm bill are objectionable, I will limit my statement in
8 this brief period to the provision for competitive bidding.
9 Section 11, if you read it, states "All grants and contracts
10 awarded by the corporation for the provision and support of
11 legal assistance to eligible clients under this title shall be
12 awarded under a competitive bidding system."

13 I think the phrase "all grants and contracts" sort
14 of answers the question as to whether you're going to select
15 those that are not doing good work, making a selection of
16 those and doing competitive bidding.

17 MR. WITGRAF: Mr. Koch, may I interrupt you?

18 MR. KOCH: Yes.

19 MR. WITGRAF: You're certainly correct that that is
20 the phraseology of H.R. 1345, but, beyond that, that is just
21 one proposal that's in the hopper, so to speak, and, as I
22 indicated when Mr. Brick was testifying, I think in the minds

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1 of some of us and, more importantly, in the minds of some in
2 Congress, competitive bidding is not an all-or-nothing
3 proposition.

4 So, if you're able to address whatever utility it
5 might have, please do. If you think, of course, it has no
6 utility whatsoever under any circumstances, certainly.

7 MR. KOCH: That isn't my belief.

8 MR. WITGRAF: But don't limit yourself, at least in
9 my judgment, don't limit yourself to it as an all-or-nothing
10 proposition.

11 MR. KOCH: No, I don't intend to, and my statement
12 will reflect that.

13 MR. WITGRAF: Thank you.

14 MR. KOCH: I will say this, though, that the
15 McCollum-Stenholm bill has that language in it, and that's the
16 language, and that's the language which I hope this board will
17 join most of us in Legal Services in objecting to, as an all-
18 encompassing action. Further, my statement, of which I will
19 submit a copy, covers that.

20 I feel this provision, particularly in the aspect
21 that all grants and contracts will be subject, is potentially
22 a greater threat to quality legal service to the poor than

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1 almost any other provision of the McCollum-Stenholm bill.

2 I think, as you point out, competitive bidding has a function,
3 and it really should be a limited one. And I think, as far as
4 I know, that's all that many of us feel should be involved in
5 Congress' reauthorization.

6 The only justification that I can see for
7 competitive bidding is, after the powers given to Legal
8 Services Corporation to monitor and to enforce the regulations
9 that have been fairly applied and an independent evaluation
10 made, as provided in the Frank bill, an existing Legal
11 Services program is found to have failed to use its resources
12 to provide economical and effective legal assistance of high
13 quality, then, at such time, that kind of program could be
14 defunded and perhaps should be defunded.

15 In those circumstances, others in the community
16 could be given an opportunity to apply for funds, and I think,
17 as you indicate, competitive bidding under strict quality
18 standards would certainly be warranted.

19 However, to subject all existing programs to
20 competitive bidding, which the language of Section 11 of the
21 McCollum-Stenholm bill as it now exists does, regardless of
22 their effectiveness and the quality of their services, I think

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1 would be to gratuitously weaken, if not destroy, a system that
2 has grown and served the legal needs of the poor well in this
3 country for over 25 years.

4 Tulare/Kings Counties Legal Services, of which I am
5 executive director, has been an established effective legal
6 service program for 25 years in two of the poorest counties in
7 California. Tulare County is the second richest agricultural
8 county in the country, yet today it has an unemployment rate
9 of almost 22 percent. In some parts of the county, it is
10 close to 50 percent. Tulare County has one of the highest
11 percentages of public assistance recipients in the United
12 States.

13 To serve the needs of the poor in these two
14 counties, we have a staff of four attorneys and six
15 paralegals. Last year we served over 4,000 poor families in a
16 variety of very serious legal problems. Even with this
17 volume, I know we have only served a portion of our poverty
18 population. In the first quarter of this year, we've
19 experienced almost a 50 percent increase in our caseload over
20 the first quarter of last year.

21 Of our 4 staff attorneys, all are experienced
22 poverty lawyers. One has been in the program for 12 years; 2

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1 for 9 and 6 years, respectively; the fourth position is
2 currently vacant, and we hope to fill that shortly with a
3 quality poverty lawyer.

4 Of our 6 paralegals, 2 have been in our program for
5 over 11 years and are acknowledged experts in their field of
6 government benefits, and are often consulted by less
7 experienced private practitioners. Our other paralegals have
8 been with Tulare/Kings Counties Legal Services for 6, 4, 2,
9 and 1 years, respectively, and they are similarly highly
10 qualified.

11 We have a support staff with similar long-term
12 commitments to our program. All of my staff look upon leg
13 services to the poor as a career, just as many attorneys in
14 government service, district attorney, county counsel, public
15 defender, U.S. attorney, officers in other state and
16 government agencies consider government service to be their
17 career.

18 No longer is Legal Services considered just a
19 training ground for bar admittees to learn their trade before
20 stepping out into the real professional world. How long would
21 state, local, and federal agencies be able to attract and hold
22 experienced attorneys if their jobs were periodically subject

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1 to competitive bidding?

2 The threat, and it is a real threat, of mandatory
3 competitive bidding for all programs casts a large and ominous
4 cloud over the future of legal services to the poor as a
5 viable career opportunity and, if it is enacted, will only
6 serve to encourage many of those who are now in Legal Services
7 programs to leave at the first opportunity and discourage
8 those who might want to consider such service as a career.

9 To cause experienced, able lawyers or paralegals
10 working in this specialized field of law to worry about
11 whether next year or the year after some organization or group
12 of lawyers in the community will underbid his or her program
13 for all or part of the services is not only unfair to those
14 dedicated lawyers and paralegals but is also in effect telling
15 the poor, "You are second-class citizens, not deserving of the
16 same experienced, quality legal services that others in our
17 society have access to."

18 Further, if the successful bidders replace an
19 established and effective program and then fail to provide
20 quality services, then what? Out to bid again? Can those who
21 have been replaced be expected to return to Legal Services as
22 a career? What future is there for those who want this type

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1 of legal work to be a career?

2 During the 1980s, until the appointment of this
3 present LSC Board, LSC and the front-line programs appear to
4 have been operating in an unfortunate atmosphere of distrust
5 and suspicion. I think the evidence is clear that the vast
6 majority of LSC-funded Legal Services programs have over the
7 years then and now are doing an excellent job, considering the
8 limited and shrinking value of the dollars that are allocated
9 and the increasing number of families living in poverty.

10 It is my hope, and I know the hope of many others,
11 that this new LSC Board, appointed by a President who has
12 expressed his support of legal services to the poor, that this
13 board will find that the high quality of legal services can be
14 maintained through the powers it has and will be given under
15 reauthorization without forced competitive bidding to conduct
16 effective and fair monitoring and evaluation.

17 If a presently funded program is not performing
18 effectively, the board can use their authority to make
19 whatever changes are required without disrupting the
20 established system of legal services that now exists.

21 If the Legal Services Corporation cannot do this
22 effectively through its monitoring and evaluation powers, then

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1 how in the world will they be able to devise standards of
2 performance upon which to base competitive bidding that will
3 have any real meaning in meeting the legal needs of the poor
4 in the hundreds of cities and communities throughout the
5 nation and will ensure a stable, dependable system of equal
6 access to justice?

7 Presently, each Legal Services program throughout
8 the nation has a board comprised of members of the local bar
9 and representatives of the poor in the community, who are
10 experienced and in the best position to determine the legal
11 needs of the poor in their community. They are also in the
12 best position to oversee the quality and effectiveness of the
13 program they govern.

14 If a program is not being effectively run, the local
15 board can make the changes that are necessary or that Legal
16 Services Corporation, in its monitoring and evaluation
17 function, can dictate. How can anyone on the LSC Board or in
18 Congress say that somehow in Washington you will have a better
19 insight to the problems of the cities and communities of this
20 nation?

21 My hope is that those of you on the board who may
22 feel that competitive bidding for all Legal Services programs

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1 will in some way improve legal services to the poor will
2 rethink that position. And I'm pleased by the comments made
3 by Mr. Witgraf that perhaps the board isn't thinking in terms
4 of across-the-board competitive bidding, because that to me is
5 the major danger.

6 Competitive bidding in situations where it appears
7 necessary is one thing; competitive bidding that puts
8 everybody in a state of uncertainty is absolutely in another.

9 I really thank you for this opportunity of
10 presenting my views. I really look forward to working with
11 this board and your staff and with the other Legal Services
12 programs in what I hope in the '90s will turn out to be -- and
13 I really hope it will -- a decade of mutual trust and respect.

14 Thank you.

15 CHAIRMAN UDDO: Thank you, Mr. Koch.

16 Any questions from members of the committee?

17 (No response.)

18 Members of the board?

19 MR. WITGRAF: Mr. Koch, would you be kind enough to
20 make a couple of comments based on your experience, both as an
21 executive director for a grantee and your experience in county
22 government, regarding what you do presently in keeping track

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1 of the time or the activities of your legal staff and what you
2 think about proposals for so-called timekeeping?

3 MR. KOCH: Timekeeping? I think timekeeping, to
4 some extent, could work, if it's set up properly. I've had
5 experience -- I've been in four Legal Services programs:
6 first, many years ago as a young lawyer, both as a staff
7 attorney and an executive director of that service; and, since
8 coming back in 1984, in three different programs, the last one
9 being Tulare/Kings Counties.

10 In one of the programs I was in, timekeeping wasted
11 more time of staff than seemed to me warranted because of the
12 way in which it was set up. I don't find timekeeping as
13 serious a threat as some of the other things.

14 MR. WITGRAF: Is it something that you're utilizing
15 presently in Tulare/Kings Counties?

16 MR. KOCH: We're not utilizing it presently. We
17 have a small staff. I know how hard they're working and on
18 what cases they're working. We meet periodically with all
19 staff.

20 One of the theories is, of course, that timekeeping,
21 when you're billing, is obviously a necessity in private
22 practice. I've been in private practice, and I know it's

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1 important. It may be important to determine, I suppose,
2 whether you're devoting sufficient time to the serious needs
3 of the poor in your community; however, that seems to me
4 something that only the leadership and the board, the
5 attorneys and the members of the board, poor community and the
6 board, the local area can know.

7 We have unique problems in Tulare County due to a
8 freeze. That's one of the reasons we have such a high
9 unemployment rate. The freeze is almost equal in intensity
10 and severity to the earthquake here in San Francisco.

11 MR. WITGRAF: I think in visiting with some project
12 directors over the last year or so, some have viewed
13 timekeeping as a management tool, not simply as national
14 harassment, if you will, but, as a management tool, one that
15 in Tulare/Kings Counties you don't have the need for because
16 of the size of your staff.

17 With some of the other three projects in which
18 you've been involved, have there been larger staffs of
19 attorneys?

20 MR. KOCH: There was a somewhat larger staff in the
21 one that I'm thinking of, but the requirement of minute-by-
22 minute, almost quarter-hour accountability made for long

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1 periods of time when staff spent a long time trying to
2 remember or not keep proper records. It could be a good
3 management tool, but I would think that it ought to be
4 tailored and left tailored to the individual needs of the
5 individual programs.

6 And monitors can determine whether the timekeeping
7 systems used are adequate, it would seem to me, and
8 evaluation, if necessary, by independent evaluators.

9 MR. WITGRAF: Thank you.

10 CHAIRMAN UDDO: Mr. Dana.

11 MR. DANA: Mr. Koch, do you have multiple funding
12 sources?

13 MR. KOCH: Yes. Well, primarily IOLTA and one minor
14 grant, a Community Service and Employment and Training grant
15 having to do with our domestic violence program.

16 MR. DANA: How do you account to each of the Caesars
17 without timekeeping?

18 MR. KOCH: Well, we account on the basis -- they
19 don't ask us in regard to timekeeping, neither LSC or IOLTA;
20 they ask us on the basis of cases. Particularly, we handle
21 cases through IOLTA funds for those who are not eligible in
22 LSC, like, for example, undocumented aliens and that sort of

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1 thing.

2 MR. DANA: But how do you know how much of the time
3 of a given lawyer is devoted to those matters relative to the
4 amount of time that is allocated to the other?

5 MR. KOCH: Well, as a practical matter, we happen to
6 be a service in which we don't really use IOLTA for any
7 different priorities than we use for LSC funds, with the rare
8 exception of an occasional undocumented alien that we might
9 advise. But we actually get very few of those, and then we
10 just keep track of the numbers, and that's very low. On time,
11 we don't do it.

12 MR. DANA: You have the luxury of being able to
13 eyeball it, in effect?

14 MR. KOCH: That's true, and that might not be true
15 of other services, but it's certainly true of ours. As has
16 been said before, as the dean -- not by the dean, by the --
17 and the chairman of the Contra Costa -- we have little enough
18 to do to serve the people within the limited priorities that
19 are the same for LSC and IOLTA, as far as we're concerned,
20 with the one exception.

21 So, as far as that's concerned, the timekeeping
22 would not affect us a great deal except to be time-consuming

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1 on the part of staff to have to keep track.

2 CHAIRMAN UDDO: Yes. Mr. Kirk.

3 MR. KIRK: I'm not, I guess, hearing very convincing
4 arguments from anybody on the timekeeping objection. I don't
5 of many law firms that have -- I know a lot that have gone to
6 timekeeping; I don't know of many that have abandoned
7 timekeeping and gone back the other because of any particular
8 advantages. Even some of the plaintiffs' firms that don't get
9 paid by the hour still abide by timekeeping records.

10 I personally do not find it overly burdensome as far
11 as time goes. Have you found that for that person keeping the
12 time it's burdensome?

13 MR. KOCH: If it's set up in ways in which -- I
14 think you have to recognize in any practice you sometimes lose
15 track when you're deeply involved, and then you have to take
16 time to remember when you did this and that. And maybe it's a
17 good management tool in that respect.

18 One of the reasons I didn't cover timekeeping was it
19 isn't to me as serious a threat as competitive bidding and
20 some of the other provisions. Certainly, we can live with
21 timekeeping, but we would only hope that it would be done in
22 such a way that it wouldn't slow up the services to the poor

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1 that are already not serving as many people as we should.

2 MR. KIRK: I think with computers it's almost a no-
3 brainer.

4 MR. KOCH: I'm not here to make a really serious,
5 strong pitch regarding timekeeping. Our service can certainly
6 live with it. Others have different problems; they'll have to
7 tell you. But we wouldn't have any great problem living with
8 timekeeping requirements.

9 MR. KIRK: Thank you.

10 CHAIRMAN UDDO: Mr. Dana.

11 MR. DANA: We, in private practice, really have no
12 alternative but to do it, so we come to the problem of legal
13 services from a different orientation. But I thought you
14 indicated that you had handled several thousand cases a year
15 and there are four or six attorneys in your program.

16 MR. KOCH: There are four staff attorneys in my
17 program, and we had over 4,000 last year. There are some
18 short services and some longer services. They vary, of
19 course.

20 MR. DANA: It is possible that Mr. Kirk has 1,000
21 clients a year, but I sure don't. And the concept of keeping
22 track of the hours involved in representing 1,000 clients in a

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1 given year would be, I would think, quite time-consuming and
2 more than a little nuisance.

3 And if you were trying to decide how many tenths of
4 an hour went to each of the 1,000 clients, to record that
5 information and then keypunch it and have it available in some
6 kind of a national data bank for the benefit of someone's
7 curiosity in Washington, gives me pause, and, frankly, I would
8 think it might trouble you, but I gather it doesn't.

9 MR. KOCH: Well, it troubles me. The thing is, I'm
10 more troubled by what our staff would do if competitive
11 bidding for all legal service were to be put in place. I'm
12 encouraged by what I've heard somewhat here today that that
13 may not be a serious threat.

14 I would not relish timekeeping, because it will
15 detract from the service we give for the time it takes, and I
16 don't know what it really proves. It may prove that -- I
17 mean, we spend a lot of time on eviction defenses, in
18 government benefit things, and maybe -- I don't know what the
19 standard is going to be as to what's a disproportionate amount
20 of time to spend on somebody's welfare benefits or somebody's
21 eviction problem, as opposed to any other thing.

22 I would like to see timekeeping eliminated, but if I

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1 had to choose, if we have to make compromises, we could live
2 better with timekeeping than we could with competitive
3 bidding.

4 CHAIRMAN UDDO: Thank you, Mr. Koch. I think you
5 made your position clear.

6 Let me just remind the members of the committee that
7 we will have an opportunity to deliberate and make a decision
8 about how we feel on these things, so let's try to keep our
9 questions questions.

10 Ms. Lynn Murphy, the California Right to Life
11 Association.

12 CHAIRMAN UDDO: You don't look like Ms. Lynn Murphy.

13 MR. MURPHY: Mr. Lynn Murphy, last I looked.

14 CHAIRMAN UDDO: I'm sorry. They presented it to me
15 -- how do you spell your first name?

16 MR. MURPHY: L-y-n-n.

17 CHAIRMAN UDDO: I'm sorry.

18 STATEMENT OF LYNN MURPHY

19 MR. MURPHY: I represent California Right to Life.
20 I am a board member of that organization. We have about 1500
21 members. And I believe I also speak for the majority of
22 Americans, and I'll show later on in my brief presentation,

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1 very brief presentation, that the majority of Americans are
2 against abortion.

3 I would like to expound on my qualifications very
4 briefly. There is a Mrs. Judy Brown, who is founder and
5 president of American Life League, who has given me excessive
6 praise for my work, one of which you're reading right there.
7 American Life League is the largest pro-life organization in
8 the nation and perhaps in the world.

9 I would first like to address the situation that has
10 developed here, talking about this law and that law and
11 avoiding one of the hidden subjects which is abortion. The
12 Legal Services Corporation has been and can continue to be in
13 the position of defending abortion rights for women. And the
14 state bar association and other bar associations that have
15 been here, that have been addressing that issue, have ignored
16 one very serious fact, that being that even though abortion is
17 legal, every abortion kills a human being.

18 God said "Thou shalt not kill." God said to love
19 your neighbor as yourself, and there is no closer neighbor to
20 a woman than her preborn baby. Therefore, pro-life people
21 across the nation are against abortion, and we would view the
22 slogan that, if we don't fund abortions of poor women, only

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1 the rich can afford abortions, more accurately stated that, if
2 we don't pay poor mothers to kill their babies, only the rich
3 mothers will be able to kill them. We are totally against
4 that.

5 The primary issue on the acceptability of abortion
6 is more than just the humanity of the preborn baby, it is also
7 on his separateness. Very often I'm approached by a woman who
8 tells me, "It's my body. Keep out of this." But it's not her
9 body. A preborn baby has it's own brain, it's own
10 blood --

11 CHAIRMAN UDDO: Mr. Murphy, I'm going to stop you
12 and ask you if you have some comments to address toward the
13 reauthorization question before the committee today, which
14 involves to some extent the question of Legal Services
15 grantees being involved in abortion litigation. But we have
16 such time constraints that I'd prefer that you focus only on
17 that today.

18 MR. MURPHY: Well, I am going to be very brief,
19 regardless. Much of this material is in the handout; however,
20 I'm trying to address the fact that pro-life is against the
21 Frank bill and for the McCollum-Stenholm bill entirely. And I
22 think addressing issues of abortion is really pertinent to

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1 that, because it deals very strongly with that issue.

2 CHAIRMAN UDDO: Right. Well, the question of
3 whether or not Legal Services grantees should be involved in
4 it is a relevant question, but that's what I'd like for you to
5 limit your comments to. When you say that you oppose the
6 Frank bill and support the McCollum-Stenholm in its entirety,
7 do you mean in its entirety or in its entirety as it addresses
8 the abortion issue?

9 MR. MURPHY: In its entirety as it addresses the
10 abortion issue. Pro-life really doesn't have an opinion that
11 they're interested in stating regarding legal services in
12 general to the poor. I think we'd probably be in favor of
13 continuing that, but I'm not speaking to that issue, just in
14 regard to abortion.

15 Abortion is a great calamity in America. I have a
16 chart here. Every cross represents 50,000 deaths. All of the
17 big block of crosses are deaths from abortion since it was
18 legalized in the United States. These very few crosses here
19 represent --

20 CHAIRMAN UDDO: Mr. Murphy --

21 MR. MURPHY: -- deaths in all of our world wars
22 combined.

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1 CHAIRMAN UDDO: Mr. Murphy, I'm going to ask you,
2 please address the issue before the committee today.

3 MR. MURPHY: I'm not an attorney. It's hard for me
4 to know when it's an issue and when it's not.

5 CHAIRMAN UDDO: I understand. The only issue is the
6 reauthorization of the Legal Services Corporation, and the
7 only question that I think is relevant to your issue is
8 whether or not there is need to have further restrictions on
9 Legal Services grantees being involved in abortion litigation.
10 That's the only part of the reauthorization process that I'm
11 aware of that affects your issue.

12 You've already made the point that you think that
13 the McCollum-Stenholm limitation is one that you support. If
14 that's the extent of what you have to say about the
15 reauthorization, that's fine, and it will go into the record.
16 I don't want to take up time getting into the substantive
17 issue.

18 MR. MURPHY: All right. Just one more statement,
19 then, I guess. Polls will show that up to 89 percent of
20 Americans are in disfavor of abortion for poor women, and
21 surely more than that must be in disfavor of taxpayer of
22 funding of abortions for poor women.

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1 CHAIRMAN UDDO: Let me ask you a question: Are you
2 familiar with any of the instances of California where Legal
3 Services grantees have been involved in abortion litigation?
4 Do you have any personal --

5 MR. MURPHY: Not in California. I know that Legal
6 Services Corporation was instrumental in the Supreme Court
7 decision in 1973 which greatly liberalized abortion rights.
8 It was handed down on the same day as Rowe v. Wade. Rowe v.
9 Wade had some considerable restrictions on abortion rights.
10 Doe v. Bolton is the one I'm talking about that Legal Services
11 Corporation was involved in, and that defined the mental
12 health of a woman to be anything she chose to say it was and,
13 therefore, authorized abortion on demand or request.

14 And that is really the thing that kills most of the
15 babies in this country, and it came from Legal Services
16 Corporation. We'd like to try to put a stop to that kind of
17 thing. Ninety-eight percent of all abortions in the United
18 States are for birth control purposes; they are not for
19 reasons of rape, health of the mother, handicap, or any other
20 reasons, including incest. They are for birth control
21 purposes; 89 percent of Americans are against this kind of
22 thing.

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1 Furthermore, congressmen might be interested to know
2 that in recent elections, when pro-life and pro-choice have
3 faced off toe-to-toe on the abortion issue, pro-choice
4 congressmen have lost 22 of 29 elections.

5 CHAIRMAN UDDO: Mr. Murphy, I think that we can just
6 let the record stand on what you've said so far about support
7 of the McCollum-Stenholm limitations on Legal Services
8 grantees being involved in abortion. Unless you have
9 something else to add to that, I'd ask that we see if there
10 are any questions from the committee.

11 MR. MURPHY: Perhaps one more thing. I'm not sure
12 if you would object to this or not, but I'd like to try.

13 Cincinnati Suiciders Anonymous has 4,000 members
14 that are female of child-bearing age, and 1,800 of them are
15 suicidal because they have had abortions.

16 CHAIRMAN UDDO: No, I'm not interested in that.

17 MR. MURPHY: It relates to --

18 CHAIRMAN UDDO: I'm not interested in that. I'm
19 only interested in what involves the Legal Services
20 Corporation, and that doesn't. So, unless there are any
21 questions, I appreciate your coming here.

22 MR. MURPHY: Well, I kind of felt it was related,

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1 because Legal Services could get involved in defending these
2 women for one reason or the other.

3 CHAIRMAN UDDO: But the abortion restriction in
4 McCollum-Stenholm is what you've come to support, I take it.

5 MR. MURPHY: That's correct. And I oppose the Frank
6 one.

7 CHAIRMAN UDDO: Thank you, Mr. Murphy.

8 MR. MURPHY: Thank you. Any questions?

9 CHAIRMAN UDDO: Are there any questions from the
10 committee?

11 (No response.)

12 CHAIRMAN UDDO: The board?

13 (No response.)

14 CHAIRMAN UDDO: Thank you.

15 MR. MURPHY: Thank you.

16 CHAIRMAN UDDO: Next, Professor Jim Meeker and Mr.
17 Bob Cohen, I think have requested that they make their
18 presentations together.

19 If you would, gentlemen, identify yourselves for the
20 record and who you represent.

21 MR. COHEN: My name is Bob Cohen, and I am the
22 executive director of the Legal Aid Society.

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1 MR. MEEKER: My name is Jim Meeker. I am a
2 professor of criminology, law and society in the program of
3 Social Ecology at the University of California at Irvine.

4 CHAIRMAN UDDO: Okay. Who is going to go first?

5 MR. COHEN: I'm going first.

6 STATEMENTS OF ROBERT COHEN AND JAMES MEEKER

7 MR. COHEN: First, we would like to thank you for
8 the opportunity to testify here today. And, second, we would
9 like to, to the extent possible, provide you some insight from
10 our experience with the area of competitive bidding.

11 The Legal Aid Society of Orange County was fortunate
12 enough to be involved with the Legal Services Corporation's
13 competitive bidding experiments from the years 1984 through
14 1988. On behalf of the Orange County client community, I must
15 thank you for the \$650,000 you invested in studying
16 competitive bidding in Orange County, and we would like to
17 share with you some of the information that we've learned and
18 is unfortunately still relevant when we look at the McCollum-
19 Stenholm provision on competitive bidding.

20 What perhaps concerns me most about the McCollum-
21 Stenholm provision regarding competitive bidding is the
22 brevity of the language and the flexibility it allows and the

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1 direct competition between private attorneys and legal aid
2 programs.

3 What concerns me about that direct competition is,
4 one very basic thing is, the overhead. Our legal aid program
5 carries legal aid overhead. It is extensive; it is expensive.
6 If we're going to be doing timekeeping, we're going to be
7 carrying more overhead. Private attorneys, on the other hand,
8 don't have that kind of LSC overhead.

9 When you talk about an even playing field, when you
10 have overhead shifts in overhead subsidies, the type of
11 overhead we carry locally, when you deal with private
12 attorneys, would, for the most part, if done properly, be
13 carried by LSC itself. So already we have an uneven playing
14 field.

15 My testimony, I think, is detailed and complete, and
16 I wouldn't begin to read it into the record. Let me just go
17 over a few of the issues that are really of concern to us when
18 we think back about our competitive bidding experience and
19 just give you snapshots of a few of the problems that occurred
20 and some of the problem-solving that LSC did and what it
21 resulted in.

22 When you talk about competitive bidding with private

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1 attorneys, unless there is a new system of doling out the
2 money that we are unaware of, the systems that you are
3 basically looking at are direct contracts with the private
4 attorneys and some kind of voucher program.

5 MR. WITGRAF: Excuse me just a moment.

6 MR. COHEN: Yes.

7 MR. WITGRAF: By way of background, could you tell
8 us, to the best of your recollection and knowledge, how Orange
9 County, California, as opposed to any other area in the United
10 States, was selected for the pilot programs.

11 MR. COHEN: I'd love to.

12 MR. WITGRAF: Please.

13 MR. COHEN: At the time, accepting a pilot program
14 from LSC was not considered a risk-free venture. And many
15 programs around the country were not interested in receiving
16 this kind of funding and in entering into such an arrangement
17 with the Legal Services Corporation. And we did this
18 gradually. There were two separate programs: one started in
19 1984, which only had us do one thing, and that was refer cases
20 to attorneys under direct contract with LSC.

21 Because, in balance, that developed a good working
22 relationship between us and the persons at LSC most directly

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1 responsible for working with the program, they asked would we
2 like to continue the effort and do a more far-ranging
3 competition study, which would involve vouchers, direct
4 contracts with private attorneys, and, thirdly, a staff Legal
5 Services program, our program.

6 We agreed to that. The argument that LSC made
7 regarding why it was a good idea was one that was tough for us
8 to turn down. At the time, we were a very low-funded per
9 capita program because of the large growth in Orange County,
10 and anything that we could do to responsibly bring in more
11 money to serve our client community we would do.

12 Secondly, my background, before I came to Legal Aid
13 in Orange County, was one in creating in Legal Services
14 programs. I worked at the National Senior Citizens Law
15 Center. I worked with area agencies on aging. The issue I
16 worked at was how to promote access to legal services. So, on
17 a personal level, I was really interested in the issue.

18 That's basically how LSC wound up investing so much
19 money in the Orange County area. And we learned a lot, but
20 perhaps the reason that Jim Meeker is here today is because
21 one of the commitments that the Legal Services Corporation
22 made which it looked like was not going to be kept was that,

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1 at the end of the 1985 experiment, it would evaluate the
2 program. It would have an independent evaluation.

3 We asked; we asked; we asked. It looked like there
4 was going to be no independent evaluation. There were a lot
5 of things occurring which needed to be documented. We
6 therefore took it upon ourselves to contract with the
7 University of California for that independent evaluation, and
8 Professor Meeker was the lead researcher in undertaking it.

9 That's the background. If I can give you a couple
10 of snapshots of the problems that you will be confronting if
11 you are going to be contracting directly with private
12 attorneys, and I'd be happy to answer your questions after
13 that.

14 If you're going to contract with private attorneys
15 and you're not just going to pay an hourly rate for them to
16 serve the clients they choose, more or less as you would view
17 us providing such service, you then have to provide another
18 means of payment.

19 What has been done in the past in direct contracts
20 has been known as block sale of cases, where you take a type
21 of case and you say, because of the economies of scale
22 developed in doing 200 of these cases, we want a very low fee

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1 on this case. And to ensure that we're not paying too much,
2 what we are going to do is pay you on a fractionalized scale.

3 Block sales and fractionalization, all LSC
4 terminology; we didn't know about it before LSC brought it to
5 us. Fractionalization, theoretically, pays an attorney for
6 the amount of work accomplished on a case. It is safe to
7 assume that all cases will not close after judicial resolution
8 and that it would be unfair to pay someone based on a dollars-
9 per-case basis, assuming that all the cases are closing after
10 judicial resolution.

11 So you have a fractionalized scale that pays 25
12 percent, 50, maybe 75, and 100 percent. And you break down
13 the work necessary to achieve each of those payment points.
14 That is block sales of cases.

15 Now, I can tell you -- and Jim can tell you in more
16 detail why -- that every attorney that contracted with you in
17 the 1985 study, and there were four -- there were four
18 separate law firms -- would never contract with you again.
19 And these were people that we did not know, with one
20 exception, going into this, and these were people that LSC
21 selected; we did not select.

22 But the basic structural problem you have is that

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1 you were paying money for the time of the attorneys. Now, the
2 time was being converted into work points, but you were paying
3 money for the time, and you weren't paying for the attorney
4 standing ready to provide the service. Those attorneys really
5 took a bad loss, the ones that were not referred cases in an
6 assembly-line fashion.

7 Another problem that cuts into the block sale
8 approach is that you're very careful about the definitions you
9 establish. Unlike the Legal Services program that if we don't
10 get 30 UDs that we have sort of anticipated, we can shift
11 over, because there are clients that need our help, and we'll
12 take another priority area. And we'll always, more or less
13 always, come in within our priority areas, but we won't have
14 the exact number of cases.

