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**LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS  
MEETING**

March 27, 1990

The Old Colony Inn  
Ballrooms C & D  
625 First Street  
Alexandria, Virginia

Board Members Present:

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

Staff Present:

Terrance J. Wear, President  
Timothy B. Shea, Vice President and General Counsel  
Maureen R. Bozell, Secretary  
David L. Richardson, Treasurer and Comptroller  
David Wilkinson, Inspector General

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## MOTIONS:

3, 5, 111, 115, 118, 126, 146, 157, 223, 226, 237, 244.

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## P R O C E E D I N G S

(9:19 a.m.)

1  
2 CHAIRMAN WITTGRAF: Ladies and gentlemen of the Board,  
3 our meeting will come to order at this time. Yesterday, of  
4 course, was essentially an informal meeting for the purpose of  
5 hearing from some 39 witnesses regarding issues facing the Legal  
6 Services Corporation. This morning, we'll begin our regular  
7 business.

8 The first item of business is the approval of the  
9 agenda. Before we move to the approval of the agenda as  
10 recorded, or as stated, the Chair asks that we have a motion to  
11 amend the agenda first to include remarks by Congressman William  
12 McCollum at his request; that will be at approximately 10:00  
13 a.m. today; and, also, to hear from Paul Mullen, the Executive  
14 Director of the Middlesex County Legal Services Corporation in  
15 the State of New Jersey regarding grant assurances for access to  
16 personnel files and the continued funding of that program from  
17 the Legal Services Corporation.

18 The Chair would be happy to entertain a motion that  
19 the agenda be amended accordingly.

20 MOTION

21 MR. DANA: So moved.

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1 CHAIRMAN WITTGRAF: Mr. Dana has made such a motion.  
2 Is there a second?

3 MR. COLLINS: Second.

4 CHAIRMAN WITTGRAF: Mr. Collins has seconded the  
5 motion. Is there discussion?

6 MR. HALL: Yes.

7 CHAIRMAN WITTGRAF: Mr. Hall.

8 MR. HALL: Do we need to amend to put our Executive  
9 Session on there? I may not have seen that latest copy. I just  
10 had that question.

11 CHAIRMAN WITTGRAF: I don't think, Mr. Hall, that  
12 that has to be included formally, as a part of the agenda;  
13 however, for purposes of all in attendance and all concerned,  
14 there has been approval by a majority of the Board for an  
15 Executive Session to discuss pending litigation and other  
16 issues.

17 To allow minimal inconvenience to all, it is the  
18 Chair's expectation that we will go in to Executive Session at  
19 approximately 11:45 a.m. today and, thereby, hopefully, be  
20 prepared to proceed again at approximately 1:00 or 1:15 p.m.,  
21 with agenda items.

22 Further discussion?

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1 (No response.)

2 CHAIRMAN WITTGRAF: Hearing none, those in favor,  
3 those in favor signify by saying aye?

4 (Chorus of ayes.)

5 CHAIRMAN WITTGRAF: Opposed, nay?

6 (No response.)

7 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
8 ayes do have it. The agenda, as amended, is approved.

9 The Chair is next interested in obtaining a motion for  
10 approval of the Board Minutes of February 12, 1990.

11 MS. PULLEN: Mr. Chairman?

12 MOTION

13 MR. HALL: So moved.

14 CHAIRMAN WITTGRAF: Such a motion has been made by Mr.  
15 Hall. Ms. Pullen?

16 MS. PULLEN: I have one correction I would like to  
17 raise.

18 CHAIRMAN WITTGRAF: The Chair would like to entertain  
19 a second to the motion and then entertain Ms. Pullen's request.

20 MR. MOLINARI: Second.

21 CHAIRMAN WITTGRAF: Mr. Molinari seconds the motion.  
22 Ms. Pullen?

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1 MS. PULLEN: On page 7, in the first full paragraph,  
2 the phrase in the minutes reads, "In response to a suggestion  
3 from Ms. Pullen." That word "suggestion" should be "request."  
4 It was not in the nature of a suggestion.

5 CHAIRMAN WITTGRAF: Page 7?

6 MS. PULLEN: It's page 7 on the version I have, the  
7 draft minutes. Maybe that's not the same page number that  
8 you're dealing with.

9 CHAIRMAN WITTGRAF: Is the Board familiar with that  
10 place in the minutes, page 7 of the minutes? The Chair asks for  
11 unanimous consent to change the word "suggestion" to the word  
12 "request" where indicated.

13 Hearing no objection, the correction is made. Further  
14 discussion?

15 (No response.)

16 CHAIRMAN WITTGRAF: Those in favor of approval of the  
17 minutes as corrected will signify by saying aye?

18 (Chorus of ayes.)

19 CHAIRMAN WITTGRAF: Opposed, nay?

20 (No response.)

21 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
22 ayes do have it.

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1           At this time on the agenda, the indication is  
2 "Chairman's Remarks." The Chairman just has a few remarks at  
3 this point, directed particularly to the Board Members. It is  
4 the Chairman's expectation that the Board will continue to meet  
5 on a monthly basis, more or less, throughout 1990.