15 Not so for block sales. If you didn't have the
16 case, the attorney couldn't do the work. You wound up with
17 two attorneys that you contracted with suing you, and you
18 wound up with settling with those attorneys. One, you
19 provided a \$15,000 credit for work to be done for Legal Aid,
20 at the rate of \$100 an hour. The other, you've just provided
21 a \$10,000 credit to.

22 These are things which you may not know about things

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1 you've already done in experimenting with competitive bidding,
2 and these are all overhead items which should have been, in
3 any study, added into what your overhead of competitive
4 bidding wound up being.

5 I just want to add this personal comment about block
6 sales. When the program started, we did have a reasonable
7 working relationship with Pete Brocoletti and Mike LaSavio.

8 Pete Brocoletti, who I think was director of field
9 services at the time, came down, and he couldn't resist, one
10 of the bidders at the bidders' conference was a nun, and he
11 had to work out an arrangement with her because he was sure
12 that this would one of the most cost-effective deals he could
13 get into. And we were somewhat upset about the whole nature
14 of competing against someone who has taken an oath of poverty,
15 because, frankly, while we serve the poor, we have not taken
16 such an oath.

17 But we all very much appreciated Sister Annette, and
18 she was and she is a community resource. What happened to her
19 can be viewed in the article that is attached. The program
20 drove her out of the family law business. She had to take a
21 second job, because she was honestly trying to keep her
22 commitment to the Legal Services Corporation, and she just

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1 stopped doing family law. She just couldn't handle it any
2 more.

3 Her comment about it was, the experiment was not
4 well thought through; it didn't take the clients into
5 consideration. That was mild compared to the attorney who
6 sued you, who said, "Those people in Washington, they're just
7 completely screwed up."

8 Now, in all fairness, the reason he said that was, I
9 believe, that after he had settled with you for the \$15,000
10 settlement, and after he had received the credit for \$15,000,
11 a \$60 item came in. It was a transcript that had to be paid
12 for. He asked us to pay for it. We said, "This is LSC's
13 experiment. We will forward this \$60 bill to LSC."

14 Well, I forwarded it to Leslie Russell, and I said ,
15 "We didn't pay it, because we didn't think it would be right
16 for us to pay on your experiment." And he said, "That's
17 absolutely right. We're going to check this out. We're going
18 to see if it should be paid or not." He forwards it, I
19 understand, to Carl Merkel in your General Counsel's Office
20 for an analysis, who does not make the decision himself, but
21 forwards it to the vice president of the corporation.

22 The word comes back, we are not to pay the \$60 bill,

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1 and we are not to use any LSC money for it. Well, in Mr.
2 Thompson's view, this was money that he had fairly expended
3 and should have been paid to him. Our board looked at this
4 separately and, in hearing about this, both became amused and
5 angry, and the chair of our board just wrote a personal check
6 on the spot to make it right. And that ended that.

7 But I bring this up not to belittle the Legal
8 Services Corporation but to show you that there are some real
9 overhead problems that you can't begin to deal with 2,000
10 miles away. Unless you staff up your overhead, you're going
11 to have a lot of people who are real unhappy with the block
12 sale approach.

13 Let me get into the other side of it, because I have
14 a real puzzler for you, fractionalization. Now the way it's
15 supposed to work is, you do 25 percent of the work, you get 25
16 percent of the money. I think, as long as you study it,
17 you'll never be able to come up with a perfect
18 fractionalization formula, from what we've seen.

19 Give you an example: In the 1984 experiment, you
20 had two bidders on unlawful attainer cases. They bid
21 different amounts, but one wound up with a 400-case commitment
22 to you; one wound up with a 225-case commitment to you. Now,

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1 at the end, and it took us about three years to refer this
2 many cases, but, at the end of the referral period, the
3 attorney with the 400-case commitment was referred 253 cases
4 from us, and the attorneys with the 225-case commitment were
5 referred 242 cases.

6 Now, LSC credited the attorney with the 400-case
7 commitment with 114 complete cases and credited the attorneys
8 with 225-case commitment with 225 complete cases. And I can
9 tell you that the work done was almost the same, but what
10 happened was -- as a matter of fact, the bidder with the 400-
11 case commitment, he was one of them who wound up suing you
12 over a detrimental reliance argument, which I won't get into
13 here.

14 But the only difference between the two bidders is
15 that bidder one really tried to abide by both the letter and
16 spirit of the agreement he made with you. It was a shame that
17 the lawsuit occurred, but bidder two looked at the agreement
18 very carefully and figured out how to play the system. Most
19 unlawful attainments settle.

20 With bidder one, he'd settle the case; he'd take a
21 credit for .5, one-half, of a case, and he'd bill you for
22 that. Bidder two, when bidder two settled the cases, they

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1 would say, the only way we're going to settle our cases is by
2 stipulation of the court. They'd come to the same settlement.
3 They'd run a judicial order. They'd get a judicial order
4 signed; they'd bill you for a whole case.

5 I think you're going to see a lot of things like
6 that going on that you're not going to be able to deal with.
7 And the folks who can play the system like that will do well,
8 but it won't do well for our client community and the way that
9 money should be spent.

10 I just want to say one more thing, and I'm going to
11 turn it over to Jim. My testimony is quite detailed on what
12 we went through. The question has arisen, well, how can
13 voucher attorneys or competitive bidding interfere with pro
14 bono? Well, Jim Meeker's study addresses that, and it really
15 came as a surprise to us.

16 We had a voucher component in the 1985 program, and
17 the voucher component worked relatively well compared to the
18 direct contract component. The voucher fees were set by LSC
19 at 130 percent of the contract fees. And unlike the contract
20 attorneys, the voucher attorneys told us, mostly, that, yes,
21 if we wanted to continue something like that, they'd want to
22 talk a little bit about the fees, but they would do something

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1 like that.

2 And, to some extent, we run a judicare option, which
3 is analogous right now. But they weren't completely turned
4 off by the notion of being involved. But the one thing that
5 was very surprising was that they viewed their work as pro
6 bono. They were getting paid. They weren't getting paid very
7 much, but they were getting paid, and they thought this was
8 meeting their pro bono commitment.

9 Now, I didn't want to disabuse them of that, but if
10 you think that through, and if you, and you have the power to
11 do so, if you changed the whole delivery system in the
12 country, and everyone starts looking at their pro bono
13 commitment as a compensated pro bono, you are going to wind up
14 with substantially eliminating the pro bono work that now goes
15 on and paying for work on a reduced fee basis, and ending up
16 with a net result of less work being done for more money than
17 it is under the current system.

18 I could talk about this for a substantial period of
19 time. I know you have a busy day, so I'm just going to let
20 Jim tell you about his study.

21 MR. WITGRAF: If I can just follow on that, in fact,
22 did that happen? I mean, I understand the concern that you've

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1 just described. Was that the result?

2 MR. COHEN: It was not the result, because it was
3 such a short duration, and we kept a degree of separateness
4 from our pro bono program and ourselves. We were originally
5 the pro bono program and the Legal Services program. We spun
6 off the pro bono program, got a new board of directors, got
7 some AV firms, you know, doing the encouraging to get involved
8 in pro bono.

9 But we have to look at in Orange County is that
10 there are now, with the big increases in number of attorneys
11 providing pro bono services, there are now about 400 signed up
12 on the pro bono panel, and there are about 8,000 practicing in
13 Orange County. So it's a hard road.

14 MR. WITGRAF: But you're not relating that fact to
15 the voucher effort in 1985?

16 MR. COHEN: No, no. I just think that it's a risk.
17 We don't know. I think it's something that deserves more
18 study. If it happens, it would be awful. It's a substantial
19 risk. Why take it if you don't have to, if there is some way
20 of studying it to see if it's going to be a real problem
21 before you do it.

22 MR. WITGRAF: You are certainly changing the

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1 definition of pro bono legal services.

2 MR. COHEN: Oh, yes.

3 MR. MEEKER: If I could interject, on that study,
4 you really should read that Orange County study in detail. I
5 think Bob submitted a copy for your panel, but we do address
6 that in detail. I think our findings are a little bit
7 stronger than Bob is characterizing it.

8 Most of the high load voucher attorneys involved
9 with the experiment were also actively involved in pro bono
10 work in Orange County. Every one of those attorneys that we
11 interviewed in the field saw this as a continuation of their
12 pro bono work. Some of them saw this as a way of getting some
13 payback for other work in pro bono. All of them saw this as
14 pro bono because the rate at which they were paid was way low
15 compared to regular fee market value.

16 So I would say that there was a definite impact.
17 The problem was that the program was too short in duration,
18 and there was no design element in the study to actually
19 measure the impact on pro bono, because, when the study was
20 implemented, no one saw this as a possibility.

21 In fact, that is one of the conclusions of the study
22 that any further studies of voucher type models or competitive

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1 bid should have some of these other ancillary impact
2 components designed to specifically address this issue.

3 MR. KIRK: I have just one thing, and this is a kind
4 of a question that maybe you can answer by the end, or maybe
5 you can come back and answer. If you were given another shot,
6 do you think that you could construct a program that would be
7 effective at all -- at least I'm hearing that you find that
8 these are almost noneffective -- and, if so, to what extent
9 would it be effective?

10 So I'll give you some time to think about it, and if
11 during your presentation you could let me know what your
12 thoughts are.

13 MR. MEEKER: You're asking about a -- there are two
14 problems: There's one of designing a program; the other one
15 is designing an adequate experiment to really determine its
16 impact. And those are two distinct issues.

17 I don't think you can really develop a program until
18 you know all of its potential impacts, until you thoroughly,
19 systematically study the problem. Can you design some studies
20 in order to get at some of the issues that were raised by the
21 Orange County study and the San Antonio study? Yes, I think
22 you can, but a lot more serious thought needs to be put into

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1 it.

2 And, as far as its implementation goes, it has to be
3 done a lot better than what was done in either San Antonio or
4 Orange County.

5 MR. COHEN: Just briefly, I would say, of course,
6 you could design a better competitive bid program than LSC
7 designed. Having been through four years of the experience, I
8 know a lot of things that went wrong. But one of the things
9 that I haven't been able to determine, and maybe someone else
10 will, is, if you're going to be having nonprofit corporations
11 compete against attorneys, you're really mixing and matching
12 different things.

13 CHAIRMAN UDDO: Mr. Cohen, we're going to let
14 Professor Meeker have a few minutes. We're running into
15 something of a serious time problem here, and we do have your
16 report, which is quite extensive and I think would answer many
17 of the questions that members of the committee would have.

18 If there are some things that you could highlight or
19 you think you should highlight for us, why don't you do that.

20 MR. MEEKER: Okay. Well, I want to thank you for
21 the opportunity to testify. It is not often an academic gets
22 to talk to policymakers about their research, and I appreciate

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1 the opportunity. I also would like to apologize for some
2 typos I discovered on the report on the plane ride up here.
3 It was put together in a hurry, and there are some typos,
4 unfortunately.

5 It's a changeover report and a revision of a paper
6 that was delivered in the Law and Society meetings in 1989,
7 and so that's why some of the arguments are not directly on
8 point. But it does make a very strong case about the extent
9 of our scientific knowledge for substantiating competitive
10 bidding as a delivery model for legal services to the poor.

11 Basically, it reviews the San Antonio study, which
12 was the ABA-conducted study, as well as the Orange County.
13 Now, I was the lead investigator on the Orange County project.
14 I should say that it was a post hoc analysis. We came in
15 after the fact, because there was no evaluation implementation
16 designed into the study. And that's a different kind of any
17 evaluation than if we had been involved from the get-go.

18 The ABA study in San Antonio is slightly different.
19 My involvement there basically consists of being a consultant
20 to several members of the SCLAID committee in commenting on
21 earlier drafts of that report, as well as its study design.
22 The main point is that the state of the knowledge of both of

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1 these studies does not substantiate the use of competitive bid
2 as a delivery model right now.

3 Basically, they show that we know less about the
4 competitive bidding model than policymakers originally thought
5 when they set up these two experiments and that before any
6 policy changes are done, even on a limited level, that we
7 really need further investigation before implementing those
8 kinds of programs, because, basically, what you'll be doing is
9 creating a whole new set of problems which you know nothing
10 about right now in exchange for some problems in the staff
11 model that you already know that you have and have some
12 procedures and try to correct those problems.

13 The paper breaks up the analysis of the two studies
14 in terms of their validity. You have to pardon the approach
15 of using the different validity topologies. I teach
16 statistics and methods, and that kind of flows over into my
17 work.

18 The main problem I see, without getting into great
19 detail, is the issue of the construct validity; that is, were
20 the studies measuring what they were supposed to test? and the
21 issue of external validity; that is, how generalizable are the
22 results? There are also some detailed comments in terms of

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1 internal validity and statistical conclusion validities, but
2 I'll let you read those on your own. I will be happy to
3 correspond in writing.

4 CHAIRMAN UDDO: Professor Meeker, let me just stop
5 you a second. I haven't read it obviously. Do you
6 acknowledge in here that Professor Cox, I think, still has a
7 different view about the effectiveness, at least of the San
8 Antonio project? I'm saying do you acknowledge it. Would the
9 people who are not familiar with Professor's Cox's study be
10 aware that there is someone out there who may view things
11 differently?

12 MR. MEEKER: Yes. As a matter of fact, the
13 introduction starts out saying that the conclusion that
14 Professor Cox made in that three-page summary introduced in
15 1989, before the official report was released, is unfounded
16 and unsubstantiated by his study.

17 CHAIRMAN UDDO: Okay. I guess you do indicate it
18 then.

19 (Laughter)

20 MR. MEEKER: I think you were there too, in
21 Schaumburg, when Professor Cox and I testified together.

22 CHAIRMAN UDDO: Yes, I was there. That's why I

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1 asked. Let me suggest this, then. This is a fairly important
2 point in the reauthorization process. What I'm going to
3 suggest is that, since you've submitted this, that the members
4 of the committee read it. We have another meeting in Chicago.
5 If the members of the committee feel that you and Professor
6 Cox should come to Chicago, the corporation may invite you to
7 do that and fly you to Chicago to go into this more deeply.

8 But I think the members of the committee ought to
9 read your report first, and maybe the staff can provide them
10 with Professor Cox's summary from the Schaumberg meeting.
11 They may get interested enough in going more deeply into this
12 to have you folks in Chicago.

13 MR. WITGRAF: Do you have Professor Cox's study with
14 you, Professor? Do you have a copy of the Cox study with you?

15 MR. MEEKER: Well, actually, Cox never really
16 formally released a study because the ABA delivery committee
17 refused to accept his earlier drafts.

18 CHAIRMAN UDDO: This is a huge can of worms --

19 MR. MEEKER: Yes.

20 CHAIRMAN UDDO: -- that I guess most people are not

21 --

22 MR. WITGRAF: You refer to a three-page summary in

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1 your --

2 MR. MEEKER: There is a three-page summary that he
3 released. There is also a paper he delivered along with me at
4 the same Law and Society meetings in 1989, where he talked
5 about his problems. But the official ABA report was never
6 signed by Cox, and he does not stand by the delivery
7 committee --

8 MR. WITGRAF: You have a three-page summary.

9 MR. MEEKER: Cox has it.

10 CHAIRMAN UDDO: We have it. The staff can supply
11 it.

12 MR. MEEKER: I can send you a copy.

13 CHAIRMAN UDDO: No, no. Because this is pretty
14 complex, I'm going to ask the staff to put together a briefing
15 book from the beginning of the San Antonio and Orange County
16 projects to now, which will incorporate, of course, the
17 materials that you all have presented today, to give the
18 committee members as full a picture as they can get of this
19 whole area, read it, and then, as I say, they may determine
20 that they want to have you and Professor Cox come to Chicago
21 and answer some questions in Chicago.

22 Because it's important, and there's an awful lot of

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1 material here that I think the committee could benefit from
2 reading, rather than to continue to go back and forth and
3 cover stuff that they can read and develop specific questions
4 about.

5 MR. MEEKER: May I make two points?

6 CHAIRMAN UDDO: Sure.

7 MR. MEEKER: One is, if the committee is anything at
8 all like some of my students, once they start reading about
9 statistical design and validity issues, they tend to get heavy
10 eyelids. Sometimes you can make these arguments more
11 effectively vocally. At least it's more animated than the
12 written page when delivering the issues. So if you do have
13 Cox make an oral presentation, I think it only fair that these
14 issues should also be present orally.

15 Two, I would like to make a couple of points that
16 are not made in this document in terms of the competitive bid
17 issue that ought to go in the record since they're not in
18 writing. One issue concerns the scenarios that Bob was
19 running through, in terms of difficulties in dealing with a
20 centralized authority in setting these competitive bids,
21 because the bottom line in all of these, none of them were
22 competitive in the true economic sense. None of them

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1 reflected economic marketplace values; none of them.

2 But, in support of the difficulties that happened in
3 Orange County, I just want to refer you again to some
4 testimony that was introduced at Schaumburg by Kent Spueller
5 of Jacksonville, where he essentially sent a letter describing
6 the exact same problems that attorneys had with dealing with
7 centralized LSC authority in setting and meeting the terms of
8 competitive bid contracts, that he had the same experience and
9 the same difficulties.

10 In fact, these attorneys also reached the same state
11 as the attorneys in Orange County, frankly saying that they
12 did not want to be involved in a similar process again.
13 That's one issue.

14 Two is that there is a large literature out there,
15 or a larger literature out there, on the issue of competitive
16 bid in indigent criminal defense. I just want to read one
17 conclusion by the Spangenburg group, who has studied this in a
18 fairly systematic fashion. Basically, in the area of criminal
19 defense, they conclude, "Competition in the marketplace, which
20 has been one of the stated purposes of competitive bidding,
21 has not led to efficient quality legal services. In most
22 cases, over time the cost has gone up and the quality has gone

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1 done."

2 So we do have actual experience at least with some
3 types of legal services where competitive bidding has not
4 worked at all. The studies to date suggest that it has
5 extreme problems.

6 CHAIRMAN UDDO: Do you have a question, Mr. Witgraf?

7 MR. WITGRAF: Mr. Cohen was good enough to explain,
8 from his recollection, how Orange County happened to be
9 selected or involved in the experimental programs in 1984 and
10 1985. What is the recollection of either of you, if either of
11 you has a recollection as to why San Antonio was selected?

12 MR. MEEKER: I will defer to Bob on that.

13 MR. COHEN: I don't know. We came in after San
14 Antonio, and we were always told that we would be evaluated in
15 the same sort of way. And maybe that was one of the reasons
16 we never got evaluated. I don't know.

17 CHAIRMAN UDDO: I should know the answer to that,
18 because it has come up before, and I don't recall what it is.
19 But there is an answer that we can put our hands on as to why
20 San Antonio was selected. There may be someone out there that
21 knows the answer.

22 MR. WITGRAF: The only thing that troubles me a

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1 little bit is, in looking back now over several years, from
2 what little I've learned during the last 15 or 16 months, it
3 seems to me that the least need for competitive bidding is in
4 areas such as Orange County, or the San Francisco area, San
5 Francisco-Oakland area, or perhaps the San Antonio area. And
6 the greatest need, as I suggested this morning when Mr. Brick
7 appeared, is in rural areas and in the Southeastern part of
8 the United States.

9 That's why I keep raising the question as to why
10 someone went to what seemed to me to be the least likely areas
11 rather than what I would consider to be more likely areas.
12 But I don't think either of you can go beyond what you have
13 said already.

14 MR. MEEKER: That touches on an important
15 generalizability point that both of the markets that -- and
16 Beher County as well as Orange County are atypical legal
17 markets, in terms of comparisons to rural markets -- and we
18 don't know at all how well competitive bidding would work in
19 those situations, because it hasn't been studied.

20 MR. WITGRAF: You say Orange County and Greater San
21 Antonio are atypical markets?

22 MR. MEEKER: Well, they are not generalizable beyond

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1 the types of communities they are. And they don't -- the
2 types of firms that practice in those areas and the type of
3 population that they serve are not typical of a rural county.
4 Therefore, you cannot extrapolate their findings to a rural
5 setting. I mean, your observation is directly on point.

6 I think the reason why Orange County and Beher
7 County were involved in these studies, at least the
8 unofficial, thirdhand information I get, was because of the
9 particular political climate at the time and the personalities
10 involved. It had nothing to do at all with scientific
11 justification of picking these counties for purposes of
12 generalizability.

13 MR. WITGRAF: That's the political climate in Orange
14 County and Greater San Antonio, or the political climate in
15 Washington?

16 MR. MEEKER: Both.

17 MR. DANA: Mr. Chairman.

18 CHAIRMAN UDDO: Yes, Mr. Dana.

19 MR. DANA: My understanding has been that the Orange
20 County pilot program was not the only LSC pilot program at the
21 time. Is that your understanding?

22 CHAIRMAN UDDO: It seems that there was one more

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1 than Orange County.

2 MR. MEEKER: There was, first, San Antonio. That
3 was a peculiar study because LSC funded the operation, but the
4 ABA took on the responsibility of evaluation. It is my
5 understanding that the LSC went to the ABA and said, "We'd
6 like to do another one." The ABA said, "We're not going to
7 fund another evaluation till this one is done." And then the
8 LSC went ahead and contacted Bob and started another project.

9 There are also -- and this I have not been able to
10 get clear from LSC -- anywhere from four to five other
11 demonstration projects, of which Jacksonville, Florida, was
12 one, in which there has been no information that I can get
13 hold of of any effort to systematically evaluate these.

14 MR. DANA: That is my understanding. Several people
15 have indicated that the corporation has closed the door on
16 those pilot projects and will not release any information or
17 any results from them. I would like to ask the chairman to
18 consider whether or not the staff could in fact seek into our
19 archives and uncover anything that we have in fact learned and
20 make that information available to the committee.

21 CHAIRMAN UDDO: I'll make that request, because, as
22 I say, it's obviously important, not only for reauthorization,

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1 which may address competition in a broader sense, ultimately,
2 but the corporation is about to do a competition study, and
3 obviously, at least my opinion is that all of this prior
4 experience is relevant to that study.

5 So I am going to request of Mr. Martin if he would
6 look into it and find out what information there is available
7 about these other demonstration projects and make the reports
8 or information available to the committee along with the San
9 Antonio and Orange County project information.

10 MR. MEEKER: As an interested outsider who studies
11 these issues, I'd also like information. I know I've written
12 a series of correspondence back in 1989 requesting information
13 on these reports, and I received no response.

14 CHAIRMAN UDDO: Well, we may be seeing you again in
15 Chicago.

16 Mr. Kirk, a very brief question. We have a very
17 serious time problem.

18 MR. KIRK: I understand. Based upon what you know
19 today, I'm asking you to project, do you feel that you could
20 construct or adopt any sort of a program for Orange County
21 that would be effective, ultimately?

22 MR. MEEKER: It's my professional speculation, from

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1 talking with the attorneys and looking at this project, that a
2 mixed delivery model is probably the best; that is, the
3 voucher attorneys really saw their involvement with the
4 program as beneficial, even though they were operating under
5 the misconception that this was compensated pro bono.

6 It still generated a lot of goodwill between the
7 local bar and Legal Services, and I think, in some cases,
8 perhaps increased volunteer work. I know that there are some
9 circumstances where limited competitive bidding on some narrow
10 issues in a limited number of cases might be effective, if
11 it's delivered locally.

12 The big problem that we saw in Orange County was the
13 issue of dealing with the federal bureaucracy 3,000 miles
14 away, who had no idea or knowledge of changes in local
15 practice, changes in different judicial rules that occurred in
16 Orange County, being inflexible in terms of changing the terms
17 of the contract to reflect these things, and not knowing the
18 nature of the nature of the local bar to best recruit those
19 who would be willing to continue in such a project.

20 MR. KIRK: I hear you.

21 CHAIRMAN UDDO: All right. Time's up. Thank you,
22 gentlemen, and, as I said, we may see one or both of you in

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1 Chicago.

2 Mr. Victor Geminiani.

3 STATEMENT OF VICTOR GEMINIANI

4 MR. GEMINIANI: Good morning. I want to thank you
5 or an opportunity to come and testify this morning.

6 My name is Victor Geminiani. I am the executive
7 director of Legal Services of Northern California, which is an
8 LSC grantee. We provide services in 18 of the 58 counties in
9 California. We provide services in the Sacramento Valley,
10 which is that way about 90 miles, a very beautiful area, and
11 we cover most of the mountainous areas in the northern part,
12 from the Trinity Alps to the Sierra Mountains.

13 I also serve currently as the president of the Legal
14 Aid Association of California, which is an association of
15 approximately 130 legal aid programs in California. I also
16 currently serve, and have for the last four years, as chair of
17 the National Legal Aid and Defender Association Civil
18 Committee, which is a committee comprised of approximately 16
19 people who are elected by program members and individual
20 members of NLAVA for three-year terms. We deal with issues
21 affecting civil legal services in the United States.

22 I have, as a program representative, a number of

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1 concerns about some of the recommendations contained in H.R.
2 1345; however, this morning I would like to limit my comments,
3 because of the time constraints, to two. Those are priority-
4 setting, contained in Section 8 of 1345, and the time
5 reporting suggestion.

6 I was not prepared this morning when I came in to
7 talk about time reporting, but given some of the exchange I
8 very much would like to provide a few comments on one
9 program's view of the problems in terms of implementing a time
10 reporting system.

11 Priority-setting: I believe that the
12 recommendations and suggestions contained in Section 8 of 1345
13 are serious. They would substantially affect the ability of
14 programs to provide a comprehensive system of delivering
15 services based upon priorities.

16 You have to understand that one of the cores of
17 priority-setting is contained in 1620, which is the regulation
18 that oversees priority-setting in this country, are the
19 availability of resources -- first of all, providing program
20 and offices flexibility enough to make sure that those client
21 concerns in that particular community are those that are
22 prioritized and met by the program.

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1 The second issue that's highly critical to priority-
2 setting is an examination of the types of resources that are
3 available in those particular communities around the country
4 and within a program service area to handle problems that
5 clients might have.

6 Let me explain how priority-setting goes in our
7 program, very briefly. We have five office. Our service area
8 is about 300 miles long and about 220 miles wide, quite large.
9 Five offices located anywhere from 20 miles from one another
10 up to a 170 miles from one another. The types of issues that
11 are presented by clients in those areas are substantially
12 different.

13 The types of issues that arise in Redding,
14 California, which is a highly rural area in the northern part
15 of the state near Oregon, are substantially different than
16 those that are presented on a daily basis to the clients in
17 Sacramento, which is a highly urbanized area, in which half
18 our poverty population exists.

19 The second thing that differs between the
20 communities is the types of resources that are available
21 within those communities to handle client problems differ
22 substantially. When we adopt priorities, and they are adopted

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1 once a year, obviously, according the 1620, by the board of
2 directors, readopted, I should say, and once every three years
3 through the periodic process of gathering input from clients
4 and doing a series of interviews with a variety of players in
5 the communities where we operate services.

6 We have adopted priorities in four different areas:
7 Those are administrative benefits, health, housing, and civil
8 rights. The great majority of the work that we do in our
9 program, in terms of the hours spent and the money spent
10 therefore to pay for those hours, are spent fulfilling work
11 and completing work in those four priority areas.

12 That does not mean that we periodically do not
13 assist someone in a community that comes to us with a
14 particular problem -- obviously, if it is a legal problem, it
15 normally is a serious problem in things like veterans'
16 benefits, and things like family issues, things like
17 bankruptcies and consumer issues -- if in fact we have the
18 expertise in our program to be able to provide minimum
19 assistance, information and referral, and brief service, not
20 complicated representation, long and costly representation,
21 but brief referrals, and we also have available resources in
22 that particular community to which we can refer someone.

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1 There are a number of ways you can provide efficient
2 and effective brief services to people without draining the
3 resources of an organization and shifting away from your
4 current priorities. For example, some communities provide pro
5 se representation through the court structure. Obviously, in
6 some situations, self-help packets may be developed and
7 distributed fairly easily after an initial brief interview to
8 determine the particular problem someone has and let them go
9 ahead and represent themselves.

10 Other times we have associations within a community
11 that will provide -- other nonlegal services associations that
12 will provide some resources for the operation of brief advice,
13 or, more likely, clinics. That particularly is true in the
14 family area.

15 Often we have lawyers that will volunteer time on a
16 pro bono basis to either advise clients in a particular area
17 or run clinics. Bankruptcy is a classic area. So we have an
18 outlet for providing services to those clients, even though
19 they don't currently fit within the core priorities that we
20 have adopted in our program.

21 It seems to me that the recommendations contained in
22 Section 8 of H.R. 1345 will allow me two options, as a program

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1 director. I will either have to, in the future, advise my
2 board to adopt fairly wide priorities to get away from the
3 problems of departing from those priorities and getting
4 ourselves into a reporting requirement for LSC, as well as an
5 oversight requirement from LSC.

6 Those priorities will be so broad, because I will be
7 again having to require some form of flexibility, depending
8 upon a client need or, more importantly, the resources that
9 are available in the community to handle that client that the
10 priorities will become meaningless. We will be opening our
11 doors to virtually everything.

12 I could take also the second approach, and that
13 would be to limit the priorities to the four or others that we
14 may decide are appropriate on a periodic basis and tell
15 everyone else, "No, we can't help you," regardless of whether
16 there is a service in that community that we could link the
17 person up with or a method that we could develop that in fact
18 would provide rather easy representation or at least advice to
19 someone.

20 The second problem I have with the recommendations
21 contained in Section 8, and this comes from my 22 years of
22 service in legal services -- I should mention, by the way,

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1 that I have served as a program director or a staff member,
2 mostly a program director, in seven of the nine regions across
3 this country. I have been a traveler, although the last seven
4 years I have been very happy to be situation in Northern
5 California in LS&C, but before that I had like 9 jobs in 17
6 years. I had quite a reputation.

7 I also served, with great pleasure, for the Legal
8 Services Corporation in Region Six, the Southeast Region,
9 overseeing the 374 legal services programs as regional
10 director, about 8 to 9 years ago.

11 I have also, during the last six or seven years,
12 been fairly involved in national activities and have a lot of
13 opportunities to talk to peers across the country who run
14 programs. And I will tell you, the deviation from priorities
15 in this country I do not think is an issue, either for the
16 Legal Services Corporation, or at least I have not heard it
17 has been a problem with the Legal Services Corporation, and
18 certainly not from project directors.

19 What I mean by that is that as monitoring is done,
20 very few problems arise around the diversion of funds or at
21 least substantial amounts of funds from those core priorities
22 that are adopted by programs, with the understanding that

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1 additional issues might be handled on a brief I&R or brief
2 service basis.

3 And I think that's the way we ought to be. We ought
4 to be able to be a linkage for a variety of different
5 services, as I said, around the community that may be
6 available, so that we just don't say, "No, no, no" to so many
7 clients that have critical issues affecting them.