6           The Chair asks the Board Members to review the  
7 Memorandum of Proposed Meeting Dates sent to the Board Members  
8 recently by the Board Secretary, Ms. Bozell. The Chairman will  
9 assume that those dates are workable for all of the Members of  
10 the Board unless someone indicates to the Chairman otherwise  
11 during the course of the day today.

12           Do any Board Members know right now that any one of  
13 those dates is unworkable for him or her?

14           MR. COLLINS: Mr. Chairman, there was a suggestion  
15 that when it fell on a holiday, that we could meet a week  
16 earlier. I assume that what you mean is that we will meet a  
17 week earlier.

18           CHAIRMAN WITTGRAF: Yes, sir. I think that's a fair  
19 assumption. Does anybody know off-hand of any conflicts that  
20 they have with any of the dates, including the alternative  
21 holiday dates referred to by Mr. Collins?

22           MS. PULLEN: Mr. Chairman, I will not be able to be

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1 here for June 25th, but I am not sure what date I could  
2 proposed, either.

3 CHAIRMAN WITTGRAF: Other conflicts?

4 (No response.)

5 CHAIRMAN WITTGRAF: If any of you have any conflicts,  
6 please bring them to Ms. Bozell's attention or to mine, during  
7 the course of the day, ideally, even before the end of the day,  
8 if you can. The Chairman has no further remarks at this time  
9 and is prepared to ask for the President to provide the report  
10 and the items in that that he has at this time.

11 Report of the President

12 MR. WEAR: Mr. Chairman, it became apparent to me  
13 yesterday that it would be very helpful to have a couple of  
14 people from the Corporation's staff come forward at this time to  
15 talk a little bit about the Corporation's monitoring procedures.

16 It has been a matter of some discussion here  
17 yesterday, and I think it would be helpful for the Board to  
18 learn something about those procedures and why the Corporation  
19 does what it does with regard to monitoring. So, if I may, Mr.  
20 Chairman, I'd like to ask Emelia DiSanto, who is the Director of  
21 the Division of Monitoring, Audit and Compliance, to come  
22 forward at this time and to say a little bit about monitoring.

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1 I anticipate that she will also discuss the issue of  
2 personnel files and this compliance file that has been set up  
3 here in the last few months to obviate those questions and  
4 problems. So, Mr. Chairman, if I may, I'll ask Emelia to come  
5 forward at this point to address the Board.

6 CHAIRMAN WITTGRAF: Please.

7 Presentation of Ms. DiSanto

8 MS. DI SANTO: Good morning. My name is Emelia  
9 DiSanto and I am the Director of the Office of Monitoring, Audit  
10 and Compliance, commonly referred to as MAC. Today, I'd like to  
11 tell you a bit about MAC's activities.

12 First, I would like to give you a brief overview about  
13 how MAC is structured. Next, I will discuss the monitoring  
14 process. Third, I'd like to report to you on some of the  
15 difficulties encountered during our on-site reviews of Legal  
16 Services Programs. Finally, I will offer some solutions for  
17 your consideration.

18 MAC is responsible for monitoring and evaluating Legal  
19 Services Programs. Our primary objective during the on-site  
20 review is to ensure that Legal Services Programs are providing  
21 high quality legal assistance in an economic, efficient and  
22 lawful manner. MAC also conducts followup compliance reviews.

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1           We do this work through the work of three divisions,  
2 that is, the Audit Division, the Monitoring Division, and the  
3 Compliance, Review and Analysis Division. LSC has established  
4 policies and procedures that it follows when we conduct  
5 monitoring visits and when we conduct compliance visits.

6           For example, LSC provides Legal Services Programs ten  
7 to fourteen weeks notice of our intent to conduct an on-site  
8 monitoring review. Now, of course, in the case of a compliance  
9 review, where we have a much more focused review in order and we  
10 have specific information relating to a particular violation, we  
11 will give much shorter notice.

12           LSC uses the team approach in conducting monitoring  
13 and compliance reviews. LSC's monitoring teams include  
14 attorneys, management specialists, and accountants. Prior to  
15 arriving on-site, each of our team members review, among other  
16 things, program-related documents in order to become familiar  
17 with the program prior to arriving on site. This also assists  
18 in ensuring a thorough and expeditious on-site review.

19           After the on-site review is completed and after an  
20 exit conference is provided, each team member is required to  
21 prepare an individual report. These reports provide the basis  
22 for the draft monitoring report. The draft monitoring report is

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1 then provided to the Legal Services Program for review and  
2 comment to ensure its accuracy.

3           These comments are then reviewed by LSC and  
4 incorporated where appropriate. LSC will then issue a final  
5 monitoring report. This process generally runs smoothly, but  
6 like any process, it encounters difficulties along the way. In  
7 that regard, I'd like to discuss with you some of the more  
8 pressing concerns affecting LSC's ability to conduct thorough  
9 and efficient on-site reviews. I would also like to present  
10 some potential solutions to these pressing concerns for your  
11 consideration.

12           The concerns I would like to present to you involve  
13 the denial of access to information, the lack of record keeping,  
14 the use of non-LSC funds, and whether or not LSC funds are  
15 federal funds for purposes of criminal prosecution.

16           First, an integral part of effective monitoring is  
17 access to or, if necessary, copies of documents. That is,  
18 copies of documents that are not properly subject to the  
19 attorney/client privilege. We have a grant assurance that  
20 provides the basis for LSC's authority to obtain access to  
21 relevant documents.

22           In performing our monitoring and compliance reviews,

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1 LSC has not always been successful in obtaining access to  
2 documents that are requested. In fact, access to documents is  
3 often denied in one form or another.

4 The information denied to LSC has ranged the gamut.  
5 It has ranged from the names of clients to vendor files.  
6 Information denied to LSC has been such things as cancelled  
7 checks, cash disbursements journals, cash receipts journals,  
8 outside practice of law approval forms, Board Minutes,  
9 correspondence sent to Congressmen and mailing lists for  
10 publication and distribution.

11 These examples demonstrate that access to documents  
12 remains an ongoing concern for LSC. Most disturbing is the fact  
13 that in some instances, after repeated requests and repeated  
14 exchanges of correspondence, LSC has obtained access to the  
15 information it had originally requested.

16 This often occurs after the on-site review has  
17 concluded and after the program has initially denied access. In  
18 some instances, this delay prevents LSC from verifying the  
19 information while on site.

20 It should also be noticed that, to some degree, these  
21 actions in denying access to information flies in the face of  
22 Grant Assurance No. 7, which requires Legal Services Programs to

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1 cooperate with the on-site review.

2 Let me now turn to the specific issue of personnel  
3 files. You should know that LSC does request access to  
4 personnel files. There is an important distinction, however, to  
5 be understood in this context. MAC generally has requested  
6 access to personnel files and not copies of personnel files.

7 Generally, we do not need copies of the information  
8 contained in personnel files. This distinction is significant,  
9 because the documents then are not available to the public  
10 through the Corporation. You might be asking yourself why does  
11 MAC request access to personnel files in the first place.

12 The reasoning behind our request to review personnel  
13 files is quite simple. We are not interested in medical  
14 histories or in emergency contacts that might be in a personnel  
15 file, but the fact remains that over 70 percent of LSC's  
16 resources are used to pay staff salaries and benefits.

17 As such, documentation relating to hiring processes,  
18 evaluation procedures, time and attendance records, benefits  
19 packages, annuity packages, settlement agreements, EEO  
20 considerations, disciplinary actions and staff grievances, do  
21 indeed become relevant.

22 LSC's right of access to this information relates

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1 solely to its mandate to ensure compliance with the LSC Act and  
2 its regulations. In fact, the information contained in a  
3 personnel file relates to no less than six separate regulations  
4 which we are bound to enforce.

5 An alternative to reviewing personnel files was set  
6 forth in the 1990 Grant Assurance this year. That grant  
7 assurance is commonly known as the EVA grant assurance which  
8 stands for the Employment Verification and Accounting file.

9 If grantees comply with this assurance, then our  
10 concerns over access to relevant personnel-related information  
11 may be resolved. Specifically, compliance with this assurance  
12 will allow LSC to resolve such matters as the reasoning behind  
13 salary increases or decreases, staff lay-offs, staff hirings and  
14 the waiver of different regulatory provisions for certain  
15 employees at a program.

16 A second pressing concern affecting MAC is the lack of  
17 record keeping on the part of Legal Services Programs. The  
18 ability to independently verify and cross-reference information  
19 cannot be overstated. It is also important to keep in mind that  
20 the ability to verify and cross-reference information is an  
21 integral part of monitoring and an integral part of a compliance  
22 review.

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1           However, LSC's ability to verify and cross-reference  
2 information is severely limited by the fact that Legal Services  
3 Programs lack adequate or contemporaneous records. As you know,  
4 Legal Services Programs receive money from many different  
5 sources. These funds may be private or public and this  
6 distinction is important when reviewing the LSC Act.

7           The Act provides that if the funds are public, they  
8 are supposed to be used for the purpose for which they were  
9 provided. The Act also provides that if the funds are private,  
10 they are supposed to be used like LSC funds, and are subject to  
11 the same prohibitions as LSC funds.

12           In monitoring Legal Services Programs, questions often  
13 arise involving what money paid for which activity and whether  
14 or not an employee was being paid with LSC funds or someone  
15 else's funds at a particular point in time. Usually, these  
16 questions cannot be answered with accuracy by the Legal Services  
17 Programs themselves.

18           More importantly, how the Legal Services Program  
19 allocates LSC funds and non-LSC funds cannot be documented by  
20 Legal Services Programs themselves. The reason for this is  
21 because Legal Services Programs maintain inadequate records. As  
22 a result, accountability to LSC, as well as to other funding

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1 sources, is a major concern.

2 One solution for your consideration is to require some  
3 form of contemporaneous record keeping. This procedure does not  
4 have to be complicated. This procedure does not have to be  
5 complex. This procedure does not have to be burdensome.