8 If it's not a problem, I would urge you, as the
9 board of this organization, to really consider whether the
10 reporting requirements which are suggested in 8 are really
11 necessary. If you have specific problems with particular
12 programs, 10, 15, 20, 25 programs in this country, who you
13 find, from your monitoring process, in fact are deviating in a
14 substantial way from priority-setting processes, intervene in
15 a variety of different techniques with those particular
16 programs.

17 But when you, on an across-the-board basis, require
18 a reporting system which is timely, which is bureaucratic-
19 laden, which is potentially conflict-laden between programs,
20 you are diverting precious resources away from the direct
21 delivery of legal services.

22 My third point really intersects with that last

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1 point I was making. I have recently had the great benefit of
2 returning from a seven-week driving trip through Eastern
3 Europe, and I was affected -- I have had this philosophy for
4 much of my life that things should really be handled and
5 critical decisions made by those closest to the place where
6 the decisions ultimately are going to impact; i.e., local
7 control is a critical element of how we run this country and
8 the productivity that we've been able to enjoy in this
9 country.

10 One of the things that strikes you as you drive
11 through Eastern Europe is the devastating effect that that
12 central control has. It stifles creativity; it stifles
13 efficiency. It produces exactly the countereffects that we
14 wish to produce in this country.

15 For a two-year period I deviated from that basic
16 philosophy. I worked for the Legal Services Corporation in
17 Washington, D.C. I was a total bureaucrat, as I am now today,
18 but a slightly different bureaucrat. I was in charge of
19 funding policy for the Legal Services Corporation when I
20 worked in Washington, from 1977 to 1979, and I was also in
21 charge of supplying support to field programs of the Office of
22 Field Services.

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1 During that two-year period, not only Potomac fever
2 somewhat swept over me, but this bureaucratese disease that
3 makes bureaucrats in Washington think that ultimately their
4 need for information counterweighs the devastating effect that
5 the flow of that information back to Washington creates in a
6 local program.

7 We have limited resources in this country for legal
8 services. Clearly, they're not growing. They've been
9 decreasing over the years, especially when you factor in
10 inflation. You also have an increasing demand.

11 I hope that people in Washington would think about,
12 before the implementation of any new reporting system -- I
13 don't care if it's time reporting; I don't care if it's
14 priority-setting and deviation from priority-setting -- on a
15 quarterly -- the papers that we submit to Washington already
16 number this many (indicating) -- that you think about the
17 cost-effective nature of what you're doing, in terms of the
18 implementation of that reporting requirement in the field and
19 what you really get back for that information, how that
20 information is really going to be used, and how critical that
21 information is for you to have.

22 Having worked in Washington, I always wanted more

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1 information, and I often went overboard and required programs
2 to do certain things that, on retrospect, ultimately were
3 counterproductive to what we were both supposed to be in the
4 business of doing; i.e., providing free legal services in a
5 quality fashion to the programs.

6 So I would urge you, basically, to consider very
7 carefully whether there is a problem out there in the field;
8 if there is a problem, whether this particular proposal is
9 beneficial. I am particularly disturbed by the suggestions in
10 Section 8 that the Legal Services Corporation make suggestions
11 about program-wide or universal priorities in programs.

12 And I can tell you, my friends, that although you
13 may categorize it, from Washington, as a suggestion, since you
14 are the primary funding source for most of these programs out
15 here, it becomes much more than a suggestion when it hits
16 those local boards and hits those local programs. It will
17 have a devastating, chilling effect on deviation from those
18 priorities, because they know, if in fact deviation occurs,
19 you are going to come back and require an extensive reporting
20 requirement to justify that deviation. The easiest thing to
21 do is comply.

22 I urge you again to think about the damage that's

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1 done by centralizing control and the stifling of creativity,
2 imagination and efficiency that takes place.

3 Briefly, and I know we are restricted on time, time
4 reporting. I will go back again to my statement that there
5 has to be linked up with any kind of reporting requirement
6 from a bureaucracy some linkage with the cost-benefit that
7 you're going to benefit in Washington from all of that
8 accumulation of information, and the punching of that
9 information into computers, and the examination of that
10 information by a layer of bureaucracy in local programs, and,
11 finally, the sending of that information out to you in
12 Washington.

13 Our program considered, and I was the prime mover in
14 this, about five years, about two years after I came to the
15 program, I started to become interested in the concept of time
16 reporting. I talked to a number of my peers across the
17 country, most of whom I'm sure you are aware of that have
18 implemented time reporting. I could not find one program
19 director that told me that time reporting, in and of itself,
20 provides a substantial tool for the management of that
21 program; not one, including John Ascher in Denver, Colorado.

22 He is very careful to say that that is a process

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1 that is somewhat helpful but clearly does not outweigh the
2 bureaucracy involved in trying to implement that, unless you
3 have a variety of other needs for that particular information;
4 i.e., funding sources who require that to be reported in a
5 particular way.

6 We have implemented time reporting in our program in
7 a limited fashion, and it's contemporaneous time reporting.
8 Our attorneys in all of our offices use contemporaneous time
9 sheets on all prohibited LSC activities, of which I'm happy to
10 say we do none, restricted LSC activities, and all attorneys'
11 fees.

12 That kind of a system, which is limited, issue-
13 specific for what you should want your information for; i.e.,
14 those issues that you are restricting and don't want this work
15 done except in a certain way, that may be acceptable in terms
16 of not an extensive bureaucratic intrusion on the work product
17 of the program.

18 But anything past that, I can tell you as a manager
19 of 22 years, and I think one of a fairly good reputation, is
20 overkill. It's not necessary for the management of the
21 program. It may get you information that you need, but
22 certainly not us.

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1 I would ask you to reflect, if it's such a valuable
2 management tool, why has no government agency that I'm aware
3 of implemented internally, within their legal department, a
4 time reporting system? If it's so critical, why isn't the
5 Justice Department at the front of the line of implementing a
6 time reporting system?

7 I would suggest to you that those managers have made
8 intelligent decisions that in times of limited resources and
9 increasing demand it does not make sense to go out and develop
10 a paper process that will be burdensome, take time away from
11 direct delivery, costly, and produce minor results. There are
12 a lot of better ways to determine whether productivity in your
13 program in fact is where it should be.

14 I want to thank you very much for your time. I very
15 much appreciate it.

16 Just a few remarks to Mr. Witgraf. I respect you
17 very much and your judgment very much. I am intimately
18 knowledgeable about the Southeast programs. Most of those
19 programs are programs that I oversaw for many years. I worked
20 in many of them, four of them, to be frank, in the 10 southern
21 states.

22 If there is an area of the country that I am

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1 particularly proud of, in terms of the political pressures, in
2 terms of the increasing demand, in terms of the limited
3 dollars that they have available, and in terms of difficulty
4 of providing good legal services, that's the region.

5 We have incredibly strong programs down there, and I
6 urge you to visit Atlanta Legal Aid; I urge you to visit the
7 Rural Legal Services Program in Tennessee, the Neil McBride's
8 Program, Nashville, Jacksonville, Little Rock. There are
9 problems, obviously, in some programs, but, given overall the
10 difficulties of running these things and the quality that we
11 can expect, given human frailties, they are remarkable
12 programs.

13 MR. WITGRAF: Please don't be defensive, either in
14 the past tense or in the present tense. I guess, based upon
15 my knowledge, we're talking about a handful of projects; we're
16 not talking about most or anything approaching a majority of
17 the 72 or 73 or 74 projects in that part of that country. No,
18 we're talking about a handful.

19 And there may be a handful in other parts of the
20 country, but I guess, at least over the last 15 months, I've
21 been most aware of the difficulties in some of the rural parts
22 of the South in particular.

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1 MR. GEMINIANI: I'm aware of most of those, and
2 sometimes, when you go to the programs that are the bad
3 programs, you generalize on those experiences. I would agree
4 with you that there are some programs, we can characterize it
5 a handful or two handfuls, that do have problems. There are
6 just as many law firms in those communities that are having
7 problems also.

8 MR. WITGRAF: Ms. Love may want to say something
9 here. There certainly are cultural and social and political
10 reasons that have an effect, obviously, on the strength or the
11 lack of strength of some of those projects in those parts of
12 the country. I guess Mr. Uddo may want to speak to this too.
13 But, at least in my limited experience thus far, it's that
14 part of the country where the greatest number of particularly
15 weak projects exist.

16 Beyond that, on the timekeeping, you mentioned the
17 Justice Department analogy, as others have in the past. I
18 guess the only problem I have with that analogy or that
19 example is that the Justice Department lawyers are not, to my
20 knowledge, involved in the direct provision of legal services.

21 You were well prepared enough to pick up on the fact
22 that I have, based on our visit with John Ascher and his

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1 project in Metropolitan Denver last summer, having cited his
2 use of timekeeping or time reporting as a management tool,
3 that, as I recall my conversation or our conversation with
4 him, was an important and a valuable tool.

5 I am sure, as suggested by Mr. Koch earlier this
6 morning, that the appropriateness of that tool as a management
7 tool varies from project to project, but my recollection at
8 least -- some of the others here may have a different
9 recollection -- was that he felt it was very important. The
10 suggestion made by Mr. Koch certainly may be a valid one that,
11 through the monitoring, audit and compliance process, it may
12 be more appropriate to deal with that than through the
13 statutory process.

14 I think, for the seven board members here and for
15 Mr. Martin, I am correct in saying that we hope that the math
16 process can become a more constructive process in the future
17 and can be viewed in a more constructive and companionable way
18 than it has been perhaps during the last 8 or 9 or 10 years,
19 when I assume it has been viewed largely as a harassing and a
20 frightful process instead.

21 If that's true, and if we can reach that point, then
22 we can talk about management tools, including timekeeping and

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1 time reporting, as something to help us all provide legal
2 services more efficiently and more effectively, as you said,
3 rather than just filling either more computer disks or more
4 boxes full of paper in Washington.

5 I would hope that our concerns are the same as
6 yours, which is to do a better job of providing more
7 efficient, more effective legal services. And I hope that you
8 and Mr. Koch and others understand that that's what we're
9 after, just as you are.

10 MR. GEMINIANI: We are very optimistic, and, as a
11 representative of the field, that's exactly what we wish for
12 also.

13 CHAIRMAN UDDO: Thank you, Mr. Geminiani.

14 MR. GEMINIANI: Thank you.

15 CHAIRMAN UDDO: We don't have time for any more
16 questions. We have to have one more witness before we break
17 for lunch, and that's Mr. Manuel Romero.

18 STATEMENT OF MANUEL ROMERO

19 MR. ROMERO: I want to thank the members of the
20 committee and the board members here for giving me the
21 opportunity to present this testimony. I have submitted a
22 brief written statement. The statement focuses on Section 2

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1 of the McCollum-Stenholm bill, which deals with prohibiting
2 Legal Services Programs from being able to engage in any kind
3 of legal representation as it relates to redistricting.

4 I also very briefly want to touch upon one other
5 provision, and that is the one that has to do with
6 restrictions on the representation of aliens. I am going to
7 be very short, and I would refer the board to my statement for
8 more detail.

9 I also, as many of the folks who have come before me
10 here, have a background in legal services. Although MALDEF
11 does not receive any federal funds and does not receive any
12 LSC funds, we, that is MALDEF, have a lot of the same
13 communities that we represent that Legal Services programs
14 throughout the country also represent. That simply is because
15 of the fact that a disproportionate number of Hispanics do
16 constitute low-income and poor persons in this country.

17 In addition to that, I come to MALDEF, as do many of
18 my colleagues in MALDEF, from a Legal Services experience. I
19 was both a staff attorney and managing attorney for both the
20 field program, Legal Services of Northern California, of which
21 my friend, Victor Geminiani, is the executive director, as
22 well as having served at the National Housing Law Project as a

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1 staff attorney. I am also an immediate former past member of
2 the executive committee of the legal services section of the
3 state bar.

4 So I am familiar with the Legal Services community,
5 with how Legal Services' operations function, but I am here
6 today wearing my hat as a civil rights advocate, a hat which
7 we believe allows us to say with some authority what we
8 believe the impact of Section 2 is on people of color, and
9 particularly low-income people of color in this country.

10 The restriction that will prohibit or prohibits
11 Legal Services from engaging in any kind of representation
12 whatsoever in assuring that the political processes, including
13 redistricting processes, in the nation do not violate the
14 Constitution and do not violate federal voting rights
15 protections means that more communities that have large
16 concentrations or large populations of people of color go
17 unrepresented.

18 MALDEF has had a long history of success, or at
19 least long in terms of we have been doing this for the past 20
20 years, but we have established, I think, a track record which
21 clearly indicates that this litigation is not frivolous
22 litigation, that in fact our courts have recognized that there

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1 are fundamental rights the Constitution and the Voting Rights
2 Act specifically provide.

3 Yet, as a result of limited resources, organizations
4 such as MALDEF, the Legal Defense Fund, ACLU, and so on, that
5 are the only ones out there doing this type of litigation, are
6 limited in the extent to which they can really impact in a
7 very qualitative way the ability to make the changes necessary
8 so that minority communities truly have an equal opportunity
9 to participate in our political process and truly have an
10 equal opportunity to elect representatives who, hopefully, may
11 in fact impact upon policy decisions and decisions that would
12 allow, at some point, the need for us not to be here anymore;
13 that is, the need not to have a program that specifically is
14 trying to address the legal needs of poor people.

15 But the point is that the reason we see the need for
16 legal services programs to be involved in addressing barriers
17 that prevent the full participation and the equal opportunity
18 of participation of poor people -- and now we're talking
19 minority communities in particular -- in this process is that
20 the resources are simply not there.

21 By allowing them to participate, it would enhance
22 that pool of resources, provide competent legal

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1 representation, and would allow us to get quickly to, I think,
2 a national goal, which all of us should share, of making our
3 ideal of democracy, which the whole world looks to as a model,
4 truly be an ideal in reality.

5 So, without elaborating any further on a lot of the
6 background information, in terms of factual -- you know, the
7 number of minorities that constitute the percentage of poor
8 persons, and so on -- all of that is in our statement.

9 What I would like to do is to urge this committee
10 and urge the board to recommend to Congress that this kind of
11 prohibition has to go. It is time that we allow poor people
12 in our country to stand on equal footing with everyone else
13 and not be prevented in this kind of way, which we view as an
14 officially-sanctioned discrimination that still continues,
15 that impedes the ability to secure the enforcement of these
16 very important protections.

17 Briefly, on the other issue, I believe it's Section
18 15 or 16, we will submit a written statement on that at the
19 Chicago hearing. Again, we also feel very strongly that we
20 are really past the time when the invidious type of
21 discrimination that our country, in my view, shamelessly
22 continues to carry on, in terms of denying a resident who

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1 lives in the United States access to legal advice, legal
2 representation, solely because of that person's immigration
3 status, we have to, I think, come to grips with the fact that
4 there simply is no place in our democracy, in our values as
5 American society, to continue that kind of discrimination.

6 Therefore, we would also urge that the Legal
7 Services restriction that is contained in the legislation and
8 which we have had now for many years that continues to close
9 the doors of the local legal services programs to the
10 undocumented, that the time has come for us to get rid of that
11 very invidious barrier.

12 That is all I want to say here today. We will
13 submit an additional statement in Chicago. If there are any
14 questions, I would be glad to take those.

15 CHAIRMAN UDDO: Thank you, Mr. Romero.

16 Any questions?

17 MR. DANA: One.

18 CHAIRMAN UDDO: Mr. Dana.

19 MR. DANA: Would your position be the same if the
20 restriction was limited to federal election districts?

21 MR. ROMERO: We feel that the bulk of the problems
22 right now do have to deal with state and local redistricting.

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1 So, if Legal Services programs would have the ability to
2 engage in representing communities at the state and local
3 levels and limit the restriction to federal redistricting,
4 that would be a compromise that would constitute, in my view,
5 a major step forward from where we're at today.

6 MR. DANA: How would you feel if it was limited only
7 to local elections, as opposed to state elections?

8 MR. ROMERO: If the prohibition was limited --

9 MR. DANA: There would be a prohibition of state
10 legislative districts and federal legislative districts but
11 would be --

12 MR. ROMERO: Would allow local?

13 MR. DANA: Correct.

14 MR. ROMERO: Yes. Well, that, again, from our
15 experience, the link between redistricting as it impacts state
16 bodies is very much intertwined with what is happening at
17 local districts. It would impede, I think, the effective
18 advocacy needed to operate at the local level, and therefore
19 we would really hope that the line would be drawn at the state
20 and local level.

21 However, again, even if we were to allow it only for
22 local redistricting, that again is a major step forward from

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1 where we are at now, which is an absolute bar. But we would
2 urge, of course, that there is simply no rationale that can
3 stand, in our view, for the prohibition at all.

4 CHAIRMAN UDDO: Mr. Witgraf.

5 MR. WITGRAF: In addition to the two dichotomies
6 suggested by Mr. Dana for prohibition or nonprohibition, it
7 seems to me there is yet another dichotomy, which is partisan
8 versus nonpartisan. In all 50 states, certainly, we have
9 active political parties, and we have generally well-funded
10 political parties. In many states right now, those political
11 parties, both Democrat and Republican, are gearing up for
12 different kinds of fights, legal and otherwise, over
13 redistricting efforts.

14 Realizing that the dollars that are available to the
15 local grantees are very, very limited, as we have been
16 discussing this morning, what is your feeling about a
17 prohibition in partisan races or partisan electoral districts,
18 as opposed to no prohibition in nonpartisan electoral
19 districts?

20 MR. ROMERO: Well, that question we always have to
21 deal with every time we attend redistricting hearings. We
22 think that the law is very clear, and what we base our

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1 position on is the fact that when a community that is
2 protected by the Constitution or the Voting Rights Act, that
3 interest has been violated -- and we're talking here now
4 specifically about violations against minority communities--
5 we take the position, and I think this is demonstrated by the
6 fact that litigation has had to take place after every
7 redistricting, whether it was Democrats or Republicans that
8 may have been the majority party, that just because you have
9 one or the other does not necessarily mean that the interests
10 of the minority community have been taken to heart.

11 In fact, other considerations, such as incumbency,
12 and so on, play a greater role. So our perspective is, no, it
13 would be absolutely unacceptable to deny poor people the
14 opportunity to be able to challenge unlawful redistricting or
15 unlawful processes that involve partisan elections and limit
16 them only to nonpartisan elections.

17 We don't see the rationale or the risk of somehow
18 Legal Services programs becoming political pawns being a very
19 real risk. I think the fact that MALDEF, the NAACP Legal
20 Defense Fund, and other organizations that have been at the
21 forefront of trying to enforce these rights, the fact that
22 they are not the pawns of any -- or at least we don't consider

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1 ourselves the pawns of any political party -- is testimony to
2 the fact that that concern really has no basis in the real
3 world.

4 MR. WITGRAF: Let me just go once more. I
5 understand your position, philosophically. I'd ask you to
6 look at it, as well, practically or pragmatically, or what I
7 would consider to be the real world, to use the term that you
8 just used, and that is that most of our bodies that are
9 policymaking bodies or executive bodies on the state or
10 national level are in fact partisan. And the Congress that is
11 concerned with reauthorization is obviously divided along
12 Democrat and Republican lines.

13 It seems to me that if either party, either partisan
14 political party, has an upper hand in a state with the
15 redrawing of legislative lines, let's say, that it would be
16 natural then for the people on whose behalf you're speaking
17 this morning, or now this noon, would get together with the
18 partisan party, the political party that was on the short end
19 of that redistricting, would side with them or join with them
20 to challenge the efforts or the activities of the party that
21 had the upper hand, and that there would be a very natural and
22 strong ally for the people whom you represent.

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1 It just seems to me that, pragmatically or
2 practically, if the prohibition is to be lifted that,
3 realistically, the best place to have it lifted is in
4 nonpartisan races. That's contrary to what you're saying, I
5 understand, and that's not the purest argument,
6 philosophically.

7 But, practically, with a Congress that's divided
8 between Democrats and Republicans, does it make some sense to
9 you that we would be concerned, first of all, in allowing
10 Legal Services grantees to be involved in nonpartisan
11 redistricting and reapportionment matters rather than partisan
12 redistricting and reapportionment matters?

13 MR. ROMERO: Well, we would, obviously, like -- if
14 it meant nonpartisan or nothing at all, we would go with
15 nonpartisan. However, again, I would just go back to the
16 record, in terms of when you look at the challenges that we
17 have made, and, for example, the Legal Defense Fund and others
18 have made in the South, it does not matter who the incumbent
19 party has been.

20 We have not lined up with those parties or the
21 majority party to support their plan. In fact, we have
22 challenged their plans virtually in every instance, because

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1 they have not complied with the protections of the Voting
2 Rights Act.

3 I understand your point about the concern of the
4 parties, respective parties in Congress, about the fact that
5 this in fact can become a partisan issue, but I think the
6 fundamental thing that we need to look at goes beyond that,
7 and that is the right of all persons to be able to have
8 representation in that process, to challenge those processes
9 from their community interests.

10 From that perspective, that should apply across the
11 board to all elections. We would hope, and we would continue
12 to argue and advocate, that they should extend to both
13 partisan and nonpartisan.

14 CHAIRMAN UDDO: Thank you, Mr. Romero.

15 MR. ROMERO: Thank you.

16 CHAIRMAN UDDO: The committee is going to recess for
17 lunch for 30 minutes. We will be back in this room in 30
18 minutes. Lunch is for the committee in the Sutter Room next
19 door. While it's only being provided for the committee, the
20 public is welcome to come in and see to it that we are not
21 deliberating, since it's not an executive session, but we will
22 be in the room next door having lunch for 30 minutes.

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

(12:55 p.m.)

CHAIRMAN UDDO: It is approximately 12:55 and we do have a quorum of the committee with Mr. Kirk, Mr. Witgraf and myself being present. President Martin, Ms. Wolbeck and Ms. Love are also present.

Our next witness is Mr. Phillip Burtenthal.

STATEMENT OF PHILLIP BURTENTHAL

MR. BURTENTHAL: Thank you very much, Chairman Uddo, members of the committee, other members of the board and Mr. Martin.

My name is Phillip Burtenthal and I'm the Director of Litigation at Contra Costa Legal Services Foundation. I have worked in Legal Services for more than 20 years, one year as a law student and the last 19 as an attorney. My experience covers four programs in three different states.

I appreciate the opportunity to appear before you to give a perspective on reauthorization from one whose primary responsibility is the direct supervision of legal work and performance of legal work.

As I was looking through the schedule for today, it appears that, with the exception of project directors, I am

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1 the only non-project director staff member of the Legal
2 Services program who will be appearing before you.

3 As such, what I'd like to do is address my comments
4 to you in regards to how some of the proposals that you have
5 before you would impact on our ability to deliver legal work
6 to eligible clients.

7 I think sometimes, as we get caught up in the
8 process and stuff, we sort of lose sight of sort of the nuts
9 and bolts of how things happen. I appreciate Mr. Kirk's
10 comments this morning just to try to get some more specifics
11 in terms of what these things mean in terms of our daily
12 operations.

13 Contra Costa Legal Services is a six attorney
14 program. It's located east of here. It's the second richest
15 county in the State of California. It's also a county which
16 has a large number of poor people.

17 Despite the fact that we are rich, we also have a
18 very large poor population, so what we find in our county is
19 our rich are richer and our poor are poorer. We have a
20 poverty population of more than 50,000 individuals and we,
21 therefore, have less than one attorney for each 8,000 poor
22 people in the county.

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1 Our program is similar to other Legal Services
2 programs, though I would argue that the quality of our
3 advocacy and our staff and our support staff is among the
4 finest you'll find anywhere in the country.

5 Our staff is about 50 percent of its size when it
6 was at its peak. Because of this and because we have a rising
7 population to serve, it's been necessary for us to cut service
8 to clients and in those areas in which we continue to provide
9 services, we must be as effective and efficient as we can be.

10 It is therefore important that as much of our time
11 as possible be spent on providing services to our clients and
12 our client community.

13 I have reviewed both reauthorization bills that were
14 provided by Mr. Martin to our program and have prepared some
15 comments for you based upon a review of those documents.

16 As a preliminary matter, and just reflecting on some
17 of the testimony this morning, that it's difficult to engage
18 sometimes in discussions regarding reauthorization in the
19 absence of an effective monitoring program, and I don't think
20 that for the last 10 years, we have had a monitoring program
21 in place that has evaluated the quality of the legal work that
22 has been delivered by programs.

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1 A number of years ago, my program was put on
2 month-to-month funding based upon a monitoring report which
3 said the strength of the program is the dedication of its
4 staff and the quality of the legal work that it produces.

5 There were some technical problems, in terms of
6 program operations, all of which were fixed, but to put us on
7 month-to-month funding when you have that statement in the
8 monitoring report, I found it very, very difficult to deal
9 with.

10 In any event, I think that as you proceed over the
11 next several months, either in the reauthorization bill or
12 through your own practices and procedures, is to restructure
13 the monitoring process to deal with quality issues.

14 I think that -- and I see Mr. Martin nodding -- that
15 is a very, very important function. We've got to do a good
16 job. We have very limited resources. The clients will demand
17 it. The bar associations will demand it. Congress will
18 demand it. The president will demand it and all rightly so,
19 because to do less with the limited resources is simply not
20 acceptable.

21 I'd like to focus on a couple of items that are set
22 forth in H.R. 1345 first. Actually, the first section that

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1 I'd like to deal with is Section 5 of 1345 and Section 16 of,
2 I guess, Congressman Frank's bill, because they have similar
3 provisions.

4 Our county, we serve a very wide, real poly-ethnic
5 group of clients. We represent Afghani refugees who speak
6 Pashto. We represent Afghani refugees whose primary language
7 is Farsi. We represent three groups of Lao refugees, some who
8 speak Mong, some who speak Lao, some who speak Min.

9 We represent Vietnamese refugees who speak
10 Vietnamese. We represent a large group of Polish refugees who
11 speak Polish. We represent Hispanics from Mexico and Central
12 America who speak Spanish.

13 Section 5 of McCollum-Stenholm and Section 16 of
14 Frank, both require us to get statements from our clients not
15 only in English but in the client's native language prior to
16 entering into settlement negotiations or into filing a
17 lawsuit.

18 As a very practical problem, as opposed to any of
19 the theoretical, that is very, very difficult. It is
20 difficult enough to bring in a Lao interpreter. It is
21 difficult enough to find Vietnamese interpreters.

22 But even after we do so, and then to prepare a

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1 document in English, translate it for the client, especially
2 when so much of our work is emergency services, does not make
3 any sense to me. It is neither cost-effective, nor is it
4 sensible.

5 So, therefore, that type of provision I think would
6 just be burdensome without serving, in my view, a function
7 that is really appropriate.

8 Secondly, the provisions of both bills in terms of
9 that requirement, a lot of intake work is done by relatively
10 inexperienced paralegals and/or attorneys. If that document
11 that is prepared early on -- which should be comprehensive,
12 because it's going to be discovered by the other side -- it
13 needs to be reviewed by a senior person.

14 If a client walks into my office who has been locked
15 out of his or her apartment and I need to go in that afternoon
16 with a restraining order, to prepare a document that
17 adequately sets forth what the facts are in order to protect
18 my client later on during discovery and still get my pleadings
19 filed by 4:00 o'clock when the courts close, is a burden that
20 I don't think is appropriate, nor does it promote the effect
21 of economical and efficient delivery of legal services.

22 So, in addition to the comments you heard this

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1 morning regarding those sections, I would submit that from a
2 practitioner's perspective, it is a very, very time consuming
3 process and not time that will be well spent in terms of
4 delivery to clients.

5 Section 13 of H.R. 1345 requires approval of all
6 class action filings by governing boards prior to filing. In
7 1989, Contra Costa County was about to close down its series
8 of homeless programs. We wrote them a letter and indicated
9 our desire to sue.

10 The decision was made administratively with no prior
11 notice. We had to move quickly and effectively. We moved
12 very quickly and we filed the class action and we were able to
13 secure a temporary restraining order to stop the closing of
14 those homeless shelter programs and those programs continue to
15 operate today.

16 If we had to wait the six weeks until the next Board
17 of Directors of our program's meeting, it would have meant
18 that we would not have been able to get a temporary
19 restraining order. Those of you who do litigation know that
20 if you're going for injunctive relief, it's much easier to
21 maintain the status quo than to restore the status quo.

22 Our ability to provide effective representation to

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1 our clients would have been seriously impaired by the
2 requirement requiring us to wait six weeks before filing the
3 class action lawsuit.

4 Section 12 of H.R. 1345 would prohibit us against
5 recovering attorney's fees from private individuals. For most
6 of the last five years, my office has engaged in litigation
7 over a complex in Richmond which is the city in which our main
8 office is located, a 325-unit subsidized housing complex.
9 That complex is a HUD-subsidized complex.

10 That complex had leaky roofs in 13 buildings with
11 water pouring in. It had terrible security problems, serious
12 problems of drug dealing going on. The deposition of a police
13 officer who I took during the course of the litigation
14 described the parking lot as a supermarket.

15 The owners had taken virtually no efforts to fix the
16 premises up, nor had they done anything to deal with the
17 serious drug problem within the complex. After five years of
18 very intense litigation, we were finally able to negotiate a
19 consent decree.

20 One reason we were able to negotiate a consent
21 decree was the owner's understanding that if the matter
22 proceeded further, they would be liable to us for attorney's

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1 fees. In fact, we secured a fairly significant attorney's
2 fees award.

3 But without that ability to recover attorney's fees,
4 there was no incentive for them to settle or very little
5 incentive for them to settle, because the costs of litigation
6 to them were cheaper than the cost of fixing the premises up.

7 It strikes me that we should not encourage
8 individuals to violate the law by not making them liable to my
9 clients when I represent them, by restricting our ability to
10 get attorney's fees from private individuals.

11 Section 6 of H.R. 1345 provides for a total ban on
12 all legislative and administrative advocacy. I'd like to
13 describe some of the legislative and administrative advocacy
14 that I do, because I think that it's very good advocacy. I
15 think that it's important advocacy. I think that it's cost
16 effective advocacy.

17 Wednesday of this week, I spent an hour and a half
18 meeting with the County Clerk of Contra Costa County. Why?
19 Because the County Clerk was requiring additional paperwork
20 and was not complying with appropriate procedures in terms of
21 permitting clients who wanted to file in forma pauperis
22 applications.

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1 I had two alternatives. I could sue him or I could
2 sit down and negotiate a change in his practices. I sat down
3 with the gentleman for an hour and a half. We negotiated some
4 preliminary procedures. We're going to be meeting again
5 around some of the issues. He gave me free access, actually,
6 to the county's data base in terms of its court filings.

7 It was a far more effective way for me to deal with
8 the problems than to go out and increase bad will between my
9 office and the county clerk's office by simply going ahead and
10 suing him.

11 In the JFK Manor case that I was just describing to
12 you a little while ago, we've discovered that one of the
13 problems in terms of why the premises were in such bad
14 condition had to do with structural problems in terms of the
15 authorizing legislative from Congress in terms of how
16 subsidized housing programs are set up and also in regulatory
17 authority that HUD has.

18 At this point, we believe that it's appropriate for
19 us to both bring to our elected representatives' attention as
20 well as to the Secretary of Housing and Urban Development, who
21 has expressed repeated interest in providing better services
22 and better housing for low income people, suggested changes in

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1 their operating procedures and their regulations so that
2 owners of complexes will not get, as they do at JFK Manor,
3 nine percent off the top of the rent roll no matter what they
4 do.

5 Those are the kinds of issues that are appropriate
6 for administrative advocacy. I think it makes better quality
7 housing for poor people and I think it's the kind of advocacy
8 that we need to do on behalf of our clients.

9 CHAIRMAN UDDO: Mr. Burtenthal, I really have to
10 watch the clock carefully in this afternoon's session because
11 we've got more people than we have time to do this in, and I
12 want to make sure the committee members have a chance to ask
13 you questions.

14 So, I'm going to ask you just to stop at that point,
15 see if there's any questions up to this point and then ask you
16 to submit the balance of your testimony in writing, if you
17 would.

18 MR. BURTENTHAL: Fine.

19 CHAIRMAN UDDO: Any questions?

20 MR. KIRK: I think that the point you made about the
21 attorney's fees is exactly what the complaints are in
22 Congress, that you have an ability, without restriction, on

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1 how much you could spend on attorney's fees to keep the guy in
2 court, and he just had to say, "Look," this is what the other
3 side is going to say. "I may have been right. I could have
4 won, but they held me up because the government continued to
5 fund this Legal Services program until we were behind the
6 eight ball."

7 I have to tell you that that's what we're hearing
8 and that's just exactly what you said one of your tactics is.

9 MR. BURTENTHAL: It wasn't one of my tactics. What
10 it was is it was a fact of life in terms of the reality of the
11 situation. It is -- what happened in that case is we were
12 facing counsel who were willing to paper us to death.

13 We had attorneys working around the clock doing
14 depositions in addition to doing their regular legal work. We
15 had to bring in outside pro bono counsel to help us because we
16 were getting killed, because they had unlimited resources. My
17 attorneys were averaging 60-hour weeks in order to respond to
18 the demands of the other side.

19 We don't have the time or the luxury to take on
20 frivolous claims. My housing unit meets once a week. We sit
21 around the table and we may have seven cases which are very
22 meritorious that we want to accept. As a practical matter, we

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1 are never able to accept more than two or three.

2 The JFK Manor Complex -- and you can look at the HUD
3 reports and I'd be more than happy to send it to you. HUD has
4 consistently found their management to be unacceptable.

5 The Richmond Police Department have said that these
6 people are responsible for an increase in drug activity on the
7 premises because they have broken their promises to the
8 Richmond police in terms of fencing in the project to keep the
9 drug dealers out. That's the facts of life.

10 Now, obviously, they'll come to you and say, "Yes,
11 they jammed us up," but that's the nature of litigation.
12 That's what the other side is always going to say.

13 MR. KIRK: That's what you told me, though. You
14 told me that they finally gave up because their attorney's
15 fees were going to be more than the cost to repair the
16 premises.

17 CHAIRMAN UDDO: Weren't you, Mr. Burtenthal, talking
18 about a fee shifting statute in that case?

19 MR. BURTENTHAL: Actually, I was talking about a
20 contract. All the tenants at JFK have a contract with the
21 owners that say in the case of litigation between the parties,
22 the prevailing party is entitled to reasonable attorney's

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1 fees.

2 When I represent clients who are being evicted from
3 JFK Manor, they are -- if they are in the judgments and they
4 lose, they are required to pay attorney's fees.

5 CHAIRMAN UDDO: So, you are addressing that
6 provision which determines whether or not a grantee should be
7 able to keep attorney's fees either from a fee shifting
8 statute or a contractual obligation to pay attorney's fees?

9 MR. BURTENTHAL: That, as well as the ability to
10 recover funds from private firms.

11 MR. KIRK: But who would have paid the fees if you
12 had lost? Suppose you'd lost and the housing authority had
13 won.

14 MR. BURTENTHAL: It's not the housing authority.
15 It's a private group. My clients would have been liable for
16 the fees. The bottom line is we don't have the resources to
17 take close cases. The only cases that we take are what I
18 would call slam dunks.

19 We reject more than 50 percent of the cases in which
20 I am convinced that we could win in the housing area in my
21 program, more than 50 percent. At times, we reject more than
22 90 percent of the cases. We only take winning case at this

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1 point, because we don't have the resources to take losing
2 cases.

3 CHAIRMAN UDDO: Thank you, Mr. Burtenthal. Any
4 other questions from the committee or from the board members?

5 (No response.)

6 CHAIRMAN UDDO: Thank you very much. If you would
7 submit the balance of whatever it was that you were going to
8 comment on in writing, please, because I would like to make it
9 a part of the record and distribute it to the committee.

10 MR. BURTENTHAL: Thank you.

11 Mr. Bob Hawley? Is Mr. Hawley here? You can go
12 ahead and identify yourself for the record and get started, if
13 you would.

14 STATEMENT OF ROBERT HAWLEY

15 MR. HAWLEY: My name is Robert Hawley, H-a-w-l-e-y.
16 I am a private practitioner here in San Francisco with the law
17 firm of Landalls, Ripley and Diamond.

18 I'll begin by generally thanking the committee for
19 allowing me to be here. I appear before you today in my
20 personal capacity. I don't represent any entities or
21 individuals in doing so; however, as I explain briefly my
22 background, I think it will become apparent why I am here and

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1 why I have taken a concern in this matter.

2 I offer my expertise primarily on issues of
3 professional responsibility and ethics. My concerns were
4 raised by reviewing particularly the McCollum-Stenholm bill,
5 H.R. 1345, to such an extent that I felt it important to come
6 and address to you some of the concerns that I saw, and then
7 to make myself available should you have questions now or at
8 some time in the future.

9 For your benefit -- and not to extol my virtues, but
10 just so that for the record, the basis of my expertise can be
11 made clear -- I'll review very briefly my credentials in the
12 area.

13 I'm a 1978 graduate of the University of California
14 Hastings College of the Law. I obtained a Master's degree in
15 Labor Law from New York University in 1983 and that is the
16 nature of my practice. I'm a defense lawyer. I defend
17 management interests in employment-related litigation.

18 I have, since 1983, specialized in employment-
19 related litigation but in addition to that experience, I have
20 had a great deal of experience with respect to legal ethics
21 and professional responsibility issues.

22 I began my practice with the State Bar as a

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1 disciplinary prosecutor. I have served in that capacity and
2 as a State Bar disciplinary referee. I am the immediate past
3 chair of the California State Bar Committee of Professional
4 Responsibility and Conduct, which is our State Ethics
5 Committee. I've been a member of that committee for five
6 years.

7 I've served the State Bar and the Committee of Bar
8 Examiners as a consultant on various disciplinary, ethics and
9 professional responsibility issues. I'm currently a
10 consulting editor on professional responsibility with
11 California Continuing Education of the Bar.

12 I serve as an adjunct professor of Law and
13 Professional Responsibility and Ethics at the University of
14 San Francisco, Golden Gate University and John F. Kennedy
15 University, and I've testified on numerous occasions as an
16 expert in this field.

17 In the course of my practice of labor law, defending
18 management interests, I have represented a number of Legal
19 Services entities. I've represented the management of those
20 entities in dealing with their organized union and unorganized
21 employees. That's not an extensive part of my practice but it
22 is something I have done.

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1 It is the combination of my experience with Legal
2 Service entities and my background in ethics and professional
3 responsibility issues that brings me here today.

4 It's that dual capacity that has also led me to be
5 involved in the representation of Legal Service entities in
6 labor-related problems because, when organized Legal Service
7 attorneys go on strike, there are legal ethics and labor
8 issues that are integrally involved, and that's the reason
9 that I've oftentimes been involved in representing management
10 in those kinds of disputes.

11 I've identified several provisions of the proposed
12 legislation, H.R. 1345, which I think pose real ethical
13 problems, even problems of constitutionality, in certain
14 respects.

15 The problem that I have is that the legislation as a
16 whole tends to be overreaching, I think, something that
17 they're trying to do more than really needs to be done and as
18 a result, create real dilemmas for Legal Service entities and
19 Legal Service lawyers and dilemmas that can't be resolved and
20 in a way, complicate the entire process.

21 I have listed here under my sub-headings the various
22 sections that I will address and I will try to be as succinct

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1 as possible. This is not comprehensive. I have tried to
2 pick out the things that I saw initially that caused me the
3 greatest problem.

4 My overall feeling is that if these things are
5 there, it causes me to doubt the legislation, as a whole, in
6 terms of what it's trying to accomplish and how well it's
7 trying to do that.

8 Addressing first the section on solicitation which
9 is Section 4, in my opinion, this provision has real
10 constitutional problems. Just right out of the box, I think
11 that there's a real problem there and it's subject to real
12 challenge on that basis.

13 Attorneys have a protected right of commercial
14 speech ever since the Bates case in 1976 or so. The problem
15 with the proposed legislation is that it appears, from what I
16 can tell, to track an old disciplinary rule. It's old
17 Disciplinary Rule 2-104, which is pre-Bates.

18 I mean, we have had a couple of constitutional
19 revolutions since that language with respect to freedom of
20 speech in the attorney field in advertising and solicitation.
21 In today's world, solicitation is not the bad word it used to
22 be.

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1 It is actually legal in, certainly, a very limited
2 context, for any attorney to go out and solicit a client under
3 the California rules. I'm addressing myself to the California
4 rules. California tends to be one step ahead of the ABA.

5 To very clearly indicate my problems with the
6 proposed language in this solicitation section is, first, you
7 have it's based upon an old outdated disciplinary rule.

8 Second, that rule itself has been since revised and
9 is now embodied in what is Rule 7.3 of the ABA Model Code, but
10 even Rule 7.3, the modern rule, has been called into question
11 by the U.S. Supreme Court in Shapiro v. Kentucky Bar
12 Association, which is at 486 U.S. 466.

13 So, even the most modern ABA rule on solicitation
14 doesn't go far enough, the Supreme Court indicated, in its
15 1988 decision, in allowing freedom of speech.

16 But even more significant is the fact that in the
17 U.S. Supreme Court case of In re: Premis (phonetic), 436 U.S.
18 412, you have the U.S. Supreme Court addressing the issue of
19 public interest entities, Legal Service type entities, and
20 solicitation and finding in the In re: Premis case, that the
21 rules that apply to lawyers who are working for the public
22 interest, not just government entities but for entities like

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1 Legal Service providers, the rules of solicitation may well
2 apply differently to them than to for-profit lawyers because
3 of the fact that a Legal Service entity is not a for-profit
4 entity.

5 Granted, there are -- you are the funding source, to
6 a great extent and there may be other ways that there is money
7 that comes in there, but the individual attorneys are not on a
8 for profit basis. They get a salary and that case
9 specifically recognizes that we have a very different standard
10 in terms of solicitation when it comes to attorneys in the
11 public service entities.

12 MR. KIRK: Could I ask for a point of clarification?

13 MR. HAWLEY: Sure.

14 MR. KIRK: Do you contend that the not-for-profit
15 organization is prohibited from putting restrictions on its
16 attorneys, that there is a constitutional right that the
17 attorney has to do it, whether the not-for-profit organization
18 puts them on it or not?

19 MR. HAWLEY: I think that -- I mean, I think that
20 you, certainly, as a -- well, we have different levels here.
21 I think that there are certain restrictions that can be put on
22 an employee, whether they are an attorney or not, by the

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1 employer.

2 I think there is a problem, then, when you go one
3 step away and now you have another entity out there that's a
4 third party entity, starting to put restrictions. I think
5 that you get into constitutional problems when you start
6 infringing in any way on freedom of speech.

7 So, I think that the basic answer to your question
8 would be yes. I'm saying that there would be a constitutional
9 problem, I think.

10 MR. KIRK: So, what you're saying is the local board
11 could put the restrictions on the lawyer, but the LSC could
12 not? I mean, I --

13 MR. HAWLEY: No, I'm not going that far. I'm saying
14 that I think that an employer has the right to impose certain
15 restrictions on an employee regardless of whether they are a
16 lawyer or not, not necessarily infringing on freedom of
17 speech, because you retain a constitutional right.

18 I'm saying that you have constitutional problems
19 when anyone starts infringing on freedom of speech. I think
20 that this proposal here, whether it comes from Congress or
21 from this board or even from a local board, would have
22 constitutional problems under that standard.

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1 CHAIRMAN UDDO: Mr. Hawley, let me ask you a
2 question. What if the solicitation was for a case where there
3 would be the possibility of an award of attorney's fees?

4 MR. HAWLEY: I don't see that as being any different
5 under the standard in Premis.

6 CHAIRMAN UDDO: Why not, if the grantee is going to
7 receive attorney's fees and profit from the representation?

8 MR. HAWLEY: The problem with the use of profit
9 there, there's a big difference between a private attorney
10 going out and soliciting a case where they're going to take it
11 on a contingency fee basis and make one-third of some amount
12 that is going to be in their pocket, and between a Legal
13 Service attorney on salary that is going to go out and is
14 going to get the same salary whether they get an attorney fee
15 award or not and even to that agency, when that agency is
16 going to -- if they get that money, it's going to be for time
17 expended on the case and may end up, if they are able to
18 retain it.

19 I know that there's a provision here that seeks to
20 take that away from them and distribute that more broadly, but
21 if they're able to retain it, then that goes back into the
22 operation itself and isn't going into the pockets of the

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1 private attorneys.

2 I think that there's a difference there in terms of
3 profit. You have a very different profit analysis in a
4 private law firm and a Legal Service entity.

5 CHAIRMAN UDDO: You're not saying that a paid, a
6 salaried associate, could go out and solicit and not be
7 violating the rules because he's a salaried associate?

8 MR. HAWLEY: In a private law firm?

9 CHAIRMAN UDDO: In a private law firm.

10 MR. HAWLEY: No, what I'm saying is what Premis
11 says. What Premis says is that there is a different between a
12 for-profit operation and a Legal Service entity.

13 CHAIRMAN UDDO: But Premis didn't really have the
14 facts of a fee-generating case or a case where there might be
15 a fee-shifting statute or a contractual provision that
16 attorney's fees would be paid, did it?

17 MR. HAWLEY: That's true. That issue has not been
18 directly addressed and what I'm saying here is that I can't
19 tell you that absolutely -- I'd be citing you the cases that
20 say that this is absolutely improper.

21 I'm telling you that I think that what this does is
22 over reach. The thrust of what I'm going to say here

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1 repeatedly and really directly is number one, I mean, I
2 understand the concern here about making sure that the funding
3 is not abused. You have auditing concerns and you have all
4 kinds of legitimate concerns as a third-party funding source.

5 The problem that I have and that will come up
6 repeatedly is the fact that it seems like we're going too far
7 or you're going too far or that this bill goes too far, and
8 that's probably the correct characterization.

9 This bill goes too far in trying to protect those
10 interests that you have, in that there's a much more well
11 balanced way of doing it that doesn't interfere in the
12 representation taking place.

13 Because of the fact that you are a funding source,
14 you are a third party, and both the California and ABA rules
15 that I cite hereafter make it very clear that a third party,
16 no matter how much you may be funding the litigation or the
17 representation, can't interfere with that.

18 You are in good company with insurance companies,
19 labor unions and a lot of other sources that fund litigation,
20 but can't control it. What we have here is a real effort--
21 and my concern is that the effort here is getting beyond the
22 legitimate concern to make sure your funding is -- that the

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1 funds are appropriately used, into controlling the
2 representation, that certain a kind of people get represented
3 and a certain kind of people don't; that a certain kind of
4 claims are brought and a certain kind of claims aren't; that
5 attorneys are precluded from taking certain cases for reasons
6 that I fear are political.

7 That's the concern. I mean, you certainly have a
8 right to say, I think, that funds can be used for certain
9 purposes and not and to certainly assure that they are used
10 for appropriate purposes, but we also have to remember that
11 the attorneys and the Legal Service entities have a mandate to
12 provide representation.

13 My ethics concerns arise when I start seeing
14 attorneys put in the dilemma of having, you know, somebody
15 else dictate to them what they can and can't do in a way that
16 creates conflicts with them under the ethics codes.

17 CHAIRMAN UDDO: You're going to probably have to
18 stand on your written submission for most of the rest of this
19 because of our time constraints, but I would like to see if
20 there are any other questions from the committee.

21 MR. DANA: My feeling is that this is of great
22 interest to me and I would yield all my time to let him

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1 summarize his point.

2 MR. HAWLEY: I will move very quickly, if you'd
3 like.

4 CHAIRMAN UDDO: You're going to have to. It's
5 strictly a matter of I've got more people than I've got time
6 to do it in.

7 MR. HAWLEY: Oh, I understand. I understand. I
8 think we have addressed the procedural -- no, that was
9 solicitation.

10 Procedural safeguards, this is an important issue.
11 You have here this requirement that this written statement of
12 facts and various things be reduced in writing at the various
13 outset.

14 My concern here is that you're requiring attorneys
15 to take statements from clients, put them in the file. They
16 are potentially discoverable. Granted, this may be intended
17 to be a bare bones kind of statement of information.

18 The problem is that an attorney is being told to
19 take material down from a client that may end up being
20 discoverable and, actually, is contemplated to be openly
21 discoverable.

22 MR. KIRK: It's supposed to be. It is, in fact,

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1 discoverable.

2 MR. HAWLEY: That's the problem that I have because
3 I, as a lawyer, do this all the time. I take statements from
4 my clients and I decide early on as to whether that's going to
5 be discoverable or not by making it either a signed statement
6 or a function of work product, because it's in the form of
7 notes.

8 What you are requiring is that these people give
9 signed statements that may well -- that will be, in fact--
10 discoverable to the other sides.

11 MR. KIRK: But it's not just notes. It's a
12 carefully prepared thing by you, the lawyer, isn't it?

13 MR. HAWLEY: What I prepare?

14 MR. KIRK: Yes. You are carefully preparing what
15 the basis is for the complaint.

16 MR. HAWLEY: Well, see, that's the -- it takes away
17 my discretion to decide and that's the problem that I have
18 here. The lawyer needs to have some discretion to decide what
19 form of discoverable material he or she is going to allow to
20 be there. Now, they are having this aspect taken away.

21 MR. DANA: Mr. Chairman?

22 CHAIRMAN UDDO: Yes, Mr. Dana?

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1 MR. DANA: When is, in any attorney/client
2 situation, when the client comes into your office and gives
3 you a statement, if you prepare a statement and he signs it
4 and it's a statement to you, why is that discoverable, ever?

5 MR. HAWLEY: There are -- under California's
6 Evidence Code --

7 MR. DANA: If you can release that statement --

8 CHAIRMAN UDDO: Let him answer.

9 MR. HAWLEY: If you have taken signed statements,
10 particularly statements under penalty of perjury, that becomes
11 a discoverable document.

12 MR. DANA: Why isn't --

13 MR. HAWLEY: It's not necessarily work product.

14 MR. DANA: Why isn't it a communication from the
15 client to the attorney for purposes of providing legal
16 services? Why isn't that the essence of an attorney/client
17 communication?

18 MR. HAWLEY: That's true. It would be.

19 MR. DANA: Well, then, why is it discoverable?

20 MR. HAWLEY: It would be discoverable either through
21 the discovery procedure or if it's submitted to the -- as is
22 contemplated in the Act here.

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1 MR. DANA: Oh, it would be in this Act, no question.
2 My concern is I thought the reason we had an attorney/client
3 privilege was to encourage a client to tell it all.

4 MR. HAWLEY: Of course.

5 MR. DANA: And communicate in every way. Now, all
6 of a sudden, if you're talking to a Legal Services attorney,
7 you're talking to the other side.

8 MR. HAWLEY: Right.

9 MR. DANA: So, what we have done is created second
10 class lawyers and second class clients when dealing with each
11 other, because everything that happens goes right to the other
12 side.

13 MR. HAWLEY: Potentially, that's true. I mean, I
14 don't think this requires going that far at this point, what
15 is proposed here. But it again gets back to the fact that
16 it's doing more than is necessary. I mean, we are, in fact,
17 creating second class kinds of lawyers and second class kinds
18 of representation.

19 With respect to attorney's fees, my concern here is
20 the Rule 11 issue. Rule 11 is out there along with all of the
21 other rules and provisions that govern attorney conduct. They
22 apply to everybody equally. They have to.

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1 Here we have my greatest concern, that you have
2 someone other than a judge potentially deciding Rule 11
3 issues. You have the President of the Corporation deciding
4 that there may or may not have been a Rule 11 violation.

5 My experience is that Rule 11 is litigated
6 extensively. It may be that my experience here in San
7 Francisco is because William Schwarzer, a District Court
8 Judge, is an expert who has now left to go to Washington. He
9 was an expert on Rule 11 and there was a lot of litigation
10 here.

11 But I have seen how Rule 11 applies and I would be
12 terribly concerned that someone other than a federal judge,
13 going up through the Circuit Courts, would be able to impose
14 any kind of sanction even akin to a Rule 11 sanction or make
15 that finding outside of the judicial system.

16 CHAIRMAN UDDO: I've got to stop you, Mr. Hawley.
17 We are thoroughly out of time here.

18 MR. HAWLEY: Okay. In conclusion, I will just say
19 that I submit this. If there are further questions or if you
20 want further resources that I have available, I'd be happy to
21 submit them.

22 CHAIRMAN UDDO: We have another hearing in Chicago

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1 and I've asked all the members of the committee if they have
2 any questions that we don't have time to present to you now,
3 that they submit them in writing and we'd ask that you'd
4 respond before the Chicago meeting.

5 MR. HAWLEY: Okay. Thank you very much.

6 MR. DANA: Thank you.

7 CHAIRMAN UDDO: Ms. Garvey, Joanne Garvey and Ann
8 Bartsch.

9 STATEMENT OF JOANNE GARVEY

10 MS. GARVEY: Thank you very much. My name is Joanne
11 Garvey and I am a tax attorney here in San Francisco and I
12 appreciate you taking me now, since we have a mild discovery
13 crisis of our own waiting back at the office.

14 I appear today before you in my role as the chair of
15 the American Bar Association Standing Committee on Legal Aid
16 and Indigent Defense, usually known as SCLAID.

17 Just ten years ago this week, in my then role as the
18 President of the Bar Association of San Francisco, I joined
19 with more than 100 bar leaders from all over the United States
20 to participate in the ABA-sponsored march on Washington to
21 save the Legal Services Corporation.

22 I'm proud to say that that effort of the organized

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1 bar is credited with playing a substantial role in defeating
2 the then-proposal to eliminate the Corporation.

3 Since that time, the organized bar has continued to
4 vigorously advocate for the continuation of an effective and
5 well funded national Legal Services program. The bar has also
6 put its money where its mouth is. It has redoubled its
7 efforts to create and increase resources for Legal Services.

8 IOLTA, the interest on lawyer trust accounts, which
9 Ann will be talking about, for example, is expected to provide
10 more than \$100 million this year for civil Legal Service
11 programs for the poor.

12 Informal bar-sponsored pro bono programs have
13 increased in number and scope to the point that at least
14 140,000 attorneys are now enrolled in them. I'm very proud to
15 say that my own firm had more than 155 lawyers last year who
16 contributed over 20,000 hours of pro bono time.

17 Unfortunately, despite these achievements, we don't
18 find ourselves today in a position that was much different
19 than we were in ten years ago. Recent legal needs studies
20 indicate that we're still only meeting about 20 percent of the
21 legal needs of the poor.

22 While the corporation has continued to exist, there

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1 has still not been a reauthorization bill passed by Congress.
2 I believe that the views of the American Bar Association on
3 reauthorization proposals have often been stated and are well
4 known.

5 Therefore, I will not go into them in great detail
6 here, but I'd like to provide for the record and I have made
7 available to Mr. Boehm copies of our recent testimony before
8 the House Subcommittee considering the Corporation's
9 reauthorization.

10 This testimony, incidentally, includes a resolution
11 unanimously adopted by our American Bar Association House of
12 Delegates last August. The resolution states our unequivocal
13 opposition to the passage of legislation such as last year's
14 McCollum-Stenholm proposal. We have been joined in that
15 position by some hundred bar associations and foundations
16 throughout the United States.

17 I'd also like to have included in the record a
18 letter sent by ABA President John J. Curtin, Jr., to members
19 of the LSC Board on September 20, 1990.

20 As Mr. Curtin suggests, the board, in considering
21 reauthorization proposals, will naturally want to examine
22 whether those proposals further the goals of the Legal

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1 Services Corporation Act.

2 In our view, the 1991 McCollum-Stenholm proposal
3 does not meet those criteria. Despite some changes from last
4 year, it still would restrict the use of non-LSC funds, place
5 program attorneys and attorney board members in conflict with
6 their ethical responsibilities, create obstacles that are
7 applicable only to low-income persons in obtaining
8 representation and access to forums for the resolution of
9 their disputes, deprive the poor of opportunities to assert
10 substantive rights, divert scarce resources and destroy local
11 control in current effective Legal Services delivery systems.

12 As lawyers, we are particularly concerned about a
13 new provision of the bill, which attempts to create a
14 statutory definition of the attorney/client privilege.

15 This definition departs from the generally accepted
16 standards in this area and would place lawyers representing
17 the poor, whether on a staff, pro bono or adjudicary basis, in
18 a difficult ethical position.

19 A memo on this subject from the American Bar
20 Association Center on Professional Responsibilities is
21 included with the materials I have submitted for the record.

22 We by no means suggest that there should be no

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1 changes in the Corporation's authorizing legislation. For
2 example, we'd recommend an amendment to sharply increase the
3 authorized funding level.

4 A figure of at least \$750 million would establish,
5 as a goal, the obtaining of minimum access for the indigent;
6 that is, two attorneys for every 10,000 poor people. It has
7 been ten years since that goal was obtained.

8 We would also support an amendment which could
9 ensure that non-LSC funds can be used for the purposes for
10 which they are intended, not restricted to the purposes for
11 which the LSC funds may be used.

12 We also hope that you will support in the
13 reauthorization measure the inclusion of the current
14 appropriations rider regarding the composition of local
15 governing boards.

16 It provides that the majority of boards of Legal
17 Services programs shall be attorneys appointed by bar
18 associations. This provision has now been in effect for more
19 than five years. It has worked well both in providing more
20 bar involvement and in additional financial and substantive
21 resources.

22 I would like to take a small moment of personal

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1 privilege to thank the board for its recent and renewed
2 efforts to join with us in attempting to try to make Legal
3 Services for the poor better, more accessible.

4 We appreciate very much the visits by the members of
5 the board and the attendance by the President of the
6 Corporation, the appointment of a liaison to our particular
7 committee, and your efforts in working with us on the joint
8 monitoring standards.

9 I thank you very much. I again do apologize because
10 I've got to run before the court whacks me with sanctions.
11 Thank you.

12 CHAIRMAN UDDO: Thank you, Ms. Garvey.

13 MS. BARTSCH: Do I get to respond to your questions?

14 MS. GARVEY: Absolutely.

15 (Laughter)

16 STATEMENT OF ANN BARTSCH

17 MS. BARTSCH: I will also be brief, Mr. Chairman.
18 My name is Ann Bartsch. I am the chair of the American Bar
19 Association's Commission on Interest on Lawyers Trust
20 Accounts. We've been a separate ABA entity since 1986 and I
21 should note for the record that we're honored to number among
22 our current nine members Howard Dana of Maine.

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1 I'm also here today on behalf of the National
2 Association of IOLTA Programs which is the independent entity
3 made up of the 50 or so current IOLTA programs existing across
4 the country and their staff and board members.

5 In my own professional life, I am the Director of
6 Member Services for the Oregon State Bar and General Counsel
7 to the Oregon Law Foundation which operates Oregon's IOLTA
8 program.

9 For the past ten years, I've been actively involved
10 with the creation and administration of IOLTA programs and
11 also court civil filing fee surcharge programs to benefit
12 Legal Services in two states, Minnesota and in Oregon.

13 My comments today are just a brief followup on
14 Joanne's remarks on Section 1010(c) of the Legal Services
15 Corporation Act.

16 As she indicated, it is the position of the ABA that
17 this section should be amended to remove the existing
18 restrictions on the use of non-LSC funds, to provide
19 affirmatively that non-LSC funds, including IOLTA funds, may
20 be used by the recipients for the purposes for which they are
21 provided as determined by the persons or entities who provide
22 them.

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1 Since the last reenactment of the LSC Act in 1977,
2 this non-LSC funding for Legal Services programs has grown
3 exponentially. In 1981, federal funding represented over 95
4 percent of the budgets for local programs.

5 Today, that figure is approximately 68 percent.
6 There are many locations in this country where LSC funding
7 actually makes up less than 50 percent of the budget of the
8 local program.

9 This did not occur by accident. It was a direct
10 result of purposeful action by local state and national bar
11 leaders, public officials and other concerned individuals to
12 supplement the diminished scheduled resources available to
13 meet the pressing need for civil legal aid during the last
14 decade, IOLTA is the best example of the results of those
15 efforts although it's by no means the only one.

16 As I indicated, there are now 49 state programs and
17 a program in the District of Columbia. My written testimony
18 includes a chart that summarizes the amounts that have been
19 collected in each of those states, where we expect to be this
20 year, the type of program we have in each state.

21 I would just note that these funds are separately
22 administered in each jurisdiction by an independent body which

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1 often includes community representatives as well as lawyers,
2 which is charged with expending those IOLTA funds in light of
3 that state's needs and priorities.

4 From the beginning, each of these programs has had,
5 as its highest priority, the provision of civil legal
6 assistance. In 1990, IOLTA programs made nearly \$124 million
7 in grants for law-related public purposes.

8 Of that total, my estimate is that over \$100 million
9 was granted to programs providing civil legal services to the
10 poor generally and approximately 86 million going directly to
11 programs which are also LSC recipients.

12 So, collectively, we have become -- and we expect to
13 remain -- the second largest source of funding for civil legal
14 services in the United States.

15 I would just note briefly that the ABA has recently
16 reaffirmed its support for this system of local programs and
17 for the local funding decisions they make in the face of
18 increasing challenges or efforts that we are seeing in
19 particularly state legislatures to divert those funds away
20 from the boards which are making the grants now toward other
21 public, constitutionally or statutorily mandated services such
22 as indigent defense. So, there is a threat to IOLTA from that

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1 direction, as well.

2 In any case, we would hope that Congress, as it
3 considers reenactment of the Legal Services Corporation Act,
4 in light of the experience of the last ten years, would
5 recognize and respect the work of nonfederal funders of Legal
6 Services during that period by amending section 1010(c) to
7 allow LSC recipient programs to use all non-LSC funds for the
8 purposes for which they were provided, subject only to those
9 restrictions imposed by the persons or entities who provided
10 them.

11 Congress retains the right to determine what
12 activities may be prohibited using LSC funds. Other funders,
13 whether private charities or state government agencies or
14 IOLTA programs, have the same right to determine how their
15 funds are used.