6 Rather, what is required is a system where an employee  
7 will document their activity, the time allotted to that  
8 activity, on a regular basis. In this way, Legal Services  
9 Programs will be able to meet its burdens to LSC and LSC can  
10 meet its statutory obligations.

11 In addition to the difficulties encountered regarding  
12 the denial of access and lack of recordkeeping is the fact that  
13 questions have arisen regarding whether or not LSC funds are  
14 federal funds for the purpose of criminal prosecution. Let me  
15 give you an example.

16 LSC referred a matter to the Department of Justice,  
17 alleging that an executive director and others on his staff had  
18 prepared false travel vouchers. After preparing the false  
19 travel vouchers, the executive director received payment on the  
20 false information in the amount of about \$20,000.

21 This matter was brought to the Department of Justice,  
22 and the Department of Justice declined prosecution in the

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1 matter. One of the reasons set forth by the Department of  
2 Justice was the limit on the choice of chargeable criminal  
3 violations because of some language in the LSC Act.

4 Specifically, the LSC Act says that LSC is not to be  
5 considered a department, agency or instrumentality of the  
6 federal government; therefore, a conclusion can be reached that  
7 LSC funds are not federal funds, and federal statutes regarding  
8 criminal prosecution are inapplicable.

9 One can overcome this hurdle by imposing all criminal  
10 provisions set forth in the U.S. Code to LSC funds, thereby  
11 making LSC funds federal funds and rightly so.

12 These proposed solutions set forth with regard to  
13 access of information, record keeping and making the U.S. Code  
14 as far as criminal provisions applicable to LSC funds, will  
15 enhance LSC's ability to fulfill its statutory obligations.

16 Thank you.

17 CHAIRMAN WITTGRAF: Thank you, Emelia. Does anyone  
18 have any questions?

19 MR. ERLBORN: Mr. Chairman, thank you. Yesterday, I  
20 asked a question of one of the witnesses, and I didn't follow up  
21 on the answer, but I was given an assurance that there was no  
22 problem with identifying the source of funding for activities by

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1 grantees that might be permissible with other public funds but  
2 not with LSC funds. There seemed to be an assurance that this  
3 was done regularly and that there was no problem.

4 You indicate otherwise in your testimony today; that  
5 there is a difficulty in accounting.

6 MS. DI SANTO: Yes, sir.

7 MR. ERLENBORN: Is there any way, in your opinion,  
8 that the funds can be properly segregated and accounted for?

9 MS. DI SANTO: From our review, Mr. Erlenborn, we have  
10 found that segregating money is very fungible. Reviewing books  
11 to try and trace different funding sources to a particular  
12 activity becomes very difficult. In fact, we expend a great  
13 deal of resources trying to do just that.

14 In the event that there is no timekeeping or record  
15 keeping, accounting for activity to time and person, it is  
16 extraordinarily difficult and, in fact, we have found ourselves  
17 even looking into pleadings where attorneys fees might be  
18 requesting, to cross-reference information.

19 In the event that type of documentation is  
20 unavailable, usually, we will have difficulty and the program  
21 itself will have difficulty documenting that information.

22 MR. ERLENBORN: Do you believe that there should be

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1 one uniform system devised by the Corporation and required of  
2 all grantees so that contemporaneous record keeping of the  
3 proper sort will be imposed upon the grantees?

4 MS. DI SANTO: Based upon our experience, that would  
5 be extraordinarily helpful, both to the Corporation and to the  
6 Legal Services Programs themselves.

7 MR. ERLENBORN: If you don't have contemporaneous  
8 record keeping, then when a question arises, the books can be  
9 cooked, they can be changed afterwards?

10 MS. DI SANTO: Well, you also have the concern that  
11 you are dealing with estimates at all times. Most often, Legal  
12 Services Programs will reconcile their books toward the end of  
13 the year, so if I have an employee who is charged, let's just  
14 say for an example, 80 percent to LSC funds and 20 percent to  
15 someone else's funds, at the end of the year, there will be that  
16 breakout, but I could not assure this Board that that is an  
17 accurate breakout and that there is proper accounting throughout  
18 the system that it can be traced and verified to that degree.

19 MR. ERLENBORN: I've been very concerned about this  
20 issue because if the limitations on the use of LSC funds are to  
21 be meaningful, I think some sort of contemporaneous record  
22 keeping and allocation of the time of the LSC grantee attorneys

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1 must be devised.

2           When I was visiting a program in Arizona recently, I  
3 inquired and, in this particular program, I don't know if it's  
4 an ideal system, but they had a different color file folder for  
5 those that were LSC and non-LSC. They had time keeping sheets,  
6 also of a different color, so that you could identify on any  
7 given day, by looking at the file, by looking at the time sheet,  
8 whether the time spent was being allocated to LSC or non-LSC  
9 funds.

10           It would seem to me that some sort of system like this  
11 would not be burdensome. It maybe would be. I'm only giving my  
12 first impression, but some system like this probably would not  
13 be burdensome and yet would be extremely helpful in seeing that  
14 the restrictions are followed, and that there is a proper  
15 allocation of the time and funds at the LSC grantees.

16           MS. DI SANTO: Yes, sir.

17           CHAIRMAN WITTGRAF: Mr. Guinot?

18           MR. GUINOT: Yes, thank you, Ms. DiSanto. I think  
19 your presentation was rather clear. It cleared up some of my  
20 questions.

21           My main concern, as I stated during our first meeting,  
22 is whether or not there is a real need to go into people's

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1 personnel files. Basically, I am not in any way concerned about  
2 going into them if the need is there.

3 I do think, as I stated previously, that the burden  
4 really should be on the LSC staff to show that these records are  
5 really completely necessary to your job, to do what you have to  
6 do. I certainly have no problem with anything smacking of a  
7 criminal activity or digging into the records for that.

8 But, I am concerned because a lot of the elements that  
9 you cited -- hiring, time and attendance, EEO matters, staff  
10 grievances and so on -- they smack of managerial to me, and I  
11 don't believe that this is perhaps what the LSC should be doing.  
12 That would seem to be a problem of the grantee, to manage his  
13 own staff.

14 I wanted to ask you several questions. For example,  
15 in order to get the information that you need, to need to read  
16 the whole file? For example, could you not come up with a form  
17 in which the elements that you need for your investigation are  
18 clearly delineated and you ask the staff director or whomever to  
19 certify the information that you're asking for, instead of going  
20 into a person's file.

21 My last question -- at least, for the moment -- is:  
22 How do you use this information? For example, if you find a

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1 discrepancy having to do with managerial matters or, let's say,  
2 personnel matters, do you move to have the man fired or the  
3 person fired? Do you move to try to impose on the grantee  
4 better managerial skills, let's say? How is that used? I don't  
5 think it came out of your presentation.

6 Finally -- and I know I'm loading you with a lot--  
7 would it be possible to serve your purpose to isolate certain  
8 elements of the file which be to your interest and those that  
9 are more personal -- in quotation marks, personal -- left aside  
10 and then, of course, going into them after showing a greater  
11 degree of need.

12 I know I've asked you quite a few.

13 MS. DI SANTO: I'll take a shot at it. We attempted  
14 to isolate or identify those documents that we thought most  
15 relevant to our reviews through the 1990 grant assurances and  
16 through the imposition of the employment verification and  
17 accounting file.

18 We are not interested in medical information or  
19 emergency contact information or things of that nature.  
20 However, we have numerous regulations that would lead us to  
21 nowhere else but the personnel file.

22 For example, Part 1604 of our regulations talks about

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1 outside practice of law. Usually, during our reviews, we do  
2 want to identify what employees have been given approval to  
3 engage in the outside practice of law on a compensated or  
4 uncompensated basis and that that, in fact, has been approved.

5 Those questions can become very important,  
6 particularly when you are identifying an individual or employee  
7 who may be involved in major litigation in a particular state on  
8 behalf of a class action or something of that nature, and they  
9 are doing that under an outside practice of law provision.

10 MR. GUINOT: Excuse me just a second, but couldn't you  
11 find that out somewhere else? I mean, can't you ask the  
12 personnel manager? Isn't there a letter file kept, "I authorize  
13 so-and-so to do this," rather than going into a person's file?  
14 Is that the only place you can find this information? That's  
15 what I'm looking for.

16 In other words, you must show, respectfully, I say at  
17 least to my own benefit, the need. If you can't go anywhere  
18 else and you need to get there, fine, but I'd sleep better.

19 MS. DI SANTO: Well, reviewing personnel files will  
20 also identify and give you the ability to cross and compare  
21 different files; that files are, in fact, maintained the same  
22 way for all employees within a particular organization.

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1 Management of a Legal Services Program is an integral  
2 part of the operation of that program. When you begin  
3 identifying grievances or complaints or you begin identifying  
4 the fact that certain individuals may be receiving salary  
5 increases for "X" evaluation and the same evaluation for a  
6 different person does not result in the same type of bonus, or  
7 you begin identifying that evaluations, for instance, are not  
8 conducted on an annual basis, as the program's policies and  
9 procedures would require, you would go into these documents to  
10 review that type of information.

11 MR. GUINOT: Why? Why? Why? Why would you go into a  
12 document to find out whether Employee A got a better assessment  
13 than Employee B? What, with all respect, business is it of  
14 yours, you know, why this happened? What does that have to do  
15 with the monitoring?

16 MS. DI SANTO: Because the management, the internal  
17 management of a program and the internal operation of a program,  
18 has a very large effect on the operation of the program itself.  
19 Since we are also attempting to review how the program operates  
20 in matters such as morale with staff or grievances that are  
21 being lodged by staff members against a particular member or  
22 against an executive director, all play into the overall

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1 operation of that particular program.

2 MR. GUINOT: You are giving me general information. I  
3 still would like to know why it is that you must go into the  
4 file to get these things. Perhaps this is a subject for a more  
5 personal exchange between ourselves.