16 We, of course, oppose the version of the
17 reauthorization legislation on this subject that's contained
18 in the McCollum-Stenholm bill this year, that's section 9 of
19 H.R. 1345 in only one respect, and I stress only one respect.

20 It's superior to the existing language in that it
21 would finally do away with the anachronistic and, to my mind,
22 illogical, distinction in the current Act between the use of

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1 public and nonpublic or other funds.

2 However, like the previous versions of McCollum-
3 Stenholm, this version provides that funds received from any
4 source other than the corporation including IOLTA may not be
5 used by LSC recipients for any purpose which the Act might
6 prohibit.

7 The effect of this provision is to remove the
8 ability of local or state IOLTA boards to use their funds to
9 provide services which are necessary and appropriate in their
10 judgment, through grants to local LSC recipients, which they
11 know and trust to provide those services effectively and
12 efficiently.

13 If LSC Act restrictions were ever imposed through
14 this legislation, it would, of course, still be open to us, as
15 IOLTA funders, to organize and/or to funds other programs in
16 our areas to carry out those services. The services can still
17 be provided.

18 In response, I guess, to a question Mr. Kirk had
19 this morning, I would say: Why should it be necessary for us
20 to do that? The waste of the scarce resources available to
21 the entire civil legal services system, which are just
22 inherent in setting up duplicate programs, it just seems to me

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1 to be unnecessary.

2 Also, I, as a local funder of programs, want to be
3 able to deal with the programs in my area that we have worked
4 with over the years. I believe the Legal Aid Program in
5 Portland, Oregon is over 50 years old. The Oregon State Bar
6 and the Oregon local bar in the area have been working with
7 that program for all that length of time.

8 We want to be able to continue to do so, providing
9 what we can to supplement the resources the federal government
10 can provide in order to make the services available locally
11 that we know are necessary, so that would be my response.

12 For all these reasons, the ABA and its constituent
13 entities, including SCLAID and the IOLTA Commission, strongly
14 oppose the passage of this legislation which would, in the
15 words of the ABA's August 1990 resolution, "restrict legal
16 services and pro bono programs in their use of IOLTA funds,
17 state and local government monies and private contributions."

18 We look forward to working with you and with the
19 Congress to develop legislative language which will take us in
20 the opposite and correct direction.

21 Thank you and I'd be glad to respond to any
22 questions.

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1 CHAIRMAN UDDO: Are there questions? Mr. Witgraf.

2 MR. WITGRAF: You were present this morning, I
3 think, when one of the speakers talked about the possibility
4 of private practitioners doing more to support the provision
5 of civil legal services for the poor. It was either his word
6 or Mr. Dana's words.

7 Is there anything in the reauthorization legislation
8 that you see that might be included and might be appropriate
9 to stimulate more participation, both financial and just with
10 the provision of services on a so-called pro bono basis, in
11 that legislation?

12 Is there something that ought to be included in that
13 legislation that's going to help stimulate the provision of
14 more support, both financial and service?

15 MS. BARTSCH: I haven't got a quick answer to that
16 question, Mr. Witgraf, but it's a good one. I'd be happy to
17 think about that and get you a response, if I could.

18 I would say, as a matter of fact, that I'm aware
19 that there are places around the country where the kind of
20 system that the gentleman this morning was describing, are
21 being tried on a voluntary kind of basis.

22 In my own State of Oregon, for example, the programs

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1 are putting together a fund-raising effort that is targeted
2 toward major law firms in exactly the way that he describes,
3 asking them to voluntarily contribute a portion of their
4 earnings toward Legal Services programs.

5 MR. WITGRAF: It just seems to me that we, as a
6 board, and, in turn, the Congress and the national
7 administration, on the one hand, realize the relatively small
8 amount of federal money that's put forth to support civil
9 legal services is always going to be just a very small
10 proportion relative to the need so that, in turn, we all have
11 some responsibility to stimulate the private sector.

12 While much of the discussion today was focused
13 either on House Resolution 1345 or the Frank subcommittee
14 bill, I think we're interested in looking even beyond those
15 two proposals to what more, if anything, should be done,
16 either statutory or nonstatutory, to stimulate more monies and
17 more services for civil legal services.

18 So, certainly, as Mr. Uddo has indicated, we will be
19 convening in Chicago in two weeks, and by the end of this
20 month, hopefully, the board will be making our suggestions or
21 recommendations to the House Judiciary Committee.

22 If you've got some thoughts along those lines, we'd

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1 appreciate receiving them over the course of the next two
2 weeks.

3 MS. BARTSCH: We will see what we can do. I
4 appreciate your support for -- your solicitation of our
5 support in helping you in that effort.

6 I would just say briefly, just to bring it all back
7 around, I guess, that one thing that would be absolutely
8 counter productive toward an effort to getting attorneys to
9 contribute voluntarily, is including a provision that every
10 penny that they contribute to local Legal Services programs is
11 imprinted with LSC restrictions.

12 CHAIRMAN UDDO: Yes, Mr. Kirk?

13 MR. KIRK: I think a similar question may be: Would
14 anything coming from the Legal Services Corporation be taken
15 kindly by local bars to stimulate them for more volunteerism
16 or would it just anger them?

17 I mean, the only thing I can think of is perhaps a
18 revenue-sharing, you know, we put this up and you come back
19 and come up with something else.

20 The other comment I have is that I come from a local
21 bar association. For 25 years, it's had 100 percent
22 participation in a Legal Aid program, with two cases a year or

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1 money or what-have-you, so it does work.

2 MS. BARTSCH: Thank you.

3 CHAIRMAN UDDO: Mr. Dana?

4 MR. DANA: Ann, to what extent do you feel that the
5 LSC's insistence that 12-1/2 percent of our funding go to
6 promote private bar involvement has contributed to the
7 explosion of private bar involvement in Legal Services since
8 that first 10 and then 12-1/2 percent requirement came on the
9 books?

10 MS. BARTSCH: My own personal opinion is that, as
11 you say, Howard, first the 10 percent guideline and then the
12 12-1/2 requirement, have had overall a salutary effect.

13 I've been involved with the private bar involvement
14 since the beginning of those efforts in the early 1980s on an
15 organized basis.

16 And I think that it has been tremendously important
17 from the point of view, really, educationally of bringing
18 lawyers who otherwise would not have had much knowledge
19 through their own professional lives of what is involved in
20 making this kind of representation available to clients, of
21 getting them educated into exactly what is involved in these
22 cases, and how much of a specialty, quite frankly, it can be.

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1 To me, organizing private -- whose job is among
2 those at the state bar level to organize support on behalf of
3 programs, the private bar involvement requirement has been a
4 distinct advantage in helping me recruit people who are then
5 knowledgeable and able to become advocates on behalf of our
6 programs.

7 CHAIRMAN UDDO: Is that it?

8 MR. KIRK: Yes.

9 CHAIRMAN UDDO: I have one question. You address
10 the general provision of limitations on non-LSC funds not
11 being used for restricted purposes. But there is a separate
12 section, both in McCollum-Stenholm and courses talked about
13 separately and that is, the restriction on the use of non-LSC
14 funds, including IOLTA funds, for abortion litigation.

15 Do you have a separate opinion on that or is that
16 the same opinion, that you don't think there should be
17 restrictions in that regard, either?

18 MS. BARTSCH: My own opinion is that there should
19 not be restrictions. I guess I'll leave it at that.

20 CHAIRMAN UDDO: Are you at all concerned that that
21 threatens confidence in and support for IOLTA programs,
22 considering that most of them are voluntary or opt-out

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1 programs and considering that we saw what happened to the ABA
2 when the abortion issue got involved with ABA matters, split
3 the ABA pretty much down the middle?

4 Are you concerned that people will start opting out
5 of IOLTA programs or not voluntarily participating because of
6 the intensity and the controversy of that issue?

7 MS. BARTSCH: No, I'm not. I don't have that
8 concern because, again, I put my faith in the integrity and
9 the intelligence and, quite frankly, the political sagacity of
10 these local IOLTA boards.

11 I think it is extremely unlikely that, restrictions
12 or no restrictions, most IOLTA programs would actively go out
13 and ask their grantee programs to provide that kind of
14 representation. I don't see that happening on a national
15 level and, for that reason, my answer would be no.

16 CHAIRMAN UDDO: If it were apparent to you that it
17 would undermine support for IOLTA programs, do you think your
18 position and the position of your committee might change?

19 MS. BARTSCH: This is entirely speculative, but I
20 would think that, for example, if it proved to be politically
21 necessary to include in 1010(c) some kind of restriction that
22 stated that that kind of case and only that kind of case was

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1 considered to be so abhorrent that it could not be -- that it
2 should not be done with LSC dollars, then stick that kind of
3 restriction in 1010(c) and 1010(c) only without bringing in
4 all of the other restrictions that the Act might impose. In
5 other words, use a rifle, not a shotgun, if that one problem
6 is so abhorrent.

7 CHAIRMAN UDDO: I will allow, so that others won't
8 jump on the word that you used, abhorrent, let's just say
9 controversial, so intensely controversial.

10 MS. BARTSCH: Fair enough.

11 CHAIRMAN UDDO: Even though I might adopt that word,
12 though.

13 MS. BARTSCH: I wouldn't.

14 CHAIRMAN UDDO: You don't have another question, do
15 you?

16 MR. WITGRAF: Yes.

17 CHAIRMAN UDDO: You're going to really mess up my
18 schedule, but go ahead.

19 MR. WITGRAF: Ms. Bartsch, going back to Mr. Dana's
20 inquiry about the 12-1/2 percent private attorney involvement
21 required, which I believe is statutory through the
22 appropriations or the continuing appropriations process, what

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1 is your feeling as to the need --

2 If we go to reauthorization, as we're hoping the
3 Congress will, what's your feeling as to the need for that
4 requirement to be written into the law or not, bearing in mind
5 that in some cases, perhaps, particularly now that the bar has
6 been stimulated, in part, through that initiative, as you
7 indicated, what's the need to keep that in the law?

8 Or would it be better to allow flexibility so that
9 some parts of the country would be able to take that 12-1/2
10 percent and put it directly into the provision of Legal
11 Services through the grantee or the local project?

12 MS. BARTSCH: Here you are getting my own opinion,
13 not that of the American Bar Association, not even necessarily
14 that of the Oregon State Bar, but --

15 MR. WITGRAF: We are turning to you as an individual
16 expert. That's fine.

17 MS. BARTSCH: Sure. My own opinion would be that
18 flexibility is exactly what we need on that question. I would
19 not think it necessary at this point to put it into the Act,
20 frankly because we've had 10 years of experience.

21 In places where it works and works well, I think
22 programs and program boards would, by and large, voluntarily

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1 continue those efforts. In areas where it works less well, I
2 think it should be open to programs to demonstrate that fact
3 and perhaps use the resources in other ways than by strictly
4 complying with the percentage requirement.

5 MR. WITGRAF: Thank you.

6 CHAIRMAN UDDO: Thank you, Ms. Bartsch.

7 MS. BARTSCH: Thank you.

8 CHAIRMAN UDDO: Mr. James Head. If you would, just
9 identify yourself for the record, Mr. Head.

10 STATEMENT OF JAMES W. HEAD

11 MR. HEAD: Good afternoon. My name is James W. Head
12 and I'm the Executive Director of the National Economic
13 Development and Law Center, a national support center located
14 in Berkeley, California.

15 As you know, there are 16 national support centers
16 currently funded by the Legal Services Corporation, who
17 provide a variety of specialized services that promote quality
18 representation of the poor on issues of substantial
19 complexity.

20 Covering substantive areas ranging from consumer law
21 to law and education to housing to health law, national
22 support centers include the most important areas of Legal

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1 Services practice as well as the legal needs of special client
2 populations, like women and children, Native Americans, senior
3 citizens and veterans, to name a few.

4 I am here today not as an official representative of
5 national support, but as the director of a support center who
6 shares the common views of other center directors and staffs
7 about issues related to the reauthorization.

8 I would like to briefly comment on three issues
9 related to reauthorization.

10 CHAIRMAN UDDO: Could I just stop you for one
11 second?

12 MR. HEAD: Sure.

13 CHAIRMAN UDDO: That last statement confused me a
14 little bit. You are speaking on behalf of what you believe
15 the other support centers believe or has there been some
16 organized process of authorizing you to speak for them?

17 MR. HEAD: There is no organized process authorizing
18 me to speak for them.

19 CHAIRMAN UDDO: But you think that you have an
20 understanding of what other support centers want?

21 MR. HEAD: I'm fairly sure that I do, yes.

22 CHAIRMAN UDDO: Okay.

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1 MR. HEAD: The three issues I'd like to talk about
2 real briefly are: competitive bidding; private funds
3 restrictions; and lobbying and legislative advocacy.

4 While my comments are meant to convey a support
5 center's perspective on these issues, I must admit that it is
6 difficult to differentiate them from what you've probably
7 already heard or will hear from some of the field programs.
8 That's partly because I feel that the issues related to
9 support and the field are the same.

10 Additionally, I feel that I still have a fresh
11 memory of the nine years of field practice I had in Legal
12 Services as both a staff attorney and litigation director
13 before joining the law center in 1986.

14 To give some context to my remarks about competitive
15 bidding, private funds restriction and lobbying, I thought
16 that I would go back to a phrase that I heard in 1977 when I
17 joined Legal Services. That phrase was "equal justice and
18 representation under the law."

19 As I and others come before you to raise, discuss
20 and even in some instances, I think, debate these important
21 issues, I would encourage you to potentially use this phrase
22 as a test or at least part of a test to decide whether certain

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1 ideas that you hear about or have seen in the two versions of
2 the bill make sense for inclusion.

3 Let me first talk about competitive bidding because
4 I feel that it poses some serious problems for support
5 centers. One of the --

6 CHAIRMAN UDDO: Let me stop you again just for a
7 second.

8 MR. HEAD: Sure.

9 CHAIRMAN UDDO: You said you were going to address
10 competitive bidding and what else?

11 MR. HEAD: Competitive bidding, private funds
12 restrictions and lobbying and legislative representation.

13 CHAIRMAN UDDO: Okay. The reason I'm asking, I'm
14 going to ask the members of the committee if those are areas
15 you've got questions about, start formulating them now. I'm
16 going to stop you a little early to get the questions, so that
17 we get them in.

18 MR. HEAD: Sure.

19 CHAIRMAN UDDO: We feel that one of the real values
20 offered by support centers is the experienced staff of senior
21 people. Many of the services that my center offers have been
22 developed over a number of years.

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1 We feel the competitive bidding would affect the
2 current stability of support center staff and programs as
3 planning for future services and staffings would be difficult
4 in such an environment.

5 I want to make clear, though, that we, as support
6 centers, are not afraid of competition. My law center, which
7 is the only national legal nonprofit that offers legal
8 services and technical assistance in the economic development
9 field in the country.

10 The point I want to make is that we have been able
11 to develop this expertise by being able to rely on funding
12 from LSC yearly, knowing that if we were not performing as
13 expected, the process of monitoring and dialogue with LSC
14 would identify those problems, and that we could resolve those
15 in an early and timely manner.

16 This has helped to maintain, we feel, stability for
17 the programs and for the center. I should note here that that
18 statement is not particularly a statement I would have made in
19 the past. As you may be well aware, dialogues between the
20 Legal Services Corporation and the field programs have not
21 been what we all had wanted them to be.

22 But I would like to commend Mr. Martin, who has made

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1 a point of going around to the different field programs and
2 who visited our support center yesterday. I feel that the
3 visit was one that we enjoyed and that was refreshing because,
4 besides Legal Services monitors, we have not had anyone from
5 the Legal Services Corporation visit us since the late 1970s.

6 I want to commend Mr. Martin for initiating that
7 process and to encourage him to continue to move forward with
8 a meaningful dialogue between support centers, the field and
9 LSC.

10 We feel that any decisions on competitive bidding
11 should clearly support the concepts of equal justice and
12 representation for the poor. While I believe in the efficient
13 and effective delivery of legal services, this committee must
14 remember that we are dealing here with legal services for the
15 poor, which can sometimes be a complex and quite consuming
16 venture.

17 Each local community has different and distinct
18 needs. We're not talking about widgets here, but providing a
19 service which will potentially have a lasting impact on
20 people's lives, whether through representation at a divorce
21 proceeding or a class action or consumer fraud case.

22 Most national support centers cannot provide full

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1 and adequate representation without LSC money. That's why we
2 feel that private funds restriction also is a very serious
3 problem for us.

4 The centers have received minimal funding increases
5 since 1985 and the total LSC funding for support centers is
6 less than one-half of what it was in 1976. Because of this,
7 centers have been forced to seek private and public funding to
8 maintain its core of experienced people.

9 Legal Services funding is only 35 percent of my
10 center's total funding. Other private and public funding for
11 my center has helped to pay for the shared expenses and
12 overhead costs, has helped to broaden the experience and
13 expertise of our staff, and has allowed us to develop new
14 strategies for Legal Services advocates and to support them in
15 the field.

16 CHAIRMAN UDDO: Can I interrupt you for a second?

17 MR. HEAD: Sure.

18 CHAIRMAN UDDO: What percentage did you say was from
19 LSC?

20 MR. HEAD: Thirty-five.

21 CHAIRMAN UDDO: What are the sources, the other --

22 MR. HEAD: Other sources are the Ford Foundation,

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1 the State of California IOLTA Program, and other small
2 foundation grants.

3 CHAIRMAN UDDO: Thank you.

4 MR. HEAD: I believe that private funds restrictions
5 have a chilling effect on a support center's ability to obtain
6 other fundings. My experience has been that many foundations
7 will support specific projects and those projects usually
8 conform to foundation goals and guidelines.

9 However, those foundations have sometimes been less
10 than ready to provide funding where the restrictions by Legal
11 Services would have an impact on their money. It is my sense
12 that foundations are under 501(c)(3) restrictions which would
13 relate to the use of their fundings for the kinds of
14 activities that the Legal Services Corporation is concerned
15 about.

16 I speak mainly, for example, of the lobbying
17 restrictions. The foundation funds, in many instances, cannot
18 be used for those purposes. Even though many of those
19 foundations are ready to support Legal Services' causes, they
20 have, in my mind, serious difficulties understanding why what
21 they want their money to be spent for should be controlled by
22 another entity.

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1 We believe that Congress can and should describe how
2 funds that it wants to allocate should be used and that
3 programs receiving those funds should be able to show quality
4 work performed and account for the funds.

5 But what interest should Congress have in how funds
6 from other sources are being used? If the program can show
7 that those funds are being used for the purpose they were
8 intended, that should be satisfactory.

9 In talking about lobbying, I'd like to just briefly
10 reiterate that we have the same kinds of concerns as it
11 relates to a chilling effect. We believe that equal access
12 means that the poor should have the same ability in the arenas
13 that will get them their remedies as paying clients.

14 The existence of the lobbying requirements makes it
15 difficult, I think, for many programs because of the many,
16 many requirements that are upon us. This is true whether your
17 actions are targeted to Congress, to a federal agency, to
18 states or to local municipalities.

19 I'd like to give you just a brief example, which
20 shows how support centers have supported Legal Services
21 programs and how the idea of lobbying and legislative advocacy
22 would work.

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1 Under the Aid to Families with Dependent Children
2 Program, lump sum income rules, the family of an AFDC
3 applicant or recipient who receives a lump sum in one month
4 would become ineligible for AFDC for several months after
5 determined by a statutory formula.

6 The lump sum provision has caused serious problems
7 for many families who either receive no information about the
8 provision before they spend the lump sum or who exhaust the
9 lump sum on necessary living expenses before the ineligible
10 periods end.

11 The statute allows states to choose to shorten the
12 period of ineligibility to respond to family hardships. In
13 November of '88, the U.S. Department of Health and Human
14 Services disapproved a Tennessee proposal to adopt an
15 exception to the lump sum rule when the lump sum became
16 unavailable to the family for reasons beyond the family's
17 control.

18 Tennessee's proposal to define the exception broadly
19 would have benefited desperately needy families who are not
20 disqualified from AFDC. Tennessee requested a hearing and
21 clients from Legal Services programs in Tennessee moved to
22 participate in the hearing.

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1 On their request, a support center served as co-
2 counsel, providing substantial ongoing assistance, including
3 information on approved rules from other states, legislative
4 and administrative history materials and extensive oral
5 advice. In February of '89, on the eve of the hearing, HHS
6 capitulated and accepted the Tennessee rule with minor
7 changes.

8 I cite this example because I think that it is
9 important for the committee to know the types of things that
10 support centers do and to dispel the notion and the perception
11 that support centers, as well as field programs, are sort of
12 chasing in the halls of Congress, in the halls of state
13 legislatures, looking for a cause.

14 I think that those kind of examples are really,
15 truly, the kinds of legislative activity and the kinds of
16 lobbying activity that we involve ourselves in.

17 CHAIRMAN UDDO: Mr. Head, let me stop you a second.
18 It's a little more than half the time I was going to allot.
19 Let's see if I can force these guys to ask their questions
20 now. Do you have any?

21 MR. HEAD: I have a concluding statement, if you'd
22 like to --

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1 CHAIRMAN UDDO: I'm going to let you get to it. I'm
2 kind of just feeling them out here. All right, go ahead with
3 your concluding statement.

4 MR. HEAD: In conclusion, let me end where I began,
5 actually. Equal justice and representation for the poor means
6 making a full range of services available to those in need.
7 While the issue may sometimes be defined as a money or a cost
8 one -- that is, how much can we afford to pay for the poor to
9 have representation? -- I feel we must avoid the notion and
10 appearance that justice and legal representation comes first
11 and second class, depending on who can pay.

12 As you and members of Congress and the LSC staff
13 think through these important issues related to
14 reauthorization, I would ask that you keep in mind the equal
15 justice and representation test and that you examine very
16 closely any ideas or suggestions that don't seem to pass that
17 test.

18 Thank you.

19 CHAIRMAN UDDO: Thank you very much, Mr. Head. Yes,
20 Mr. Kirk.

21 MR. KIRK: I was impressed with your comments on the
22 lobbying and the efforts with the payments. If you hadn't

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1 done that, was there anybody else that was doing the same
2 thing that the Legal Services Corporation was doing?

3 MR. HEAD: No, if we had not done that, there was no
4 other constituency that was representing the Legal Services
5 client constituency in that case, which is why they actually
6 ended up going to the Legal Services program in the first
7 place.

8 MR. KIRK: Well, I'm the newest guy on this
9 committee, so I'm learning a lot. Is there -- Is that typical
10 of what's done? Are there some real hot topics out there that
11 we're not hearing about that -- you mentioned the mom-and-pop
12 type thing here.

13 MR. HEAD: Well, I guess I'll respond in saying I
14 think there are a range of topics out there. What is
15 typically the case -- let me come from another aspect of it.

16 The work that we do in our law center is in the
17 economic development field. Economic development, as a way of
18 revitalizing communities, both in the urban and rural areas,
19 is a real growing field and a real hot topic.

20 However, few of the nonprofit structures and the
21 nonprofit entities that are working in this area are really
22 focusing in on Legal Services eligible client issues. I'll

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1 cite California as an example.

2 In California, approximately 75 percent of the
3 affordable housing that's built here is now being built by
4 nonprofit organizations; however, in California, also, the
5 definition of affordability has a slight bent to it because of
6 the high cost of housing here.

7 What we have found is that Legal Services programs
8 have been the primary place that client-eligible groups and
9 organizations have gone to, to try to get those issues
10 addressed; otherwise, they tend to get left out of the stream
11 in terms of having those before legislative bodies, before
12 local municipalities.

13 So, the programs have played I think a real
14 important and key role in making sure that there are a broad
15 range of issues or benefits when they come down the pike, that
16 they are sensitive to the needs of low income clients.

17 Any other questions from the committee? You can,
18 Mr. Witgraf.

19 (No response.)

20 CHAIRMAN UDDO: Thank you, Mr. Head.

21 MR. HEAD: Thank you.

22 CHAIRMAN UDDO: I'm sorry. Any questions from other

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1 board members?

2 MS. LOVE: Is self help included in your program?

3 MR. HEAD: Most local programs have some components
4 of self help. We -- the support center that we work with, the
5 kinds of cases that we take, the kinds of things that we do,
6 are designed to assist communities, to assist groups and
7 organizations, in developing the ability to basically solve
8 their own problems. That's how I define self help. I don't
9 know if that is what was meant by your question.

10 MR. KIRK: Self help on legal things?

11 MR. HEAD: Self help on legal things, again, I think
12 that most support centers try to provide for local field
13 programs information through packets, through trainings, that
14 will assist them in designing local self help concepts of
15 ventures for programs.

16 My sense about the notion of self help is that the
17 range that we try to get to, I think, is the idea that in many
18 instances, you can help people to understand the nature of
19 their problem. You're not going to make them lawyers.

20 You're not going to make them clearly sort of self
21 sufficient, but you can certainly assist them in developing a
22 mechanism for responding to problems that will take some of

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1 the burden off of Legal Services programs and that's been the
2 real effort, I think, around that.

3 CHAIRMAN UDDO: Thank you, Mr. Head. Peter Reid?
4 Mr. Reid, if you'd identify yourself for the record and, also,
5 if there are some discrete points that you're going to be
6 addressing, if you'd let us know those in advance so that
7 folks can start thinking about their questions without having
8 to wait to see if you're going to raise that issue.

9 STATEMENT OF PETER REID

10 MR. REID: Thank you. My name is Peter Reid. I'm
11 the Executive Director of the Legal Aid Society of San Mateo
12 County. I appreciate the opportunity to come and meet with
13 you. I hope we can both learn something from the experience.

14 I've been Director of the Legal Aid Program in San
15 Mateo County for almost 20 years now. San Mateo County is the
16 county immediately south of San Francisco. If you flew into
17 San Francisco International Airport, you were in San Mateo
18 County.

19 It has generally had a reputation in California and
20 around as being an extremely wealthy county. Sometimes in the
21 past, people wondered why there was a Legal Aid Program in the
22 county since it did have such a high average income.

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1 Over the last 10 or 15 years, the demography of the
2 county has changed considerably. It is now considered to be
3 perhaps one of the most ethnically diverse counties in the
4 country.

5 There has been a large immigrant population which
6 has come into the county, both from South America, from the
7 Far East, from the Pacific Islands. It now has a much larger
8 low income population as a part of that immigration and
9 immigration from other areas.

10 Over that same period of time, my program has gone
11 from a staff of about 50 members with 20 to 25 attorneys to a
12 staff of 15 with eight attorneys. We have, however, over that
13 same period of time, managed to maintain a fairly experienced,
14 high quality group of advocates on our staff.

15 One of the main aspects of the legislation you've
16 been looking at I wanted to focus on is restrictions on
17 lobbying, legislative work and administrative work because
18 during that time, as San Mateo County has struggled to deal
19 with this changing population, we have become one of the
20 primary resources in that county for people experienced in
21 housing problems, in government benefit programs as they
22 affect people who often come in for short periods of time, get

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1 on some kind of aid, get themselves stabilized and then get
2 jobs and enter the work force.

3 And we are often called by city council people,
4 members of the board of supervisors, the Health and Welfare
5 Department staff, to meet with them to look at these issues
6 that they're facing and which they are finding extremely
7 difficult to work with and which we now have a fairly
8 significant historical body of information and primarily the
9 only body in terms of the low income clients that we
10 represent.

11 The McCollum bill, as I understand it, would in
12 large measure prohibit most of that and would make it
13 extremely difficult to represent people, even where there is
14 an individual client, where there may be some very complex
15 long-range issues in terms of how a city is going to go about
16 meeting its housing needs over the next one year as well as
17 the next 10 or 15 years.

18 The restrictions that have been placed on Legal
19 Services in terms of legislative and administrative
20 representation in the past have been difficult. We have been
21 able to live with them.

22 They've been, in large measure, paperwork

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1 restrictions -- keeping detailed records, keeping track of
2 things and so forth. As the staff has diminished and their
3 support staff has diminished, as well, keeping some of those
4 records has also become difficult.

5 But to completely wipe out this entire area of
6 representation, I would suggest would be a grave disservice to
7 our clients and to the entire community which is trying to
8 grapple with some very, very difficult problems.

9 I have one or two examples of the kind of thing
10 we've been involved with recently, just to give you a sense of
11 how it operates.

12 One of our attorneys has over 20 years experience in
13 dealing with housing issues. As Mr. Head had indicated, in
14 California, a great deal of the development of affordable
15 housing comes in the nonprofit sectors and/or through various
16 redevelopment programs.

17 The attorney on our staff meets regularly with
18 members of the planning commission, with city council people,
19 as they are developing their housing plans for the community.
20 Each community will have a general plan, dealing with a number
21 of areas, one of which will be an element dealing with
22 housing.

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1 They solicit information assistance on how our
2 clients are dealing with their housing problems. They are
3 very severe housing problems in this county, where a one
4 bedroom apartment may rent for \$800 to \$1,000, which is far
5 above the AFDC standard for a family of four, so that is a
6 serious problem.

7 He had a similar case recently where we were
8 contacted by a number of female heads of household who had
9 been living in a motel for several months. They were either
10 on AFDC or they had low paying jobs, paper route kind of jobs,
11 things like that.

12 They hadn't been able to afford to get the first and
13 last month's rent to try to get into a place, so they were
14 paying very high daily amounts of rent, because they never
15 were able to get enough to move into a place which would have
16 a lower overall rent.

17 The owner of the hotel was moving to destroy the
18 hotel and put up some -- an office building there. They had
19 essentially no alternative in terms of their living situation.
20 They couldn't get into any other place.

21 We represented them both in terms of the potential
22 eviction itself and spent a great deal of time with the city

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1 council dealing with the displacement problem.

2 The city council, after several months, developed a
3 very helpful relocation provision as a city ordinance, which
4 allowed them and allowed the developer of the place, to pay
5 them some money to relocate them to get them into better
6 housing and still be able to go ahead and destroy the building
7 and put up the new building they were trying to get.

8 That took a considerable amount of time with the
9 city council, which was very interesting when working on the
10 proposal. They had seen these similar things before, and they
11 were keen and they were interested, and they wanted to find an
12 answer.

13 That was a successful situation which, through large
14 measure, beyond the simple day-to-day representation, was
15 going to affect both these people and a lot of other clients
16 who were in similar situations in these kinds of motels.

17 Similarly, members of our staff who work on
18 government benefit programs meet quarterly with the staff of
19 the county welfare department at the invitation of the welfare
20 department, to go over problems that we see on a regular basis
21 that are coming up in our representation that the county is
22 interested in knowing about, trying to get to the bottom of

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1 and trying to deal with.

2 MR. DANA: Mr. Chairman?

3 CHAIRMAN UDDO: Mr. Dana?

4 MR. DANA: Excuse me. One of my -- you're talking
5 about the restriction in Section 6 that would prevent a Legal
6 Services attorney from expressing his or her opinion to a
7 legislative or administrative body that was seeking it.

8 That's sort of the -- in the current legislation,
9 that's always been permitted. A request from a legislator was
10 not considered lobbying. It was an exception. It is an
11 exception at the present time.