6 Basically, I just cannot understand -- at least, at  
7 present -- why, to get this information, you must read the  
8 person's file. I wanted to ask you if you, for example, were to  
9 find that an individual has -- by reading his file, you find  
10 that he has had a few traffic violations or things of that  
11 nature, he is, perhaps, intemperate in the use of alcohol, not  
12 to the point of being disabled or on his job, but people say,  
13 "He's a drinker" or "She's a drinker."

14 Doesn't it concern you that perhaps this is no  
15 business of anybody else's but his boss and the individual?

16 MS. DI SANTO: Well, that is not the type of  
17 information that we are really requesting access to.

18 MR. GUINOT: But if you see the whole file, it's  
19 there.

20 MS. DI SANTO: We have attempted to try and have a  
21 different file created for each employee which identifies just,  
22 I think it is, ten or twelve pieces of information that we have

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1 requested be in this separate file, the Employment Verification  
2 and Accounting File, which we can then cross-reference with our  
3 various regulations.

4 For example, attorney hiring, which is a requirement  
5 in our regulation that we review attorney hiring, and whether or  
6 not references have been checked, we have found ourselves in a  
7 lot of different situations with regard to who is hired, the  
8 procedures that were used to hire the individual. That would  
9 all play into the management of the organization.

10 Ensuring EEO concerns that there is no internal  
11 discrimination or perceived discrimination by employees of the  
12 program is also of critical concern. We have one program, for  
13 instance, where in a period of three weeks, 15 employees on  
14 staff filed EEO grievances against the executive director. That  
15 raises a number of questions for us, because when the internal  
16 operation of a program comes into question, it may very well  
17 affect the provision of assistance to the eligible clients.

18 MR. GUINOT: Have you found out about these grievances  
19 by reading the files? I mean, there was no other way that you  
20 could have found that?

21 MS. DI SANTO: Sometimes, we are provided with that  
22 information; sometimes, we will only find it in the files.

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1 MR. GUINOT: Judging from the individuals that I have  
2 seen involved in Legal Services, in my long experience -- which  
3 is what, now, a month -- they certainly do not seem to be  
4 individuals who would keep quiet about something like an EEO  
5 complaint.

6 In any event, Mr. Chairman, I don't want to push this  
7 further because time is short, but I would like very much to  
8 discuss this with you later. Maybe my concerns will be taken  
9 care of, but my point is that, to the extent that you must look  
10 at how the money is spent and that it is spent within the Act,  
11 you know, in areas where it should be spent, I think you should  
12 look at everything.

13 There again, I do not believe that regardless of how  
14 it's been approached in the past, the LSC staff should be trying  
15 to micromanage the different grantees. To the extent that the  
16 information you are getting from there attempts to do that, I  
17 find it perhaps a little bit too intrusive; that's basically my  
18 concern.

19 Of course, with the idea that I do not believe that an  
20 individual must denude himself of all kinds of privacy in his  
21 personnel record, just by working for Legal Services.

22 CHAIRMAN WITTGRAF: Mr. Molinari?

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1 MR. MOLINARI: I have several questions. I think  
2 perhaps you might be the most important witness that we have  
3 heard from or that we should hear from.

4 First, Emelia, if you would, can you give us just a  
5 little better description on your job title and on your job  
6 duties?

7 MS. DI SANTO: Surely. My title is that of the  
8 Director of Office of Monitoring, Audit and Compliance. The  
9 functions of MAC are that we are charged with ensuring that  
10 Legal Services Programs provide high quality legal assistance to  
11 eligible clients in an efficient, effective and lawful manner.

12 We perform those duties primarily through the use of  
13 on-site monitoring reviews and, in the event we see a need to  
14 conduct a more focused review on a particular question of law,  
15 we will conduct a compliance review.

16 We also are involved in just the daily correspondence  
17 and questions that will come from Legal Services Programs with  
18 regard to requests for various purchases and a great deal of our  
19 resources are expended conducting the on-site reviews, preparing  
20 the draft report, cross-referencing information, and then  
21 preparing a final monitoring report, and then following up on  
22 that monitoring reports, in that each of our reports will

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1 contain recommendations for the program with regard to our  
2 review of what we had seen during the time that we were there on  
3 site.

4 So, we will follow up on those recommendations and, in  
5 the event we identified a violation of law, we will then follow  
6 up with some type of corrective action plan to provide the  
7 program with an opportunity to correct that particular  
8 violation.

9 MR. MOLINARI: Let me try to get to the nub so we can  
10 move on. I take it that there are basically two components that  
11 drive you. One is normal field audits that you would do  
12 periodically of every grantee, and I suspect the other group  
13 would be the group initiated by someone's complaint or  
14 complaints?

15 MS. DI SANTO: Yes, we do receive a number of  
16 complaints a year. Those complaints can range anywhere from a  
17 Member of Congress to a person who is dissatisfied with the type  
18 of service they received, to the person who is arguing that the  
19 person who is receiving assistance is, in fact, not eligible for  
20 that assistance in the first place.

21 MR. MOLINARI: How long have you been functioning in  
22 that position?

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1 MS. DI SANTO: About two and-a-half years.

2 MR. MOLINARI: What we are trying to determine--  
3 certainly, this Member of the Board -- is how the system works.  
4 We've heard testimony all day yesterday, and conflicting  
5 testimony, so I think it would be interesting to all of us to  
6 try to get your appraisal on, number one, how the system works.  
7 Is it working properly?

8 Number two, are there changes that we should entertain  
9 in order to make the system more efficient and more accountable?  
10 Do we have the proper safeguards in effect today?

11 Lastly, what I'd like to get would be some idea of the  
12 numbers of violations complained of in the course of the year  
13 and those that are verified. Now, if you can --

14 CHAIRMAN WITTGRAF: Ms. DiSanto, I'm going to give you  
15 a break here, I think, with Mr. Molinari's acquiescence.

16 As I indicated earlier, Congressman McCollum has come.  
17 Mr. Molinari has asked you three good, substantial questions and  
18 you'll have a little more time to prepare your answer. At this  
19 time, the Chair would ask the Congressman to come forward and  
20 take the opportunity to share what thoughts he wishes to share  
21 with the Board.

22 Congressman, your name, as perhaps you've been

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1 advised, was invoked any number of times yesterday.

2 CONGRESSMAN McCOLLUM: I'm in trouble.

3 CHAIRMAN WITTGRAF: Sometimes McCollum-Stenholm, and  
4 sometimes Stenholm-McCollum. I don't know which you prefer, but  
5 we are delighted to have you here this morning and delighted to  
6 hear anything you would like to share with the Board. As your  
7 schedule allows, it may be that some of the Board Members -- ten  
8 of the eleven of us, I believe, are here -- may have some  
9 questions or comments for you.

10 Presentation of Congressman McCollum

11 CONGRESSMAN McCOLLUM: Mr. Chairman, I thank you for  
12 the opportunity to come here. Charlie Stenholm and I usually  
13 come together, and I'm sorry he couldn't be here this morning.  
14 We have both shared this same concern, with Hal Rogers and two  
15 or three other Members of the House, in particular, for a long  
16 time.

17 As you probably know, and some of you, being former  
18 colleagues of mine, understand, there are just a few in the  
19 House and a few in the Senate who really have taken up the  
20 banner of being interested in Legal Services to the degree of  
21 getting into the details. Unfortunately, that's true of almost  
22 every issue that confronts Congress, until it gets to the Floor

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1 and becomes a big debate.

2 I've spent a lot of time with this issue over the  
3 years, and I thought I would explain to the Board, as many of  
4 you don't know me, how I got involved and why some of the issues  
5 in the McCollum-Stenholm or Stenholm-McCollum Amendment are  
6 really personal to me in terms of my knowledge of the subject  
7 matter.

8 I was a practicing lawyer before I came to Congress in  
9 1980, and I had occasion to be on the Executive Committee of the  
10 Orange County Bar Association in Florida's governing body, and I  
11 was also very active with the Legal Aid Society in Orange  
12 County, which was our effort to provide services to the poor  
13 down there.

14 Somewhere around 1977 or 1978, Legal Services  
15 Corporation, being in existence, decided to establish its  
16 presence in Orlando, which pleased some of us quite a bit, the  
17 idea of their coming in with federal resources and so on. I  
18 wanted to know why we couldn't combine forces.

19 Why should we have two legal aid operations there?  
20 After wall, we are all doing the same thing. We'd just pool  
21 resources. Orange County had one of the premier Bar Legal Aid  
22 Programs in the nation then and, frankly, still does as an

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1 independent entity right now.

2 I was told, through the staff members, that this was  
3 not possible; that it was not something that we could do. I,  
4 being the lawyer I am, went and actually looked up the statute.  
5 I pulled it out of the law books and I said, "Well, I don't see  
6 why local Bar Associations can't be doing this in conjunction  
7 with Legal Services, why the grantee has to be separate, why we  
8 can't have our local Bar there as the grantee or at least a  
9 share in it."

10 I called the Atlanta Field Representative at the time  
11 for Legal Services and had a nice conversation on the phone with  
12 him. He said, "Mr. McCollum, you don't understand. You are  
13 technically correct. You could participate, but that's not what  
14 we want to do. Local lawyers and local Bar Associations are  
15 interested in routine, every day things for the poor, helping  
16 the poor out with their problems in domestic matters, helping  
17 the poor out in cases of landlord/tenant problems, and that's  
18 not what Legal Services Corporation is all about.

19 "We are out here to change the poverty laws of this  
20 country. We are out here to eliminate poverty from the nation.  
21 We are out here to change the laws, to change the whole effect,  
22 so there aren't poor people anymore. We are not out here to get

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1 involved with the every day stuff that you guys would tie us  
2 down with."

3 Now, if you don't think that perked up my ears, it  
4 did. This is something I'm hearing from one of the chief  
5 fellows in the Legal Services Corporation. This isn't something  
6 some farm advocate came in or somebody came in complaining about  
7 Legal Services had to say, which I've heard many times from  
8 third party sources after the fact.