12 Can you think of any other human being in this
13 society that Congress has said may not utter a word to a
14 governmental entity that is requesting that person's opinion?

15 MR. REID: Well, I haven't searched very far. I
16 don't know of any other instance where it happens.

17 MR. DANA: Isn't this almost unique? I can't think
18 of any other and I wondered if you could.

19 MR. REID: I don't know of any, no. I don't. I
20 think, as you say, it is very unique and particularly
21 surprising, I would think, where it is coming from a group
22 that has such a little voice in most of these areas, that is,

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1 the poor people.

2 So rarely are discussions around city councils,
3 board of supervisors, whatever, do they bring forward people
4 on behalf of low income clients and so rarely are the low
5 income clients themselves somehow able to get there.

6 MR. DANA: Do you think it's perhaps a reflection of
7 the fact that what -- well, let me withdraw that.

8 MR. WITGRAF: Mr. Reid, may I ask you to go into a
9 couple of areas that you really haven't been in, but I think
10 your perspective may be helpful in light of your experience as
11 the project director of a Legal Services grantee.

12 First, I'm wondering what, if any, value you see or
13 what, if any, utilization you now make of time keeping or time
14 reporting as the director of your staff of attorneys?

15 Second, I wonder if you could respond a little bit
16 to what benefits, if any, your agency has received from the
17 Corporation's monitoring, audit and compliance visitations in
18 the last two to four years and how, if at all, you think that
19 process might be improved?

20 MR. REID: In terms of the time keeping, we do keep
21 time records. We keep them for varying reasons. We do not
22 keep the kind of time records that most private law firms tend

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1 to keep in terms of hundred percent reporting of all time
2 spent.

3 We have found that we can meet most of the
4 requirements -- essentially, all of the requirements that I
5 know of -- that have been imposed on us by various funding
6 sources by maintaining specific time records as to activities
7 that are undertaken that might fall under one category or
8 another.

9 MR. WITGRAF: You are using it primarily as an
10 accountability tool, accountability to funding sources. Is it
11 a management tool or not?

12 MR. REID: It's a management tool in terms of
13 seeing, to some extent, how people are spending time on
14 particular areas. In a very limited way, we are a relatively
15 small program now, formerly, a relatively large program.

16 In terms of the ability to manage that size program,
17 I've found little need to spend a lot of time looking at time
18 records. It's pretty obvious to me how time is spent. I meet
19 with the staff regularly.

20 We have a staff meeting every week. There is very
21 little that goes on around there that I don't know about, that
22 the other attorneys don't know about, and that, essentially,

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1 the whole staff knows about.

2 MR. WITGRAF: Is there any correlation between the
3 record keeping that you're describing and the priority setting
4 that's done by you and your board?

5 MR. REID: Any correlation? There's always some.

6 MR. WITGRAF: What correlation is there?

7 MR. REID: There's always some, but it's not
8 designed to make that correlation, in some measure because,
9 for example, going on to the monitoring issue, one of the
10 things we've been criticized occasionally for was, for
11 example, we have a relatively low priority for consumer cases.
12 However, as a percentage of our number of cases, the consumer
13 cases are very large.

14 They lend themselves to that. They tend to be
15 advice only and they tend to be in areas that the private
16 attorneys are familiar with, so that the numbers and the time
17 are not directly correlated in terms of how we see it, as to
18 where it ranks in the priority scale.

19 But in terms of our setting priorities and saying,
20 "X amount of time is going to be spent only on this area," we
21 have not said that. I'm not sure what my board of directors
22 would want to do with that, but I don't think they would be

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1 very interested in that direct and tight a relationship.

2 MR. WITGRAF: What, if anything, can be done, then,
3 to improve the monitoring efforts that have come your way over
4 the last two to four years?

5 MR. REID: Well, I suppose the two factors that I've
6 seen -- as I say, I've been director for almost 20 years now
7 and I've seen 10, 12, 14 monitoring visits over that time--
8 and the single largest difference is that, at one point
9 earlier on in this process, the monitors tend to have a--
10 well, they weren't called monitors. They were called
11 evaluators or "somebody from the Corporation" or something
12 like that.

13 MR. WITGRAF: Would "technical assistance" be a more
14 acceptable euphemism?

15 MR. REID: Well, it tended to be more technical
16 assistance in terms of people often came with a considerable
17 amount of experience in doing the kind of things we do, and
18 they generally had very helpful and useful comments on what we
19 were doing well and what we were doing poorly.

20 The recent visits have tended to be monitoring with
21 a capital "M" and underscored in the sense that they are there
22 to go down a list and see, "Do you do this? Do you do that?"

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1 Do you do that?" for which there may very well be a use for
2 the Corporation, but not very much of a use for trying to make
3 a program better and improve what we're doing and get the
4 perspective of some outside people to come and look at what we
5 do, which in the past, I found very useful.

6 CHAIRMAN UDDO: Thank you, Mr. Reid. Any other
7 questions from the committee members?

8 (No response.)

9 CHAIRMAN UDDO: Board members?

10 (No response.)

11 CHAIRMAN UDDO: Thank you very much for your time.
12 Linda Jones. Ms. Jones, thank you for coming. If you'd
13 identify yourself for the record, we'd appreciate it. Also,
14 as I said to Mr. Reid, if there are some specific issues
15 you're going to be addressing in the legislation or the
16 reauthorization process, let us know that up front.

17 STATEMENT OF LINDA JONES

18 MS. JONES: My name is Linda Jones, and I represent
19 Concerned Women for America. I will be addressing the
20 abortion-related legislative and advocacy provisions in the
21 bill. My testimony is narrow on that issue.

22 Mr. Chairman, thank you for this opportunity to meet

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1 with you and your colleagues of the reauthorization committee
2 of the Legal Services Board. I am here on behalf of Concerned
3 Women for America of California, a nonprofit, nonpartisan,
4 educational organization representing thousands of women and
5 men across the State of California.

6 With respect to the reauthorization of the Legal
7 Services Corporation, I wish to address several issues of
8 profound concern to my organization and its constituents.

9 The Legal Services Corporation Act, as amended in
10 1977, placed important restrictions on legal assistance in
11 abortion-related litigation. Even stronger prohibitions were
12 included in subsequent appropriations Acts.

13 Notwithstanding the clear intent of these
14 prohibitions, by taking advantage of various loopholes, Legal
15 Services attorneys have long participated in extensive
16 litigation designed to expand abortion rights through the
17 courts by challenging various state and federal regulations on
18 abortion.

19 The list of these cases read like a virtual hall of
20 fame for abortion rights litigation. It includes significant
21 cases, such as H.L. v. Mathison, Williams v. Sabarzas, Mayer
22 v. Roe, Beall v. Doe, and Doe v. Bolton.

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1 These and other cases have touched on abortion-
2 related issues such as parental consent and notification,
3 waiting periods, spousal consent, measures to prohibit
4 demonstrations near abortion clinics and public funding for
5 elective abortions.

6 Concerned Women for America of California is
7 particularly concerned that many of these efforts on the part
8 of Legal Services attorneys have concentrated in our state.

9 For instance, in 1971, the National League Program
10 on Health Programs of the Poor, a Legal Services support
11 center, successfully challenged a California statute that
12 required a minor to have parental consent in order to obtain
13 an abortion.

14 More recently, the National Center for Youth Law,
15 another Legal Services support center, litigated Committee to
16 Defend Reproductive Rights v. Mayer, a case designed to free
17 up public funds for abortion.

18 The National Center for Youth Law has also
19 participated in another California case challenging parental
20 consent. That case, The American Academy of Pediatrics v. Van
21 de Kemp is yet pending.

22 The participation by Legal Services attorneys in

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1 such cases reveals a blatant disregard for Congressional
2 intent and constitutes an affront to the sensibilities of
3 citizens and taxpayers across the State of California and,
4 indeed, across the nation.

5 This is particularly disturbing in light of the
6 highly controversial and explosive character of the abortion
7 issue as the state legislative battles are currently taking
8 place in the wake of the Webster decision.

9 Last year, Representative Barney Frank introduced
10 the Legal Service Reauthorization Act of 1990, an amendment
11 designed to eliminate existing restriction on abortion-related
12 activity by LSC grantees.

13 His proposal would have permitted Legal Services
14 attorneys to use monies from all sources, including LSC funds,
15 for abortion litigation. The effect would be to unleash a
16 barrage of LSC attorneys and up to an additional 350 million
17 annually for efforts to expand abortion rights through the
18 courts.

19 Furthermore, it would have eliminated restrictions
20 on legislative advocacy including advocacy for abortion
21 rights. CWA opposed Mr. Frank's bill and will continue to
22 oppose any future reauthorization proposals that fail to

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1 include restrictions on such endeavors.

2 Instead, CWA supports the Legal Services Reform Act
3 of 1991, commonly referred to as the McCollum-Stenholm
4 Amendment, as the most effective way to address the concerns
5 raised by past abuses.

6 CHAIRMAN UDDO: Excuse me just a minute, Ms. Jones.
7 You are referring specifically now to the issue of abortion-
8 related legal activity, not to the whole of that bill, are
9 you?

10 MS. JONES: My organization supports the whole bill,
11 H.R. 1345; however, I'm only prepared to testify on, you know,
12 the provisions that would affect abortion, Sections 6, 7, 9
13 and 13.

14 CHAIRMAN UDDO: Concerned Women for America is
15 principally concerned with the like question, is it not?

16 MS. JONES: It is a pro-life organization. It's not
17 mainly a pro-life organization. It's a pro-family
18 organization. Abortion is just one of the issues that my
19 organization is concerned with.

20 CHAIRMAN UDDO: Thank you. Please go ahead.

21 MS. JONES: H.R. 1345 offers the best hope of
22 returning Legal Services Corporation to its original mandate

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1 and enhance the ability of the Corporation to monitor and
2 ensure grantee compliance with the LSC Act.

3 The bill would accomplish this in several ways.
4 First, Section 6 of the McCollum-Stenholm Amendment would
5 prohibit lobbying on the part of LSC grantees. This provision
6 would help to ensure that American taxpayers are not forced to
7 pay for abortion litigation.

8 I would also note that Section 6 is fully consistent
9 with the long-embraced American ideal, perhaps best
10 articulated by Thomas Jefferson in the Virginia Statute for
11 Religious Freedom.

12 Jefferson wrote, "To compel a man to furnish
13 contributions of money for the propagation of opinions which
14 he disbelieves is sinful and tyrannical."

15 Second, Section 7 of the McCollum-Stenholm Amendment
16 would institute time keeping requirements among LSC
17 recipients. This would serve to better ensure that monies are
18 not directed to prohibited activities and to prevent funding
19 shell games whereby LSC recipients have been effectively able
20 to bypass restrictions on abortion-related litigation.

21 This basic, common sense requirement would not
22 impose an undue burden on grantees. Rather, it would simply

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1 ask them to do what millions of attorneys do every day for the
2 purpose of client billing. American taxpayers deserve no less
3 a level of accountability on the part of grant recipients.

4 Third, Section 9 of the McCollum-Stenholm Amendment
5 would extend to expenditures from all fund sources those
6 restrictions currently applicable to expenditures of LSC
7 funds.

8 This provision is necessary to close the loophole
9 that enables recipients to spend millions of dollars of IOLTA
10 funds on abortion-related activities that would otherwise be
11 prohibited.

12 Finally, the language of Section 13 would clarify
13 and strengthen the prohibition on abortion-related activities
14 currently in the Legal Services Corporation Act and thus
15 eliminate the necessity of providing such clarification in
16 successive appropriation Acts.

17 On behalf of Concerned Women for America of
18 California, I would urge the members of this committee to
19 recommend reforms to curb past abuses and prevent future
20 abuses by Legal Service grantees, particularly with respect to
21 abortion litigation and advocacy. The McCollum-Stenholm
22 Amendment is the most promising vehicle to reach this

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1 objective.

2 Thank you for your thoughtful consideration of these
3 matters.

4 CHAIRMAN UDDO: Thank you, Ms. Jones. Any questions
5 from members of the committee? Yes?

6 MR. DANA: Ms. Jones, the cases that you cite on
7 page 1 as standing for really hall of fame type cases in this
8 area, I think the most recent of the cases is the 1981
9 Mathison case. Then you talk about the two cases pending,
10 brought by Youth Law.

11 Are you aware of other cases?

12 MS. JONES: I know that my organization is aware of
13 other cases and, also, too, I might refer to the booklet, that
14 "Legal Services Corporation versus the Family," and they have
15 a whole list of cases on page 23. There's a statement.

16 MR. WITGRAF: Excuse me just a minute, Ms. Jones.
17 What booklet is that?

18 MS. JONES: I'm sorry. It's called "The Legal
19 Services Corporation versus the Family." It was printed by
20 your organization, the Office of Policy Development, in March
21 of 1988.

22 On page 23, there's a statement by the author that

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1 said, "Legal Services attorneys have been active in most of
2 the major abortion cases filed in both state and federal
3 courts," and then there's a whole list of cases there and they
4 start with a case cited in 1986, and then it goes back to
5 1969.

6 MR. WITGRAF: I don't know that some of us realized
7 that that booklet was available. Perhaps Mr. Uddo will make
8 sure that we all have copies of that. Thank you for bringing
9 that to our attention.

10 MR. KIRK: Could I look at your copy before you
11 leave?

12 MS. JONES: Sure.

13 CHAIRMAN UDDO: Mr. Dana, do you still have a --

14 MR. DANA: Yes. I am interested in trying to
15 quantify what I think you characterized in your statement on
16 page 4 of the "millions of dollars of IOLTA funds that have
17 gone into abortion-related activities." What is the basis of
18 your statement that "millions of dollars...have gone into
19 abortion-related activities"?

20 MS. JONES: Basically, it's based on the IOLTA funds
21 are the contributions there that have been made are -- when
22 they go into the funds, it's difficult to verify exactly, you

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1 know, which funds are being used for what, so I do not have
2 any facts or statistics to support, you know, that, to answer
3 that question.

4 MR. DANA: In this area -- the area I'm speaking of
5 is really the extent of involvement of Legal Services programs
6 and/or Legal Services programs with IOLTA funds, the extent of
7 their involvement in abortion-related activities is a matter
8 about which we have very little knowledge.

9 There are a few cases cited on this page, 20 going
10 back into the '60s, and we have a couple of contemporary
11 examples in this state, but if your organization was aware of
12 any additional involvement by any Legal Services programs
13 anywhere in the country, we have another hearing scheduled in
14 two weeks, it would be very helpful to get that list.

15 I've made this request before, because I made it of
16 a person who didn't show up and hasn't shown up since,
17 because -- I don't know why, but I've asked for a list of
18 cases where Legal Services programs have been involved and
19 I've never been provided with that list, other than these
20 relatively few cases, given the fact that we're talking about
21 a 30-year period. Thank you very much.

22 MS. JONES: Okay. I will, you know, get back to my

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1 organization and ask them to put together a, you know, list
2 for you and give that to you.

3 MR. DANA: Thank you very much.

4 CHAIRMAN UDDO: Any other questions?

5 (No response.)

6 CHAIRMAN UDDO: Ms. Jones, as I understood your
7 statement on page 4, and correct me if I'm wrong, that your
8 concern with IOLTA funds is that it would enable recipients to
9 spend millions of dollars.

10 It's not a statement that they have spent millions
11 of dollars, but that it would enable them to spend millions of
12 dollars of IOLTA funds on abortion-related litigation.

13 It's implicit I think in your statement here, as I
14 violate my own rule about testifying, that since the Webster
15 decision, there's a lot more activity in the states that is
16 likely to generate more litigation.

17 MS. JONES: Thank you for pointing that out, because
18 our contention is it will enable them. That's why I said we
19 don't have statistics to say they've already spent millions.

20 I could still give you a list of the cases and look
21 for that, but it's our contention that it will enable
22 recipients in the future to have those funds available to

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1 them.

2 MR. DANA: I want you to know I apologize to you.
3 That is a theoretical and possible reading of that sentence, I
4 agree.

5 CHAIRMAN UDDO: Thank you very much, Ms. Jones. Any
6 questions from board members?

7 (No response.)

8 CHAIRMAN UDDO: Thank you very much.

9 MS. JONES: Thank you for letting me testify.

10 CHAIRMAN UDDO: Mr. Padilla, if you would come
11 forward. You're not going to see Mr. Padilla's name on your
12 list. He is substituting for Mr. Val Sausido who was, we
13 thought, scheduled for this morning. Mr. Padilla was informed
14 that it was for this afternoon.

15 Mr. Padilla has two gentlemen with him who I'll ask
16 him to introduce who are farm workers. I've indicated to
17 Mr. Padilla the serious time constraints that we have here,
18 but he said that these gentlemen -- he will serve as an
19 interpreter for them because they don't speak English. But
20 Mr. Padilla said that they had some things that they wanted to
21 say to the committee.

22 Mr. Padilla.

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1 STATEMENT OF JOSE PADILLA

2 MR. PADILLA: Good afternoon. I'd first like to
3 apologize for the miscommunication and I appreciate the
4 limited time that you are giving us.

5 My name is Jose Padilla. I'm the Executive Director
6 of California Rural Legal Assistance. Mr. Sausido could not
7 be here because of a time conflict, so instead, we have two
8 farm workers who are here with us. They are both from
9 Monterey County, the City of Soledad, which is about two hours
10 south of here.

11 We are giving our time to them just, well, with the
12 intent to remind not only this committee but our Congressional
13 leaders that the changes that are made in laws like the one,
14 like the McCollum-Stenholm, those proposals do affect real
15 people who struggle, people who struggle with the daily
16 problems of poverty.

17 I'd like to introduce both of them, Mr. Roberto
18 Calderon, who will be making a few brief statements initially,
19 and then Mr. Roberto Trujillo on my right, who will be ending
20 with some brief statements.

21 I will be translating with all my imperfections of a
22 translator, but I am taking the statements and I will be

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1 providing those to you before your next -- a proper
2 translation before your next Chicago hearing.

3 So, first of all, Mr. Calderon would like to just
4 make a brief statement to you.

5 STATEMENT OF ROBERTO CALDERON

6 MR. CALDERON: Good afternoon. My name is Roberto
7 Calderon. I come from Monterey County. Before I begin with
8 what I'm going to say, I'm going to try to say everything in
9 Spanish, because my language isn't too tight, so I can't say
10 it all in English what I want to say.

11 I am involved in a migrant program in Soledad. I
12 used to help the community as hard as I can or all we can do.
13 I'm trying to help anything. For example, I came in in '71 to
14 the United States.

15 Since that time, I went to school. They don't teach
16 me very well. That's why I don't speak very well. So, the
17 reason I'm in the school is because I don't want to happen the
18 same thing to my kids. I have four kids.

19 Also, three years ago, we helped the community in
20 our area to send them, where the lawyers don't charge a lot of
21 money to get the green cards. So, anyway, let me do it in
22 Spanish better, because probably you don't understand.

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1 (The following testimony was translated by Mr. Jose
2 Padilla:)

3 I found out about today's hearing through certain
4 communications locally and I am here today because I think
5 that there are a lot of social services that are provided to
6 us and that do benefit, but that you are not aware that those
7 benefits do exist for us.

8 As examples of problems, there are a lot of labor
9 contractors who discriminate against a lot of us in the work
10 that we do. A lot of times, these labor contractors also
11 provide us with farm workers, but many times, they also charge
12 us at the same time, as part of our salary.

13 As a matter of fact, a friend of mine was dismissed
14 from her job by a foreman who was working for a contractor and
15 the reason, he told her, he said, "I think you're too fat and
16 too ugly, and that should be enough reason for me. We only
17 want beautiful women working here."

18 I personally have felt these problems. I have a
19 sister who was injured on the job. She was provided three
20 months worth of assistance through worker's compensation but
21 that has been it.

22 The doctors have been fighting, one versus the

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1 other, as to who is right, but now she is out of money and
2 she's gone around asking us to assist her because she can't
3 have the money to assist her family.

4 I work under a union contract. I also have a
5 brother who works under a union contract. He recently changed
6 jobs and when he went to the other employment, because he had
7 been known to have been involved with the union in his other
8 job, that was the reason that was used to dismiss him from his
9 work and that's why we need social services to assist us.

10 At this point in time, we are being paid \$5 per hour
11 and I welcome you to analyze whether \$5 an hour, whether you
12 can make do with \$5 an hour when rents are at \$500 per month,
13 when we all know how much the cost of food is these days, and
14 you should ask yourselves whether we can live with \$5 an hour.

15 We believe that we are the people that feed the
16 world and we feel that we welcome you to come to our county to
17 look at the way we live, so that we ask you to try to
18 understand that, and we thank you very much for your time.

19 CHAIRMAN UDDO: Thank you.

20 MR. PADILLA: This is Mr. Roberto Trujillo, also
21 from the City of Soledad. He is from Monterey County.

22 STATEMENT OF ROBERTO TRUJILLO

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1 MR. TRUJILLO: My name is Roberto Trujillo and I
2 come here representing farm workers. I'd like to talk a
3 little bit about housing. We have farm workers in our county,
4 some of whom live 15 to one garage. I wish I could find a
5 light with one of these small bulbs that you see here, not
6 with a candle.

7 Besides that, we have problems sleeping. We wake up
8 at 4:00 a.m. and then to the fields. Whether you've slept
9 well or not, that's your evening and then the sacrifice in the
10 field.

11 We enter the field and then they give us the hoe, if
12 you want to call it a hoe because they give us very bad
13 equipment. Then we enter into the field and then it's the
14 foreman who is constantly looking at the type of work that we
15 do.

16 We cannot even leave a small piece of weed because
17 then immediately they bring it to our attention, nor can we
18 say, "With this equipment, I can no longer do the job,"
19 because then immediately we are told, "If you don't like it,
20 then you can just leave."

21 What road do they then leave for us, the farm
22 workers? I would like to invite any of you here today, that

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1 you could go there and be there with us so that you could
2 spend some time with us, so that you could see with your
3 proper eyes, because if you cannot see it with your own eyes,
4 you will not feel it.

5 He who has a small home, he's living fine. But
6 remember that when the bill comes so that he can pay for the
7 house, they don't have the money and we don't have the money
8 to then pay for the food the next day.

9 I ask you, it's just to gain \$4.75 or \$5 per hour.
10 We, by force, have to leave our children that one next day
11 without food because for that reason, I plead you to send a
12 representative to look to see how it is the way we live our
13 life, the farm worker.

14 Also, remember the fact that we have to ask our
15 daughters and we have to ask our wives to join us in the
16 fields, and we suffer another consequence. Sometimes, if our
17 daughters are better looking, the foremen will take them aside
18 and ask for favors.

19 If you have a little bit of conscience among us,
20 please take us into consideration. I want to be brief with
21 this statement but I will have to end by saying that we, the
22 farm workers, do suffer. Thank you very much.

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1 CHAIRMAN UDDO: Thank you, gentlemen, very much. Do
2 any of the members of the committee have any questions for
3 these gentlemen?

4 (No response.)

5 CHAIRMAN UDDO: Members of the board?

6 MR. WITGRAF: Mr. Padilla, how many counties does
7 California Rural Legal Assistance serve?

8 MR. PADILLA: CRLA services, with its basic unit
9 funds, which is about 3.4 million, we service 14 counties, but
10 with our farm worker funds, those counties are extended to
11 about 26 out of California's 58 counties.

12 MR. WITGRAF: Of the problems that have been
13 mentioned, which ones are you capable of helping them with as
14 an LSC recipient?

15 MR. PADILLA: The problem we are currently spending
16 a significant amount of time looking at and we all know about
17 feminization of poverty, but we're spending a lot of time
18 looking at how women farm workers, in particular, suffer
19 problems of discrimination, sexual discrimination, as Mr.
20 Trujillo mentioned. We are looking at that problem and we
21 are doing that as part of the Legal Services benefit that
22 we're providing.

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1 With respect to the issue of wages, we do utilize
2 the forms that government gives us when issues of wage rates
3 come up. We consistently seek the input of farm workers, not
4 only to us but to provide the same kind of testimony that they
5 gave you.

6 Sometimes we can and sometimes, we find ourselves
7 rather limited in our ability to do that kind of
8 administrative representation because that, in certain
9 respects, is called lobbying, but at some points, we are able
10 to have them explain the difficulty of working at those low
11 wages, those low wage rates. We do look at that.

12 The issue of housing is another issue that takes an
13 inordinate amount of our time both in our basic unit program
14 and in our farm worker program. Issues of farm workers living
15 in caves we have litigated in the past in their county.

16 That was a case -- that was a major case that we did
17 where we were able to successfully gain somewhere in the
18 amount of \$180,000 for a whole number of families -- well,
19 primarily single men who were living in spider holes in
20 Monterey County. We did that one with your money.

21 MR. WITGRAF: I mean the specific problems they
22 have. I mean, are you going to work --

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1 MR. PADILLA: I'm talking about the housing
2 problems. He mentioned the fact that it's not unusual to find
3 15 farm workers living in a garage. That is a housing problem
4 that we try to address. We can do that and we do that.

5 He mentioned the problem of sexual discrimination.
6 We do that kind of work. The issue of the wage rate, that one
7 is a question of enforcement, whether we can enforce growers
8 to, you know, pay the wage rate in California.

9 We defend those at administrative hearings. But on
10 top of that, in trying to get the wage rate increased, we also
11 participate as Legal Services advocates.

12 MR. WITGRAF: So, I mean, \$5 an hour is above
13 minimum wage. Do you go beyond that?

14 MR. PADILLA: I think that in California, when he's
15 talking about the \$4.35 to \$5.00, I'm not exactly sure where
16 it's at now. I know the federal just went, I think, to \$4.35
17 or four something.

18 MR. WITGRAF: \$4.25.

19 MR. PADILLA: \$4.25. We've been at about 4.25 or
20 4.35 now for a couple of years, but you're talking about piece
21 rate. I think the best piece rate or the best unionized rate
22 right now in California is a little over \$5.00.

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1 When they're talking about that, it's one thing to
2 talk about the minimum wage. It's another thing to talk about
3 the union wage rate. I think at best right now in California,
4 it's a little over \$5.00 and both of these gentlemen, I
5 believe, have been working or have worked under union
6 contracts.

7 MR. WITGRAF: To what extent does the union get
8 involved when he was denied a job because he was a member of
9 the union?

10 MR. PADILLA: To that extent, I think that it's a
11 question of whether they can go in and make a case of
12 discrimination before the Division of Industrial Relations for
13 having been -- or the Agricultural Labor Relations Board, for
14 having been discriminated based on their exercise of union
15 rights.

16 It's questionable whether these days, that avenue in
17 California is available to farm workers. That's a whole other
18 topic, but your question was whether the unions can defend.
19 We are seeing that in California.

20 The ability to unionized has been limited in the
21 last 10 years and we're seeing increasingly that a lot less
22 farm workers -- and you're talking about a significant number

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1 -- no longer belong to unions, so that that recourse is no
2 longer available.

3 CRLA does not get involved in situations where farm
4 workers are already represented by the unions. That is their
5 defense, but that defense has been significantly diminished in
6 the last 10 years.

7 MR. WITGRAF: Were we to take the invitation of Mr.
8 Calderon and Mr. Trujillo either as a board or a committee of
9 our board, where would you suggest, Mr. Padilla, it would be
10 best for us to come to visit with you?

11 MR. PADILLA: We could make available our services
12 in Monterey County. We could also make it available in
13 counties where we see worse conditions, like San Diego County.
14 I think both of those situations would -- Ventura County. In
15 any of those three counties, we would welcome you to visit and
16 we could set up.

17 MR. DANA: San Diego County is probably one of the
18 12 that's in your extended area, is it not?

19 MR. PADILLA: That's right.

20 MR. DANA: Monterey County, though, is in your 14-
21 county core area?

22 MR. PADILLA: In that county, we both have farm

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1 worker legal services and we have basic unit services.

2 MR. DANA: Thank you.

3 CHAIRMAN UDDO: Thank you, gentlemen, very much.

4 MR. PADILLA: Thank you very much for your time.

5 CHAIRMAN UDDO: Mr. Dick Barnholt? The only other
6 person I have on the list that I know is here is Mr. Jeff
7 Brown.

8 MR. BROWN: Yes.

9 CHAIRMAN UDDO: Is Mr. Barnholt here?

10 MR. BARNHOLT: Yes.

11 CHAIRMAN UDDO: If there is anyone else who is
12 scheduled to speak who hasn't given us his name yet, please
13 let us -- give it to Ms. Batie up here.

14 Mr. Barnholt, would you identify yourself for the
15 record, please?

16 STATEMENT OF DICK BARNHOLT

17 MR. BARNHOLT: Yes. Good afternoon. My name is
18 Dick Barnholt and I own a consulting firm called the
19 Consulting Group. We provide specialized services to
20 redevelopment agencies and housing authorities and local
21 governments, cities and counties, in California.

22 Our business includes financing and development of

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1 low income housing. We also prepare housing elements for
2 general plans of cities that talk about policies and things
3 like that, that the cities are going to do to provide that
4 housing.

5 I'm here today to talk about a particular case, an
6 example of a project that I'm involved in, and it's more of a
7 policy issue that I would like you folks to consider that
8 maybe could be included or should be addressed in legislation
9 and that is the issue of using private litigation to effect
10 public policy.

11 The situation is -- without mentioning names of
12 particular cities or projects, which I'd be glad to give you
13 details in a confidential fashion -- Legal Service has been
14 involved in the behalf of their clients in negotiating a
15 particular project that involves displacement of some public
16 housing.

17 The displacement included temporary relocation and
18 replacement of the public housing, all of which was to be paid
19 and has been negotiated to be paid for by the private
20 developer. The suit has been brought against the city by
21 Legal Service and the developer and includes issues unrelated
22 to that particular project.

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1 Those issues have to do with trying to establish
2 public policy with respect to what that particular city may or
3 may not do, with future allocation of funds that come to it
4 through redevelopment financing, as well as particular
5 requirements for the provision of affordable housing by
6 private sector developers.

7 MR. KIRK: Could you be specific on that?

8 MR. BARNHOLT: Like?

9 MR. KIRK: Like what type of policy?

10 MR. BARNHOLT: In California, redevelopment agencies
11 are funded by tax increment funding, which flows annually.
12 That funding, under state law, state law requires that 20
13 percent of the tax increment, which is generated by
14 development, goes for affordable housing.

15 The particular issues were attempting to require
16 process in addition to state law, that the city should
17 undertake in allocating those funds. In addition, in the
18 number of units to require future developments be provided for
19 low income housing.

20 There are certain percentages in state law that
21 developers are required to provide. An example would be
22 developers must provide 15 to 20 percent low-income housing in

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1 their projects if they receive funding.

2 MR. KIRK: Are those groundless suits, do you think?

3 MR. BARNHOLT: I think in this particular case, the
4 city is quite willing to adopt state law minimums and go ahead
5 and do what's required.

6 I think that in this particular case, there is a
7 specific real estate development that is being held up on the
8 basis of those other kinds of issues that are really unrelated
9 to the particular project at hand.

10 As we sit here today, it is held up. There are
11 significant benefits that have been negotiated for the
12 residents, all low income, and we really can't deliver those.

13 MR. KIRK: Do you represent the group that's doing
14 the building?

15 MR. BARNHOLT: I am here representing myself. My
16 client in this particular project is the local housing
17 authority who owns the housing that's to be replaced, and my
18 job was to negotiate the replacement housing deal with the
19 private sector, which I did, and things have now gotten quite
20 bogged down in this particular lawsuit.

21 So, my purposes for being here are to really point
22 out, I think, that there's a rather serious problem here with

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1 respect to the establishment of public policy. Some of our
2 other activities involve writing general plans, and there are
3 very specific public hearing processes that one must go
4 through to establish these kinds of policies.

5 MR. KIRK: I may be -- I'm probably the one that's
6 most sympathetic to some of these provisions, but I -- you
7 know, you have to convince me that what they're doing is wrong
8 and is there a wrong reason that they're doing this? Are they
9 out for the developer or is it spite? It seems like they
10 would be interested in getting the things built so they'd get
11 some people into the housing.

12 MR. BARNHOLT: That's what I thought. That's what a
13 number of us thought. For awhile, things were proceeding as
14 if that was the goal. We got close to the end and these other
15 issues became more important.

16 I think that the other issues are important.
17 Certainly, how much resources a city allocates to affordable
18 housing is a key issue. I think that the problem with this is
19 you don't hold up a particular project that's ready to provide
20 significant benefits just to try to get that particular city
21 to allocate those resources. I mean, that's a political
22 decision.

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1 MR. KIRK: Which program is contesting this, which
2 of the Legal Service groups?

3 MR. BARNHOLT: Oh, Northern California.

4 MR. DANA: What is the hook or the nexus between
5 your project and the demands that are being imposed? Are they
6 truly separate or are they connected somehow?

7 MR. BARNHOLT: The project, in order to move
8 forward, takes some level of city involvement, and what's
9 happening is that the city is one of the entities that's being
10 sued, so the city is reluctant to proceed with its parts to
11 implement this project without settlement of the lawsuit, and
12 so that's the connection.

13 Now, the parts that relate to the project, the
14 specific project, have been resolved on behalf of the housing
15 authority, the city, and Legal Services, in essence.

16 There's this more general policy issue out there
17 that's contained in the lawsuit that has not -- we've not been
18 able to bifurcate that so that we could move ahead and the
19 city could still do what they need to do with it.

20 MR. KIRK: Is the city not doing their part?

21 MR. BARNHOLT: Oh, the city is. The city is ready
22 to move forward; however, with respect to financing and

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1 issuance of public debt, there needs to be given a legal
2 opinion by a city attorney to bond council that there is no
3 outstanding litigation with respect to this project and this
4 development and he can't do that.

5 CHAIRMAN UDDO: Mr. Barnholt, I'm not sure if -- I'm
6 not trying to diminish the importance of this, but I'm not
7 sure that it's going to help or it relates to what we're
8 trying to do in terms of reauthorization.

9 It sounds to me like you may need to talk to
10 Mr. Martin if something has gone out that is violative of
11 regulations or in some other way inappropriate.

12 If it's not, and there is some sort of structural
13 way to propose to the board that it be incorporated into the
14 legislation, the reauthorization legislation, we could
15 entertain that, but short of that, I don't know that we want
16 to try to go through the details of this and somebody say
17 something that maybe shouldn't be said.

18 I would prefer if you'd talk, maybe, to Mr. Martin
19 and he can have it looked into if, in fact, there is something
20 going on that shouldn't. If everything is as the way it's
21 supposed to be and you want to propose some sort of addition
22 to the reauthorization legislation that responds to this

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1 problem, we'd certainly consider it.

2 We're meeting again in Chicago. You don't have to
3 come there. You can send it to us. We're meeting the 19th
4 and 20th in Chicago, so there will be another opportunity for
5 us to consider it as a committee. I think Mr. Martin will
6 tell you how you can communicate with him, either today or in
7 the next couple of days.

8 MR. BARNHOLT: Okay. I wasn't really sure whether
9 this was the forum or not, but I --

10 CHAIRMAN UDDO: It may be. It may be in that you
11 may have a problem that you may want to propose legislation to
12 change, or maybe if there's something that there is a
13 legislative enactment or regulation, that may respond to it.

14 So, I think you need to work with the staff to
15 figure out exactly what, if anything, can be done if there is
16 an appropriate complaint or a proposal for a legislative
17 change.

18 MR. BARNHOLT: Okay. Well, thank you very much for
19 your time.

20 CHAIRMAN UDDO: Thank you, sir.

21 Mr. Jeff Brown

22 STATEMENT OF JEFF BROWN

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1 MR. BROWN: I am Jeff Brown from the San Francisco
2 Public Defender's Office. I have been in the Public
3 Defender's Office now 20 years. My purpose in being here
4 today is to really give you the perspective, from the criminal
5 side of the practice, in terms of what competitive bidding has
6 meant in the State of California.

7 I have been President of the California Public
8 Defenders Association and I have testified -- sometimes at
9 great length -- on this issue.

10 I also want to say, parenthetically, I serve on the
11 Board of the San Francisco Neighborhood Legal Assistance
12 Foundation. I want to just compliment them on the very high
13 quality of representation that they provide and the very good
14 administration that has really turned that organization
15 around. You are very fortunate to have a person of Ramona
16 Ruiz' stature and qualities doing Legal Service provisions
17 here in San Francisco.

18 Competitive bidding provisions in California, in the
19 counties that it has been undertaken, particularly San Diego
20 and some of the rural counties, has not been a success by any
21 measure. I am very doubtful whether it should be really
22 provided in any -- given any serious consideration on the

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1 civil side.

2 I'm not saying categorically that it can't work,
3 that there can't be good contractors and good providers, but I
4 have seen very few examples of it, if any, here in the
5 criminal side in California.

6 The experience has been that by and large, providers
7 get into the contractual relationship, over promising as to
8 what they can do for the county in terms of delivering legal
9 services and then, finding themselves swamped by the number of
10 cases and the responsibilities, either look for loopholes or
11 attempt to renege their contracts.

12 We saw that constantly in San Diego County where
13 they were finding every reason they could to dump great
14 numbers of defendants because they could not do the job well.

15 The experience has also led us to believe that the
16 providers are not of high quality. A person that tells you
17 that they're going to do the service at the cheapest rate is a
18 person usually that is not committed to a quality
19 representation for poor people.

20 By and large, what they do is they take the cases,
21 they give short shrift to the public clientele that they have,
22 and they spend their time on acquiring new clientele and

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1 higher paying clientele.

2 In other words, they'll say they'll do 5,000
3 misdemeanor cases for "X" number of dollars and what you'll
4 find, what they'll do is they'll give that responsibility to
5 the junior associates in the office and they'll put whatever
6 talent or resources that they have into acquiring higher
7 paying clients.

8 The experience also tells us something else. It
9 also tells us that the people that sit on the -- that make the
10 decisions as to which contractor or bid shall be accepted --
11 and I have sat on a board in San Diego as an outside
12 reviewer -- have very little information about the background,
13 about the wherewithal, about the ability, of individuals that
14 want to say that they're going to provide legal services.

15 It's pretty much flying blind and if you're just
16 going by the bottom line, I think you're sometimes making a
17 big mistake.

18 Providers, as I might have indicated, through the
19 contract route, by and large do not have the same motivation,
20 the commitment and the dedication that the nonprofit
21 corporations that you see now through the legal -- that are
22 funded through the Legal Services Corporation.

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1 They are dollar oriented. They are mercenaries.
2 They are not individuals that are there because they want to
3 help poor people, because they feel that this is their
4 calling. They are individuals that are just trying to do it
5 as cheaply as possible for the county, accumulate a few bucks
6 and go on to something else.

7 What I see in Legal Services Corporation providers
8 in nonprofit organizations is people are there because they
9 want to be there, because they like the work. You're getting
10 a real bargain at the present time.

11 The people that I see, for example, in the San
12 Francisco office, are tremendously talented individuals
13 working for salaries that are unbelievably low. They are
14 doing it out of motivation.

15 Just to save a few bucks to get somebody to do it
16 cheaper will deprive Legal Services of that motivational
17 component which is so, so important.

18 I would really hesitate about getting into
19 contractual bidding in terms of Legal Services. My advice is
20 to stay away from it or, if you do it, do it on a pilot basis,
21 but the experience in California has been lamentable.

22 We have had public defenders -- we have had

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1 contractors removed from cases, for example, in Calaveras
2 County. We had terrible situations in San Diego. Finally,
3 they went to a public defender model on the criminal side. I
4 think it's highly inadvisable.

5 I'll answer any questions you have.

6 CHAIRMAN UDDO: Any questions from the committee
7 members?

8 (No response.)

9 CHAIRMAN UDDO: Members of the board?

10 (No response.)

11 CHAIRMAN UDDO: Thank you, Mr. Brown. I appreciate
12 your taking the time to come speak with us.

13 MR. BROWN: I hope you enjoy your stay here in San
14 Francisco.

15 CHAIRMAN UDDO: It's hard not to.

16 MR. BROWN: Thank you.

17 CHAIRMAN UDDO: We'll take a ten-minute recess and
18 see if some folks amble in. We will reconvene either to
19 adjourn or to hear from other people.

20 (A brief recess was taken.)

21 CHAIRMAN UDDO: We're reconvening the committee
22 meeting. We have four more folks who have shown up to speak.

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1 Before I introduce them, because I may have to leave before
2 final adjournment here, I wanted to -- there are not many of
3 them left -- thank all the folks who did come.

4 I think it was a very productive hearing and an
5 awful lot of impressive testimony that I think is going to be
6 very helpful.

7 Also, I'd like to thank and congratulate the staff
8 on doing an excellent job, in particular, Ken Boehm, who was
9 responsible for the organization, and Pat Batie, the corporate
10 secretary, and Ruby McCollum, who took care of the details of
11 making this work as well as it did.

12 Of course, I want to thank the members of the
13 committee and the board and President Martin for being here
14 and being attentive and assisting in the work of the
15 committee. I look forward to another session in Chicago on
16 the 19th and 20th.

17 So, if I slip out in the middle of someone's
18 testimony, please don't be offended. It's because I have to
19 catch a plane to get back to see a soccer game tomorrow.

20 The two gentlemen who are going to address us
21 together are Mr. Ralph Abascal -- is that how it's
22 pronounced? -- who is appearing today in place of California

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1 Assemblyman, Terry Friedman, who was unable to be here, so
2 Mr. Abascal, you can come up to the table, and Senator Nick
3 Petras, California Senator Nick Petras, who my notes tell me
4 was the author of the California IOLTA bill, is that correct?
5 Do you want to come up, Senator?

6 SEN. PETRAS: Thank you.

7 CHAIRMAN UDDO: If you would each introduce
8 yourselves for the record and proceed in whatever order you'd
9 like. Even though I may sneak out, the room is only
10 available to us until 4:30, so we're trying to stay within a
11 15 or 20-minute limit, if we could do that. Thank you,
12 gentlemen.

13 STATEMENTS OF RALPH ABASCAL AND SENATOR NICK PETRAS

14 MR. ABASCAL: Thank you. My name is Ralph Abascal.
15 I'm simply going to read the testimony of Assemblyman
16 Friedman. He, last night, had a bit of a personal problem
17 with his family and he had to fly to Los Angeles. He was
18 going to testify. He had prepared written remarks and I'll
19 read them into the record.

20 CHAIRMAN UDDO: Thank you.

21 MR. ABASCAL: Chairman Witgraf, members of the
22 board, President Martin, I thank you for giving me the

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1 opportunity to appear before you today. Your responsibilities
2 are momentous as is the subject of this hearing. Therefore, I
3 appreciate your willingness to hear my advice and thoughts.

4 I want to address the subject of lobbying. I feel
5 that I am a member of a very rare group. From 1976 to 1986, I
6 was a Legal Services lawyer.

7 During the last eight years of that chapter of my
8 life, I served as executive director of Bet Tzedek, a project
9 that was formed to serve the poor Jewish community of Los
10 Angeles and now aids 10,000 clients of all backgrounds each
11 year. That was a most meaningful period for me.

12 Since 1986, I've been a member of the California
13 Legislature. Among my various assignments, I currently serve
14 as chair of the Assembly Labor and Employment Committee. I've
15 served on the Judiciary Committee since I first joined the
16 Assembly.

17 I believe that I have the insights of a long-time
18 advocate as well as those of the object of such advocacy. Let
19 me share some of those insights with you.

20 First, I must emphasize something that I think is
21 crucial to this decades-long LSC debate. It is simply a
22 matter of false symbolism, a result of simple terminology.

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1 Simply, it is the word "lobbying."

2 These days, I don't know whose public image suffers
3 more, legislators, lobbyists or lawyers. As to the first two,
4 the public believes -- a belief unfortunately too often
5 confirmed in fact -- that money flows like blood in the aorta
6 down the steep one-way street, lobbyist to legislator,
7 perverting the process of public policy making. That is what
8 "lobbying" means to all but a handful of people.

9 But Legal Services' lobbyists have simply no
10 connection to that world or to that word. They have only two
11 things to offer a legislator: their knowledge and their
12 integrity, and they have a great deal of both. That is the
13 sum and substance of their "influence."

14 Some might say that they symbolize a grammar school
15 vision of the legislative process, a vision that the whole of
16 the American people would devoutly wish for, if only they knew
17 the whole of the story, a vision that I hope some day I can do
18 my little part to make a reality.

19 As Art Agnos, the Mayor of this City, said in a 1981
20 meeting with Congressman Tom Railsback, then the ranking
21 minority member of the Judiciary Committee of the House of
22 Representatives: "Legal Services advocates are the conscience

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1 of the California legislature."

2 Mr. Railsback had come to Sacramento for two days to
3 get a hands-on view of how LSC advocates lobby and how they
4 are perceived by those who they lobby. The committee
5 published the report of his visit. I urge you to have your
6 staff get it for you.

7 Of one thing I am certain: As far as the public
8 defines the term "lobbying," Legal Services advocates don't do
9 it.

10 Second, let me emphasize another aspect of what few
11 who debate these matters seldom seem to acknowledge. Some of
12 the most important, effective legislative advocacy occurs at
13 the local level, before boards of supervisors, city councils,
14 housing authorities, redevelopment agencies, et cetera,
15 because in most jurisdictions, there are comparatively very
16 few "lobbyists" representing any groups.

17 At that level of government, as far as that word is
18 used, as I explained above, few members of the public consider
19 this to be lobbying. It is at this point that the drama, the
20 supremacy of our democratic system, seems to be most
21 fulfilling, most acceptable, most like a modern-day Athens.

22 If you stop this form of Legal Services advocacy,

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1 you will inflict a wound of the most grievous sort. You must
2 understand that many legal problems of the poor are simply
3 unamenable to resolution in the courts.

4 Indeed, as a young LSC lawyer, I remember hearing
5 the story of CRLA's establishment of the first full-time
6 lobbying office in Legal Services in 1969 right in Sacramento.
7 They advised Governor Reagan that they were doing so because
8 they thought that law reform belonged in the legislature, not
9 in the courts, and they received his blessing.

10 Let me give you some examples of my experience with
11 Bet Tzedek lobbying. When poor California Nazi Holocaust
12 victims received reparations payments years after suffering
13 their unspeakable miseries, they faced another trial--
14 Medicaid's income and asset rules.

15 The receipt of the reparations payments would deny
16 them their access to medical care, the supreme irony, since
17 for many, it was that experience long ago that created today's
18 medical needs. No lawsuit was possible. No regulation could
19 solve the problem. The statute simply did not contemplate
20 such a final solution.

21 On behalf of many clients and at the request of a
22 sympathetic legislator, Bet Tzedek drafted a bill, brought it

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1 to Sacramento and the legislature granted relief.

2 When frail, elderly nursing home patients are being
3 transferred from the facilities they call home, they suffer
4 what is known as transfer trauma. This is the profound sense
5 of disorientation and loss that accompanies such a change.

6 Lawsuits have been attempted in other states to
7 little avail. Rather than attempt that here in California,
8 Bet Tzedek represented its nursing home clients by joining
9 with other advocates and at several legislators' urging,
10 brought a comprehensive reform bill to the legislature which
11 was passed into law.

12 Don't block their ability to do this again when a
13 comparable calamity befalls their clients. Don't do it just
14 because they are poor.

15 Finally, let me pass onto you a little which I've
16 learned in the past five years as a legislator. Virtually
17 every interest group, from the banks in the oil lobby to the
18 pet bird importers and exporters, is represented in Sacramento
19 by one of the 1,000 plus registered lobbyists.

20 Virtually all of them are publicly subsidized.
21 Those private clients who employ them simply deduct their
22 costs as business expenses under Section 61 of the Internal

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1 Revenue Code. Those who represent every governmental entity,
2 from Mosquito Abatement Districts to the State Welfare
3 Department, are directly supported by tax dollars, just like
4 LSC lawyers are.

5 Opponents of LSC lawyers' ability to be real
6 lawyers, to select the best means of resolving their clients'
7 problems, have continually pointed out what they consider to
8 be an odd, unique conundrum -- spending public money to lobby
9 public officials.

10 But the only thing unique is that it's being done
11 for poor people. The Bible teaches us the poor will always be
12 with us, but it says nothing of their legislative advocates.
13 That is, in part, in your hands.

14 It is the poor that are most in need of the lobby
15 simply because we've not yet figured out how to ameliorate
16 poverty except by throwing public money at it and, of course,
17 every public agency that administers the endless myriad of
18 programs that we employ in that effort has lobbyists.

19 But we, as legislators, have to know what the
20 ultimate outcome will be as we tinker with the endless systems
21 that we employ to fight poverty. Only LSC advocates can tell
22 us that. Only LSC advocates have that vital link to actual,

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1 poor people who can provide the determinative facts. Of this
2 I am sure: We -- every one of us, regardless of party -- can
3 truly count on what they tell us to be, unalloyed by other
4 agendas. How rare, how unique, that is.

5 I never knew how vital they were until the last five
6 years. I will never stop learning that unless you throw your
7 weight behind H.R. 1343. Don't do that.

8 CHAIRMAN UDDO: Thank you, Mr. Abascal. I assume
9 that you don't want to answer questions, but it's an excellent
10 presentation and letter. I assume that if anyone has any
11 questions that they would want to direct to Assemblyman
12 Friedman, they can do so in writing.

13 MR. ABASCAL: Yes.

14 MR. DANA: Mr. Chairman, although it is in the
15 record, would it be possible to have the statement distributed
16 and copied?

17 CHAIRMAN UDDO: Do you have one copy? Is that all
18 you have?

19 MR. ABASCAL: No, I have several.

20 CHAIRMAN UDDO: I'd appreciate it if you could give
21 us some to distribute. Ms. Batie will do that.

22 Senator Petras?

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1 SENATOR PETRAS: Thank you very much, Mr. Chairman
2 and Members. I want to start with a couple of comments
3 unrelated to the subject matter.

4 The first is a rousing and cheerful welcome to this
5 area. My name is Nicholas C. Petras. I represent the 9th
6 Senate District which is across the Bay, covering Oakland,
7 Berkeley, surrounding communities. I am very happy to see you
8 here, conducting hearings on the vital issues that are before
9 you.

10 The second is I think it's happening under very
11 propitious circumstances which I hope will turn out to be that
12 way. The accident of the choice of this room -- the Olympic
13 Room, which I hope will raise all of us to Olympian heights in
14 looking at this program.

15 The first goddess of justice was the goddess,
16 Athena, one of my -- not predecessors, but related to me in
17 some way, my parents both came from Greece. The first jury
18 trial in history was conducted under her auspices. I won't go
19 into detail on that.

20 She is represented on the State Seal of California.
21 If you ever look at our seal, you'll see the goddess, Athena,
22 sitting there in her full regalia, although the person who

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1 introduced that as a policy in the 1850s mistakenly described
2 her as Minerva. Now, she was Minerva, also, but we had her
3 first.

4 And that combination of being in the Olympic Room
5 before this distinguished panel compels me to try to be as
6 objective as I can and shed some of the passion I feel when I
7 approach this subject, particularly as a Mediterranean whose
8 blood boils from time to time, so if I get all excited at a
9 point, I hope you'll bear that in mind.

10 I am here to thank you for being here and to thank
11 you for giving me the opportunity to express myself. I am the
12 author of the bill in California, which has been working very,
13 very well, with increasing amounts of money each year from a
14 private source, the trust fund money. You all are acquainted
15 with how IOLTA works.

16 I am happy to tell you that in the formation of that
17 statute, contrary to the fears of some of us that it would be
18 strongly opposed by the state bar and by the banks, who would
19 be giving up all this money that they traditionally kept for
20 themselves, thanks to the president of the state bar from one
21 of the leading firms in San Francisco and the board of
22 governors, we got very, very strong support for this bill.

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1 They went to the banks and persuaded them to support
2 the bill. I thought that was a magnificent achievement.
3 They've been very strong in support of it ever since. The
4 state bar of this state has been the leading agency and
5 leading group of volunteers that has been responsible for
6 really getting this statute on the books. I was simply a
7 vehicle.

8 We are proud of the program here. Frankly, I'm
9 distressed by the possibility that some people are considering
10 imposing restrictions which were considered at the time that
11 we had this legislation but were rejected.

12 The only restrictions we have in our statute are
13 that, number one, the client must be poor; number two, the
14 lawyers engaged in this program cannot be involved in fee-
15 generating types of cases, such as a contingency fee, for
16 example, and we've enforced that and stuck to it.

17 All the lawyers involved in it, some 160 of them,
18 whose activities are financed from this source, having been
19 very scrupulous in following those two restrictions.

20 I am disturbed by the notion that the federal
21 government -- particularly under this and the last
22 administration, which has solid, good conservative credentials

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1 and which on so many issues is a champion of states'
2 rights -- now wants to tell the State of California, "Even
3 though this isn't tax money and even though it's not federal
4 money, we're going to impose these restrictions to prohibit
5 lobbying and so forth."

6 I hope that that doesn't happen, and my first plea
7 is to respectfully ask you to reject that notion for a number
8 of reasons. It goes contrary to the American spirit.

9 It raises a question, in those states, of which
10 there's a considerable number, which receive substantial farm
11 subsidies from the federal government. Are the recipients of
12 those subsidies prohibited from expressing their viewpoint at
13 any level of government, city, county, state or congressional?
14 I don't think you'll find such restrictions.

15 There is a tradition of subsidies, which are
16 strongly supported because of their need in other areas of
17 business. We don't have much of a shipping industry left, but
18 for a long time, we subsidized the shipping companies. We
19 never imposed that kind of a restriction. Why do we do it or
20 why is it suggested that we do it for the poor?

21 I'd like to go back a little bit to show you where
22 I'm coming from with respect to the program of legal services

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1 for the poor. The bill was only introduced after Governor
2 Reagan launched an attack on this kind of program with the
3 intention of absolutely wiping it out.

4 I think it was motivated by frustration which, in
5 turn, led to anger and resentment because, in certain policy
6 areas in which he had his strong beliefs, which were tested in
7 the conflicts that arose through court actions, he lost, I
8 would say -- I don't have the documentation -- 95 percent of
9 the cases, which were handled by the public service type
10 lawyers, War on Poverty at that time and other related ones,
11 including the local ones supported by other sources.

12 His own lawyers, all through those years, had
13 repeatedly recommended to him in so many of those cases, the
14 law is very clear. They cited U.S. Supreme Court decisions on
15 these jurisdictional fights and other things about which he
16 was complaining. "Don't let us be dragged into court on this.
17 Please change the policy. We can't win that in court."

18 He disregarded that advice, disregarded U.S. Supreme
19 Court decisions, and insisted on a battle and he lost nine and
20 a half out of 10. That made him very angry at thee lawyers
21 and he made public statements that it's unacceptable in our
22 society to have people file lawsuits against the Governor,

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1 against other executives in the State Government, against any
2 public agency, and have all of the costs and all the attorney
3 fees paid for by the taxpayers.

4 Well, you know, I tried to point out to him that
5 there isn't a week that goes by in this great big state in any
6 county where some public agency isn't filing a lawsuit against
7 another public agency.

8 There are constitutional questions. There are
9 statutory interpretations and the ever present turf fights:
10 "Oh, no. You can't do that. That's in our jurisdiction."
11 What happens? They go into court and they spend all that time
12 and all that money and both sides have all of their costs and
13 all of their attorney fees paid for by taxpayers.

14 Ronald Reagan himself initiated some of those
15 lawsuits against public agencies. Never a complaint about
16 that. The complaint only seems to come when the service is
17 extended to the poor.

18 So, I think what I'm talking about is an unhappy
19 situation of attitude. I'm trying to find out when was it
20 that the war on poverty was converted into a war on the poor.
21 That's what these kind of restrictions amount to.

22 Everyone else can do these things. When a program

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1 affecting the poor gets involved in lobbying, they can't go
2 before a city council. To me, as a member of the Senate, the
3 information, interpretation and all other aspects of lobbying,
4 which really are a method of informing as well as advocating,
5 are extremely valuable.

6 I carry a substantial amount of legislation. I've
7 carried for the last two-plus decades legislation protecting
8 farm workers from the ravages of pesticides. We use more
9 pesticides in this state than any other state in the union and
10 probably more than many, many states combined.

11 I'm not saying that as an indictment. It's a simple
12 fact. We are the biggest agricultural state in the nation and
13 the chemical people who produce the pesticides have convinced
14 the farmer that he can increase production by killing the
15 pests with these particular substances.

16 Well, they happen to be very risky, very dangerous,
17 life threatening, in some situations. Our legislative
18 analysts in California made a finding 15 years ago, which
19 hasn't been changed, that if you want to get sick on the job
20 in California, go work on a farm because you'll get it. That
21 being the case, I carried this legislation.

22 Now, in the process of doing that, I need

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1 information. I need to know where the illnesses are. I need
2 to know what the policy of spraying is in particular parts of
3 the state. I need to know what safety measures are being
4 adopted.

5 I need to know what the local agricultural
6 commissioner, who is present in every county in the farm area
7 in our state, what is his policy and what is he doing about
8 this problem? Is he advising the farmers properly?

9 I can't get that information unless I have people
10 who are acquainted with the problem and working on it year in
11 and year out on a day-to-day basis. That is the public
12 service type of lawyer. I bring them in and I bring the
13 recipients in.

14 I've had farm workers come in with scars all over
15 their bodies showing the ravages of pesticides. Under this
16 bill, if that agency is a recipient of our money, state
17 money -- not state money, but lawyer money, private lawyers'
18 money -- the victim's lawyer cannot come in to show the
19 ravages and explain to a legislative committee why we should
20 do something about it.

21 Similarly, on housing for the poor, I've carried a
22 lot of legislation providing housing for poor farm workers.

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1 I've provided assistance to farmers to provide housing with
2 low interest loans and a revolving fund of only 3 or 4 percent
3 to keep the fund going.

4 In connection with that, the housing has been so
5 deplorable, I've had legislation to beef up compliance with
6 local county housing standards. Now, how do I prove that the
7 standards are below the proper level? I bring in a tenant. I
8 say, "What kind of place are you living in? What is the
9 problem?"

10 In San Diego County a few years ago, something
11 between 10 and 12,000 farm workers were living in holes in the
12 ground and cardboard shacks. Now, I can't explain that to a
13 committee without having people who are there on a frequent
14 basis who know the picture.

15 So, I need the information, as a legislator, to do
16 my job. Now, that's a personal, narrow thing connected with
17 how I'm going to try to get this legislation passed, but it's
18 all under the umbrella of freedom of expression of people who,
19 yes, happen to be recipients of some kind of a
20 government-induced program, since it is formed on the basis of
21 a statute, but the financing doesn't come from any taxpayers'
22 money. It comes from the trust funds of the attorneys.

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1 So, it seems to me that we should be very, very
2 cautious and very hesitant and reluctant to embark on this
3 kind of a squeeze.

4 The first objection I have, of course, is to the
5 federal policy of intervention in a state or any state that
6 decides to embark on this program and apply whatever resources
7 it can develop, either directly through its own funds or
8 indirectly by bringing others in, and then having that wiped
9 out.

10 I'm afraid it's an extension of Governor Reagan's
11 frustration. He took it to the White House. He conducted the
12 same campaign against Legal Services for the poor, with the
13 same justification and reasons and thank goodness, Congress,
14 in spite of that, enacted the Legal Services Corporation
15 statute and persuaded him to go along, and he appointed the
16 first members, as the president has the power to do whenever
17 that office is occupied by another person.

18 Those two arguments are the primary reasons why I'm
19 here to make this appeal. Now, to show you the extent -- it
20 embellishes a little; it doesn't change the argument, but the
21 extent and the persistence in Governor Reagan's
22 opposition -- I'd like to just tell you one story and that is

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1 that during those days of the disputes, that seemed to
2 encounter us every week.

3 Every week, there was a new battle. It got so bad
4 that it became a state versus federal government dispute.
5 President Nixon was in the White House. President Nixon tried
6 to resolve it and couldn't because of the intransigence of the
7 state administration.

8 So, he appointed a panel of very distinguished
9 retired Supreme Court Justices -- and I might point out,
10 although I don't remember their names -- they came from
11 conservative states with impeccable, conservative, Republican
12 credentials, the justices themselves, prior to their
13 appointment to the bench.

14 They came out here in good faith. They tried to set
15 up a series of hearings to hear the story from all sides.
16 They got the story from one side and that is, the people who
17 needed the legal services and so forth.

18 Governor Reagan issued a decree to all of his
19 cabinet and other staff people that they were not to cooperate
20 with this group, so they came to the hearing, they refused to
21 answer any questions or offer any evidence and, finally, their
22 intransigence and arrogance was so offensive that one of the

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1 justices packed up and left.

2 He said, "I don't know why I'm sitting here. We're
3 not getting anywhere." He wrote a scorching letter to
4 President Nixon complaining about this attitude of refusal to
5 cooperate.

6 Now, the reason I mention this as one of many
7 incidents is it illustrates how strong Governor Reagan felt
8 about not permitting any kind of a legal services to the poor
9 program and how hard he worked to eliminate it in this state,
10 both through litigation and other ways, and how he continued
11 that policy in the White House.

12 I would hope we don't fall back to a position that
13 permits that kind of an attitude to prevail. I am reminded
14 that we are in a big recession. In this state, we are facing
15 a \$13.6 billion deficit.

16 I'm sure you're aware of it. It amounts to some 21
17 or 22 percent of our budget. I know that Connecticut the
18 other day announced they're going to have to slash their
19 budget by 28 percent. It's not a problem peculiar to
20 California.

21 I mention it because it is during these times of an
22 economic crunch that we feel the need for these services more

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1 and more. If the average guy on the street who is a blue
2 collar person thinks he's getting a crunch and the small
3 businessman is facing serious problems, they can be multiplied
4 many, many times when applied to the people at the bottom of
5 the economic scale.

6 Now, the irony of it is that during the Reagan
7 Administration -- and I'm not making this a Reagan thing, but
8 just in the narrow context of the attitude toward the
9 poor -- we had this tremendous prosperity.

10 Then I read the comments of a Nixon staff member, a
11 very distinguished Republican, Kevin Phillips, in his book on
12 the politics of the rich and poor, wherein he describes the
13 massive shift of income and wealth from the bottom and the
14 middle to the very top.

15 He says that as a result, the top five percent of
16 the economic ladder in this country in terms of income and
17 wealth, has income and wealth equal to the bottom 40 percent.
18 I had to read that about three times. I thought he was
19 describing one of the Central or South American nations that
20 we used to criticize so much for that imbalance.

21 That fact makes it even more imperative, it seems to
22 me, that we develop a new consciousness and a new awareness of

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1 the need to at least permit people who have established the
2 policy, drawn in fine lawyers who are volunteering to do this,
3 something like in the heydays of the '50s when we had, under
4 the federal government, the War on Poverty lawyers, when some
5 of the finest graduates of the Ivy League schools turned down
6 offers to practice in the major firms on Wall Street, and came
7 out here to California to help the poor.

8 I'll tell you what they did for the poor, among
9 other things. They demonstrated to the farm workers and up
10 and down the valleys of California, the richest agricultural
11 area in the world, that the county courthouse is built for
12 them, as well as for anybody else.

13 There wasn't a lawyer in that area that would dare
14 take a case challenging a grower. For years in this state, we
15 had children pulled out of school, pulled out of grammar
16 school and junior high school, and sent out to fields to pick
17 crops in violation of the Constitution and the statutes which
18 said, "You must provide a free public school, a given number
19 of days per year for every child in this state."

20 Total obliteration of constitutional and statutory
21 protections and there wasn't a lawyer in the entire valley who
22 dared file a lawsuit which could have been won by any first

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1 year law student, because the abuse was so flagrant, and it
2 was finally done under this type of lawyer.

3 To have them operate without the ability to move
4 freely without those restrictions would really cripple them.
5 So, I'm sorry I ran a little longer than I planned, and I
6 apologize for not having prepared a statement. I just didn't
7 get a chance to do it and I apologize for that.

8 Again, I thank you for giving me the opportunity. I
9 close with an appeal to you and the goddess, Athena, up there
10 on Mount Olympus, to interpret justice in such a way as to
11 reject the kind of restrictions that are being urged on you.

12 Thank you very much.

13 CHAIRMAN WITGRAF: I have nothing, except it's clear
14 that the goddess, Athena, is alive and well in the 9th
15 Senatorial District.

16 SENATOR PETRAS: Thank you very much.

17 CHAIRMAN WITGRAF: Mr. Kirk?

18 MR. KIRK: No.

19 CHAIRMAN WITGRAF: Ms. Love? Ms. Wolbeck?

20 (No response.)

21 CHAIRMAN WITGRAF: We do very much appreciate your
22 taking the time to be with us. We appreciate the strong

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1 conviction with which you share your views with us. You left
2 quite an impression, Senator. Thank you very much.

3 SENATOR PETRAS: Thank you, Mr. Chairman.

4 CHAIRMAN WITGRAF: At this time, the chair
5 recognizes James Giller. Mr. Giller, it's a pleasure to have
6 you here. If you would take just a moment to introduce
7 yourself for the record by stating your name and your
8 association, we'll appreciate it.

9 STATEMENT OF JAMES GILLER

10 MR. GILLER: My name is James Giller and I'm a
11 lawyer in private practice in Oakland. I'm a criminal defense
12 lawyer. I'm here as a representative of the California
13 Attorneys for Criminal Justice, which is a 2700-member
14 organization that focuses in on criminal defense in
15 California.

16 I'm also a member, coincidentally, of the State Bar
17 Commission on Legal Aid to the Indigent Accused and I'm a past
18 president of the Alameda County Bar Association.

19 I'm here to just speak to the issue of competitive
20 bidding. I've had some experience with it, because I'm also
21 the Chairman of what we call the Court-Appointed Attorneys
22 Program in Alameda County. We handle conflict cases where the

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1 public defender can't handle those. That's a Bar Association
2 committee and we have some 300-and-some members that do these.

3 The way we got into it was that there was a group of
4 seven public defenders that were going to give up working in
5 the Public Defenders Office, and they put in a bid to the
6 County of Alameda to handle all the conflict cases, and there
7 were seven of them.

8 Well, that was an area that the private bar had been
9 handling throughout history, and when they put in that
10 program, the Bar Association decided they would make a
11 detailed study of their bid. They were bidding at that time,
12 I think it was \$250 a case.

13 We spent several hundred hours analyzing all of our
14 cases in Alameda County and their program and what they were
15 going to do, and we found there was absolutely no way that
16 they could handle that number of cases, yet our Board of
17 Supervisors was all ready to sign a contract with them until
18 we got into that picture.

19 They just -- the defendants in criminal cases would
20 just have had very, very poor quality representation by these
21 lawyers and those seven lawyers were excellent lawyers, but
22 they couldn't deal with it.

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1 There was no way they could deal with it and as a
2 result, the Board of Supervisors asked our Bar Association to
3 submit a proposal and we now, for the past 14 or 15 years,
4 have had that. Actually, we have a contract with the county,
5 the Bar Association, but we exclusively handle all of the
6 conflict cases.

7 And that has been the problem, from what I've seen
8 working on the State Bar Commission and my experience in our
9 own county, is the problem with bidding, because if you have
10 this bidding and it goes to the low bidder, they're going to
11 bid low to get the job and if they get the job, you're going
12 to have to ask questions about the quality of representation
13 unless you know and very carefully analyze exactly what
14 they're getting.

15 Our State Bar Commission has just completed a study
16 on various legal systems, the Public Defender assigned
17 counsel, which is bar associations like ours, and contracts.
18 We have set up standards for each of those groups if they're
19 going to contract to do indigent accused work.

20 That was the thing we found, is the problem with the
21 contractor where there is bidding, is the danger of the poor
22 representation, because they bid. They're going to bid at a

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1 low level and then when they get these cases, they're going to
2 try to deal with them as cheaply and as quickly as possible.

3 In our state, we have various counties that do this
4 bidding and some of them, it's an absolute disaster, the
5 representation that the individual defendants get and many
6 cases get reversed on appeal because of the poor
7 representation.

8 So, that's a real danger where you have a bidding
9 system and even though I'm talking about criminal cases, that
10 certainly would be the same, it would seem to me by analogy,
11 to civil cases, that the Legal Aid groups handle.

12 CHAIRMAN WITGRAF: Mr. Giller, excuse me. Are you
13 saying that there are also some counties, such as Alameda, in
14 which that procedure or arrangement is handled successfully?

15 MR. GILLER: No, I'm saying there are some counties
16 in this -- Alameda is not one of them. Alameda, it's the bar
17 association has a contract with the county. There are no
18 other bidders. We have that exclusively.

19 CHAIRMAN WITGRAF: That's handled on a rotational
20 basis then?

21 MR. GILLER: The lawyers?

22 CHAIRMAN WITGRAF: With a list of lawyers in Alameda

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1 County?

2 MR. GILLER: We have a panel of lawyers and that's
3 handled on a rotation and the lawyers are then placed into
4 classifications depending on their experience, so certain
5 lawyers, of course, can't handle murder cases and, you know,
6 if a lawyer just is admitted to practice, he can only handle
7 the little misdemeanors and so on. You have to build it up
8 until you handle the other cases.

9 There are some counties in this state that there is
10 contracts. San Diego, for example --

11 CHAIRMAN WITGRAF: On a bid basis?

12 MR. GILLER: On a bid basis. Our study of that
13 indicated there are some where it works, but there are some
14 where it's just an absolute disaster and it's frightening, the
15 representation that some of these defendants get.

16 CHAIRMAN WITGRAF: Do you recall any of the counties
17 where it has worked?

18 MR. GILLER: Well, I could -- I don't know right
19 offhand. I don't recall.

20 CHAIRMAN WITGRAF: Mr. Brown, when he visited with
21 us earlier this afternoon, indicated, as you just have, that
22 San Diego County was an example of a system gone wrong;

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1 likewise, I believe, Calaveras County, if I recall correctly.

2 I was just wondering if you thought of any counties
3 where this bidding system had worked well?

4 MR. GILLER: Off the top of my head, I can't. I
5 could find out, although, of course, it would depend on your
6 own individual analysis of it because some of them, for
7 example, in this state will have a bidding system, but they'll
8 call the person that gets the bid their public defender for
9 that county.

10 I know -- you know, I know about San Diego County
11 and what their problems were and it just didn't work down
12 there. I talked to lawyers that had gotten bids and they
13 didn't like it, because they ended up really not getting paid
14 for the case.

15 Now, we also have a situation that is not exactly
16 the same in Orange County. Right now, what Orange County is
17 doing is -- they call it competitive bidding, but it really
18 isn't. What happens in death penalty cases down there is that
19 a lawyer -- they have a panel and they rotate.

20 So, for example, I come up and then my name is up to
21 handle this death penalty case. What I have to do is I have
22 to put in a bid to the judges panel. So, I give them a

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1 certain figure and then I don't bid against any other lawyers.
2 I just submit a bid. If they think that's too high, they'll
3 turn me down and then they will then take the next person on
4 the panel and ask him to submit a bid.

5 I've talked to some of the lawyers that have made
6 these bids and they have gotten the bid, but they said the
7 thing that bothers them, because what they do subconsciously
8 is they're coming in lower than they feel they should.

9 What also bothers them then, once they've got this
10 case, they're at a lower amount than they really felt they
11 should get, they worry as to whether or not they will put in
12 the work that it really requires. Now, they say -- and we've
13 discussed this.

14 They say, "I know I'm going to -- I've got this case
15 and I'm going to try to do everything possible, but as a human
16 being, I wonder if I'm not short-circuiting some things that I
17 should do, because I know I'm not getting paid what I should
18 get paid."

19 And, of course, then that then becomes the danger in
20 competitive bidding where somebody gives you a low bid and now
21 they've got these cases and they've got to deal with them. If
22 it's a law firm that that's all they're doing is working for

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1 you and they've bid low, who knows what kind of representation
2 you're going to get?

3 If it's a law firm, for example, that has other
4 business and they have some of their staff that will handle
5 these cases for the poor, they are going to be -- we all know
6 that at the rates you're paying, that the present day law
7 firms aren't going to make any money.

8 So, if they're going to take them and they get a
9 bid, they're going to put their lower echelon lawyers or their
10 inexperienced lawyers handling these cases. You're not going
11 to get their top lawyers in a law firm like that.

12 Another problem that I see, if you've got
13 competitive bidding and you have more than one group doing the
14 Legal Aid work in a local area, I don't think you're going to
15 get the same contributions by the bar association, not only
16 for their guidance and their policies and their participation,
17 but we have a lot of people that do pro bono for the Legal
18 Aid.

19 And if you've got more than one group in there, I
20 think that that's going to take away from the incentive of
21 individual members of the bar to work pro bono for these
22 groups.

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1 It seems to me that, you know, if it's not broke,
2 don't fix it. At least in the areas that I'm familiar with,
3 this present system is working pretty well.

4 CHAIRMAN WITGRAF: Thank you very much, Mr. Giller.
5 Mr. Kirk?

6 MR. KIRK: No.

7 CHAIRMAN WITGRAF: Ms. Love? Ms. Wolbeck?

8 (No response.)

9 CHAIRMAN WITGRAF: Thank you very much. We
10 appreciate your taking time on a Friday afternoon to be with
11 us for a few minutes. Thank you.

12 Bruce Spicer?

13 STATEMENT OF BRUCE SPICER

14 MR. SPICER: Thank you. I am Bruce Spicer, and I'm
15 here on behalf of the Santa Clara County Bar Association.

16 CHAIRMAN WITGRAF: The Santa Clara County Bar
17 Association, Mr. Spicer?

18 MR. SPICER: That's correct.

19 CHAIRMAN WITGRAF: Thank you.

20 MR. SPICER: I would like to express appreciation to
21 the committee for taking the time to hear from the Santa Clara
22 County Bar Association. We do appreciate the opportunity to

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1 be heard.

2 I would like to begin by indicating that the
3 president of our association, Mr. Pat Tondreau, is out of town
4 and was not available to be here. Our president-elect, Brian
5 Walch, very much wanted to be here this afternoon.
6 Unfortunately, he is in trial and was not able to be.

7 He has appointed me to speak on behalf of the Bar
8 Association. I am a former officer and a former trustee of
9 the Bar Association, not a current officer.

10 CHAIRMAN WITGRAF: Is there a particular issue or
11 issues that you are concerned with?

12 MR. SPICER: I have a couple of things that I would
13 like to address. To begin with -- and the timing on this is
14 just a little bit awkward -- our bar association has had a
15 longstanding concern with the issue of delivery of legal
16 services to the poor.

17 We have had a subcommittee that has drafted a
18 resolution that I think is very much relevant to your hearing
19 today. Unfortunately, the timing is such that it was
20 scheduled to go before our executive committee next week and
21 before our board of trustees on the 18th.

22 Hopefully, the ultimate result of that we could get

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1 to you prior to your meeting in Chicago.

2 CHAIRMAN WITGRAF: That would be fine. Certainly.
3 Thank you.

4 MR. SPICER: I would like to read to you the draft
5 that is going before the executive committee next week.

6 CHAIRMAN WITGRAF: And assuming it is approved, then
7 you will provide us with copies before April 19th?

8 MR. SPICER: If it's approved or modified and
9 approved, we will do our best to get the version to you
10 immediately following the board of trustees' meeting on the
11 18th.

12 CHAIRMAN WITGRAF: Thank you.

13 MR. SPICER: The resolution reads:

14 "Whereas, the Santa Clara County Bar Association has
15 a long tradition of commitment to legal services to the poor;
16 and

17 "Whereas, the Santa Clara County Bar Association has
18 in the past supported federal funding for legal services, and
19 has endorsed the current delivery system, including
20 determinations concerning the allocation of resources and
21 program priorities being made at the state and local level;
22 and

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1 "Whereas, amendments to the Legal Services
2 Corporation Appropriations Act have been introduced the past
3 two years that would severely restrict the operation of the
4 Legal Services program; and

5 "Whereas, the important services provided by the
6 Legal Aid Society of Santa Clara County would be compromised
7 by the negative impact of the proposed amendments and other
8 proposed 'reforms';

9 "Now, therefore, be it resolved that the Santa Clara
10 County Bar Association Board of Trustees, because of its
11 responsibility to promote the availability of legal services
12 to the poor in Santa Clara County, actively opposes the
13 adoption of any proposed amendments and 'reforms' which would:

14 "Increase the limitations on which types of cases
15 the local programs can accept on behalf of their clients,
16 decisions that are best left to the local board to determine
17 in terms of priorities for their communities;

18 "Impose outdated ethical restrictions on legal
19 services attorneys -- and no other attorneys -- restricting
20 their ability to make their undereducated, poor client
21 communities aware of the available free legal services;

22 "Restrict the ability of local boards of directors,

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1 working with the local bar associations, to determine local
2 priorities and the most effective use of available funds;

3 "Impose an obligation on local programs to pay
4 opponents' attorneys' fees, even in some cases where the
5 programs have prevailed, while limiting programs' abilities to
6 obtain attorney's fees when they are victorious--
7 significantly chilling the right of poor people to pursue
8 valid claims and turning on its head the legislative intent
9 behind attorneys' fees statutes allowing public interest
10 litigants to obtain their fees;

11 "Subject Legal Services and their clients to
12 procedural requirements not applicable to other litigants; and

13 "Give local boards the right to veto involvement in
14 specific cases, despite ethical rulings making this an
15 impermissible interference with the attorney's ethical
16 obligations.

17 "Be it further resolved that the Board of Trustees
18 urges the entire Congressional delegation to reject any
19 proposed 'reforms' similar to those introduced last year in
20 the 'McCollum-Staggers-Stenholm Amendments,' as an improper
21 intrusion into the right of boards of local Legal Services
22 programs to determine local priorities for the purposes of

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1 allocating resources on behalf of low income citizens in need
2 of legal services; and

3 "Be it further resolved that the Board of Trustees
4 urges the entire Congressional delegation to support the
5 reauthorization for funding for the Legal Services Corporation
6 at a level which would enable local programs to provide
7 effective legal assistance and access to the legal system for
8 the poor in our community."

9 As I indicated, that will go before the board of
10 trustees a week from Thursday and the ultimate result of that
11 will be made available to you. There are a couple of specific
12 issues which I would also like to address.

13 One has to do with our bar association and its
14 concern for the delivery of legal services to the poor. As I
15 indicated, it's been a longstanding concern with our bar
16 association.

17 Our bar association was active in the formation of
18 the Legal Aid Society of Santa Clara County 30 some years ago.
19 It has been actively involved in other entities in Santa Clara
20 County involving the delivery of legal services to the poor.

21 Fairly recently, we created the Pro Bono Project of
22 Santa Clara County, which is an entity drawing pro bono

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1 attorneys to the bar association and taking intake primarily
2 through the Legal Aid Society of Santa Clara County in order
3 to provide a cooperative effort to provide additional leverage
4 to the available services in the county.

5 The concern with the bar association goes beyond
6 those who are eligible or at the poverty level that is
7 addressed by the Legal Services Corporation. We have also
8 addressed an income level above that by a program which we
9 call the Modest Means Panel, which is currently in
10 implementation before our bar association.

11 The point of all this is that we are very concerned
12 that legal services be available to everyone. Some of the
13 background of that goes to the very basis that differentiates
14 our country from so many others in the world, where we
15 probably wouldn't want to live.

16 Many differentiate countries on the basis of whether
17 they are a democracy or not, but another way to look at it and
18 I think perhaps a more accurate way to look at it, is to
19 differentiate our country, which is a country governed by
20 laws, from the countries which are governed by the whim of a
21 dictator or some other entity who rules a country based on
22 whatever his source of power is.

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1 That rule of law which gives our citizens the
2 opportunity to avail themselves of some method of attaining
3 justice and seeing to it that their rights are, in fact,
4 enforced, is really what makes us different from so many other
5 countries where people have no rights.

6 If we disenfranchise any group of citizens from
7 access to our justice system, we have undermined the very
8 heart of our country's values.

9 It is with that in mind that we look to the various
10 attempts -- we look with a very disheartened view to the cuts
11 that have taken place over the last 10 to 15 years in Legal
12 Services. We look at the last few years. There have been
13 some gradual increases, but not sufficient to recoup the level
14 at which legal services were previously provided.

15 The IOLTA statutes in California have been a great
16 help to us. The long-term availability of those is unclear to
17 us, having to do with projected changes in technology in the
18 banks and the banks potentially getting to the point where
19 they can track interest on accounts, and make it such that the
20 interest would have to be tracked and paid to the client.

21 We understand that to be a technology issue that
22 may, at some point, eliminate or drastically reduce the IOLTA

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1 funds. We are looking at a situation where additional funds
2 are needed. Additional services are needed.

3 We have never seen those services met to the extent
4 that we feel they are needed in Santa Clara County and would
5 like to see a great deal more done. Obviously, Legal Services
6 Corporation is not the only source of funds for those, but
7 it's an important source.

8 One specific item which I would like to address is
9 the issue of competitive bidding. I know that's something
10 that has been addressed by others before you today. I have
11 heard it addressed by at least one speaker. I understand
12 there were others and I'm not sure what they have said.

13 This is an area in which I have a particular
14 concern, partially because I may not understand all of the
15 ideas that are behind it, but it seems to me to be perhaps one
16 of the most insidious attacks on the availability of the
17 delivery of effective legal services to the poor because it
18 has the appearance of being such a well-intentioned concept.

19 Certainly, no one can oppose the idea of more
20 efficient delivery, and the idea of competitive bidding would
21 certainly have an aura of attempting to increase efficiency,
22 increase concern, have it reviewed at a level where those who

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1 can most effectively deliver it would.

2 Unfortunately, at least personally, I don't believe
3 that would be the result. There are two particular areas that
4 I'm concerned with, one of which I think speaks for itself,
5 and that's the issue of transition.

6 If these were put out at regular bids and the prior
7 bidder had no preference over the other ones, you would see
8 frequent transitions, and effective delivery of legal services
9 is not accomplished by changing lawyers frequently. That one
10 I think speaks for itself.

11 The other one, which I think is much more
12 complicated, involves the whole system of regulations which
13 the grant recipients from Legal Services Corporation currently
14 works under.

15 While the various recipients may or may not like
16 some of the restrictions, some of the regulations, there are a
17 lot of restrictions that have to do with things like the
18 appointment of the directors being largely controlled by the
19 local area bar associations, something which we at the Santa
20 Clara County Bar Association are very happy is one of the
21 regulations.

22 We are pleased to have that kind of input to the

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1 Legal Aid Society of Santa Clara County to appoint directors
2 to that board.

3 Things like the mechanism of priority setting,
4 things like the requirement of client eligible board members
5 on the board of directors of the recipients, things involving
6 the records that have to be kept, and things that involve the
7 monitoring of the recipients, these are all things which, in
8 many ways, are highly restrictive.

9 In many ways, they put a burden and a cost on top of
10 the operation of the agency, but a great many of them are very
11 much justifiable in the fact that they create a mechanism
12 whereby there is some assurance of the quality of services
13 delivered.

14 At the point at which we start talking about
15 competitive bidding, are we talking about maintaining all of
16 that same conglomeration of regulations on each one of the
17 potential bidders and if more than one contract were given in
18 a given area, would each one of them have to create that kind
19 of a mechanism of record keeping and reporting?

20 If so, I think we are looking at a tremendous
21 dilution of the amount of funds that would go to the actual
22 delivery of legal services, because we would be duplicating

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1 the administrative and record keeping overhead that provides
2 the mechanism of assuring that the services are effectively
3 delivered for the costs that are incurred.

4 CHAIRMAN WITGRAF: Mr. Spicer?

5 MR. SPICER: Yes, sir.

6 CHAIRMAN WITGRAF: I've got to interrupt you. We
7 have one more gentleman who is here to speak this afternoon.
8 We have been told that we have to leave the room or we'll be
9 removed from the room at 4:30 p.m.

10 I guess we're particularly interested, obviously, in
11 the bar association's resolution if it's passed, and we'd be
12 happy to have any written extension of your remarks. We will
13 be meeting again in Chicago on April 19th and 20th. I think
14 you've made your main points and I'll ask your indulgence to
15 cut you off at this point.

16 Mr. Dana, do you have anything for Mr. Spicer in
17 particular?

18 MR. DANA: No, nothing, thank you.

19 CHAIRMAN WITGRAF: Mr. Kirk?

20 MR. KIRK: No, thank you.

21 CHAIRMAN WITGRAF: Ms. Love?

22 (No response.)

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1 CHAIRMAN WITGRAF: Ms. Wolbeck?

2 (No response.)

3 CHAIRMAN WITGRAF: Okay. We do appreciate your
4 taking the time to be here on a Friday afternoon and we
5 appreciate your concerns. We will look forward to receiving a
6 copy of the resolution.

7 MR. SPICER: Okay, and I thank you very much for
8 your time and attention.

9 CHAIRMAN WITGRAF: Thank you.

10 Larry Lavin? You know just how much time you have,
11 Mr. Lavin.

12 STATEMENT OF LARRY LAVIN

13 MR. LAVIN: I'm Larry Lavin. I'm Director of the
14 National Health Law Program. I've been in Legal Services
15 since 1968. I've been a director of a large urban program in
16 Philadelphia, director of a small rural program in Arkansas,
17 director of a multi-county southern urban and rural program in
18 South Carolina, director of a state support center in
19 Pennsylvania, and now I'm director of the National Health Law
20 Program.

21 Rather than have your day seem like my 23 years in
22 Legal Services, I'll be very quick.

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1 I just want to point up something that you might
2 want to consider on competitive bidding that we deal with at
3 the Health Law Program and that is something that was
4 highlighted on Monday in the paper when the Physician Payment
5 Review Commission issued a report on the rate of provider
6 participation in the Medicaid Program.

7 Basically, it underscored the problems we see
8 throughout the country in getting doctors to participate to
9 take Medicaid recipients because of the low rates of
10 reimbursement, the cumbersome paperwork and procedural
11 requirements, and the red tape that is involved in
12 getting -- the quickness in getting the funds back.

13 I point this out because I think that, in my
14 experience in the rural south, in a multi-county program, in
15 implementing the private bar involvement piece, we were trying
16 to cover counties where there were no providers and where we
17 didn't have the ability, with two attorneys covering maybe
18 four counties, to get lawyers in those counties to serve our
19 clients.

20 Basically, the local control component of our
21 program was the way in which it worked. The fact that we had
22 local bar association representation got us to have them help

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1 in the process. The fact that we had local clients involved
2 at that local level got them to help make the lawyers in the
3 local community -- the clients receptive to those local
4 lawyers who previously may not have served them at all and may
5 not have had a very good reputation in welcoming the clients.

6 CHAIRMAN WITGRAF: Can you speak briefly to how that
7 arrangement in those two rural Arkansas counties worked?

8 MR. LAVIN: In the South Carolina counties.

9 CHAIRMAN WITGRAF: Excuse me, South Carolina.

10 MR. LAVIN: This was South Carolina, primarily. We
11 had 14 counties. What we really had to do in that situation
12 was do two things that were financial incentives.

13 One, we provided free CLE trainings to lawyers
14 throughout the counties so that we offered quite a bit of
15 training that met their CLE requirements that we didn't charge
16 them for.

17 The other was that we had -- we did a mix of
18 judicare and pro bono cases, so that if they took two free
19 cases, we would give them one pro bono case at \$25 an hour.
20 Now, that had a max on it of \$250 a case.

21 Now, the problems there were that they could only
22 take certain kinds of cases. Anything that involved Medicaid

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1 or anything that involved welfare or consumer law generally
2 were matters that they not only were uncomfortable with, but
3 they weren't things that they were willing to take.

4 So, they generally took things that they had some
5 expertise in that were similar to other kinds of -- their
6 other kinds of practice, domestic relations.

7 But I point it out because I think that when you
8 look at competitive bidding, what you could be doing here is
9 dismantling a delivery system that really does work at the
10 local level, to try to get the maximum participation by those
11 local lawyers in serving clients.

12 The Medicaid provider participation issue is a
13 serious one for everyone throughout the country. As Congress
14 has expanded Medicaid eligibility for women and children,
15 particularly, we cannot get providers willing to take prenatal
16 care cases. We can't get them to take kids, pediatric cases.
17 We can't get dentists to participate.

18 The main reason is that the rate of reimbursement is
19 as low as 40 percent compared to the Medicare reimbursement
20 rate throughout the country. Also, that's compounded in the
21 complex health care system by the fact that that reimbursement
22 system has caused a run away in costs.

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1 So, I think unless you're prepared to increase ten-
2 fold the funds available for Legal Services, you're not going
3 to see any kind of success with a competitive bidding system
4 in this program, so I just wanted to call your attention to
5 the problems encountered in that program.

6 I think the other speakers addressed all of the
7 issues very well today and I hope that the deliberations of
8 the board will somehow reflect the majority of comments here,
9 which are against some kinds of -- most of the things that are
10 contained in the McCollum bill.

11 It seems that my experience in Legal Services has
12 been that you hear testimony after testimony that is opposed
13 to things, and the decisions of the board often do not in any
14 way reflect the testimony.

15 So, I would hope that we'll see a change today here
16 and if we do have a new reauthorization bill, that it will
17 reflect the continuation of what I think has been a very
18 successful program in delivering services to our clients.
19 Thank you.

20 CHAIRMAN WITGRAF: Thank you very much, Mr. Lavin.
21 Mr. Lavin, I didn't know if there was any chance that there
22 were any comments or questions from any of the board members

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1 who are here at this time. Mr. Dana?

2 MR. DANA: Not a one.

3 CHAIRMAN WITGRAF: Mr. Kirk?

4 MR. KIRK: No, thank you.

5 CHAIRMAN WITGRAF: Ms. Love?

6 (No response.)

7 CHAIRMAN WITGRAF: Ms. Wolbeck?

8 MS. WOLBECK: No.

9 CHAIRMAN WITGRAF: I would say simply there has not,
10 of course, been reauthorization for what's getting ever closer
11 to two decades. I think one of our purposes and one of our
12 reasons for being here is to try to do what we can to help
13 make reauthorization a reality.

14 We are attempting to be as realistic and as well
15 documented as we can in what suggestions we make back to the
16 Congress and to the national administration. Your comments
17 and those of the many other speakers today certainly have been
18 heard and are helping build the case for whatever
19 recommendations we make.

20 I think it's fair to say that of the seven board
21 members who have been here most of the day today, we'll be
22 mindful of what we've heard today as well as what we hear in

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1 Chicago two weeks from today, so have faith. Thank you.

2 MR. LAVIN: Thank you very much.

3 CHAIRMAN WITGRAF: Is there anybody else? There are
4 several of you who have been with us most of the day who
5 haven't felt called upon to say anything. I don't see anybody
6 coming to haul us away yet.

7 Is there anyone who hasn't had a chance to say
8 anything who wishes to, at this point?

9 MS. WOLBECK: Mr. Chairman?

10 CHAIRMAN WITGRAF: Ms. Wolbeck?

11 MS. WOLBECK: I would like to submit for the record
12 a set of questions that were answered for me -- and very well
13 answered for me -- by Nancy J. Clemen, who is the Director of
14 Volunteer Legal Services of the Minnesota State Bar
15 Association.

16 CHAIRMAN WITGRAF: Certainly, we'll make that part
17 of the record. You can give it to the Corporation Secretary,
18 Ms. Batie, and that will be made a part of the record for both
19 of the hearings, certainly.

20 MR. DANA: Mr. Chairman?

21 CHAIRMAN WITGRAF: Mr. Dana?

22 MR. DANA: To the extent that portions of the record

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1 like that have not been distributed to the committee, can that
2 be done?

3 MS. WOLBECK: Yes.

4 CHAIRMAN WITGRAF: Yes, with the assistance of Mr.
5 Martin and Ms. Batie and Mr. Boehm, I'm sure they will be and
6 hopefully between now and the 19th, so that we have them
7 before our deliberations on the 20th when we begin to try to
8 digest these materials.

9 At this time, the chair is prepared to introduce a
10 motion from a member of the committee that we adjourn.

11 M O T I O N

12 MR. KIRK: So moved.

13 CHAIRMAN WITGRAF: It has been moved by Mr. Kirk.
14 Is there a second?

15 MR. DANA: Second.

16 CHAIRMAN WITGRAF: It has been seconded by Mr. Dana.
17 Those in favor, signify by saying aye.

18 (A chorus of ayes.)

19 CHAIRMAN WITGRAF: The ayes appear to have it. No
20 nays. The ayes appear to have it. The ayes do have it.

21 We are adjourned. Thank you.

(Whereupon, at 4:35 p.m., the hearing was
adjourned.)

* * * * *

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