9 I got rather indignant about that. We had a little  
10 game playing around it, but it was to no avail and, in the end,  
11 Legal Services came in and established their own entity in  
12 Orlando, and Legal Aid continued to do their own thing. To this  
13 day, they are cordial and they are friendly. There is no real  
14 working together and no pooling of resources.

15 So, when I first came up here, I got involved on the  
16 Judiciary Committee in 1981. One of the very first things we  
17 took up was reauthorization of Legal Services, the last time  
18 that this Corporation was technically through a reauthorization  
19 process in the Committee. As you know, it hasn't been in the  
20 full House and Senate since that time.

21 In fact, even that provision in '81-'82 that Guy and  
22 John remember did not become law in the sense of an

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1 authorization law, although it's been adopted by the  
2 appropriations process.

3 One of the things that was adopted and has been part  
4 of your ruling, governing force ever since then was an amendment  
5 of mine that provided that the local Boards of Directors of the  
6 grantee organizations would be controlled by members of the Bar  
7 locally who were representative of the majority of the lawyers  
8 practicing in that area.

9 What I have found since then, even though that is  
10 still the rule out there, is that there is an awful lot of  
11 circumvention. One of the things in McCollum-Stenholm is a  
12 provision that says, clearly and unequivocally, that the local  
13 governing boards, as they are now constituted, have the power to  
14 decide the general policies for Legal Services operations in  
15 their area.

16 There is an incredible thing to me, an ongoing belief  
17 on the part of many Legal Services lawyers in the field, that  
18 these governing boards have no right to dictate to them the type  
19 of cases they take or whether they can take class action cases,  
20 or exactly what they are going to do.

21 I find that to be, to me, just incredible. If I was  
22 practicing law in a law firm or if it was a local Bar

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1 Association directed program, you know, the policy has got to be  
2 set by somebody. There is a limited amount of funds available.  
3 There are priorities that have to be set, and somebody needs to  
4 be setting those policies.

5 In my judgment, a lot of the problems we've had with  
6 Legal Services, in terms of the public impression over the years  
7 in serving the poor, would have been remedied long ago if,  
8 indeed, the local boards governed by the members of the local  
9 Bar had, indeed, had the power and exercised it in determining  
10 the broad policies to be taken.

11 Sure, we take up controversial suits. There always  
12 will be those, but there would still have been a sense of  
13 community, a sense of local control and a sense that, indeed,  
14 Legal Services wasn't running amuck somewhere. Anyway, I  
15 thought you ought to know that is one of the provisions in here  
16 that is particularly of concern to me, and how it came about and  
17 why I got so involved.

18 Most of what McCollum-Stenholm stands for -- and I'm  
19 wanting to appear before you today to explain some of these, in  
20 hopes we can get some of the support of this Board. After all,  
21 you are new, you are governing, you've got a whole new  
22 opportunity to come forward and set an agenda and deal with it

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1 in a way that I think has been missing for a long time.

2 Many of us are very, very happy with your presence as  
3 a new Board, as much as anything else because we know, from your  
4 backgrounds, that you each have a very strong base of support, a  
5 good record and something that we're proud of; and, secondly,  
6 because we know that the balance on this Board is such that it  
7 has the respect in both the House and Senate.

8 Politically, it means that what you say and what you  
9 do will have a lot more credibility. That means the Legal  
10 Services Program can truly move along. At least, I hope that it  
11 can and I believe that it will, but in order for it to do so, I  
12 think you will find and share with Charlie and I, the need for  
13 some of these programs, some of these changes that we've  
14 suggested.

15 Let me just run through them very, very briefly and  
16 then answer any questions you may have about some of the  
17 specifics. They fall into two basic categories: accountability  
18 and trying to redirect the services of the Legal Services  
19 Corporation to the poor, rather than to the broad, sweeping  
20 ideas of social change, which I indicated to you earlier is what  
21 I discovered when I first confronted Legal Services way back  
22 when.

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1           In the area of accountability, one of the most talked  
2 about is the current federal laws dealing with waste, fraud and  
3 abuse, things like embezzlement laws, false claims laws,  
4 perjury, obstruction of audits and so forth, for whatever  
5 reason, have not been applicable to Legal Services grantees and,  
6 really, they should be.

7           I see no reason why this would not help a good deal in  
8 terms of simply restoring public trust and also having  
9 application. If somebody really is doing some of the things  
10 that are illegal and making false claims and doing some of these  
11 things at the local level, then they ought to be held  
12 accountable. It seems very strange that they are not.

13           A second area is the timekeeping requirement. This is  
14 a House administrative thing really to benefit you and to  
15 benefit the local boards, so that if they are going to do their  
16 jobs at those grantee levels, they can know what kind of time  
17 the lawyers are keeping and what they are spending their time  
18 doing.

19           Are they spending 80 percent of their time working on  
20 every day, routine, legal service matters that you and I would  
21 think the poor should have the most attention to? Are they  
22 trying to track down fathers who are gone somewhere and not

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1 supporting their families? Are they trying to help in the  
2 landlord/tenant cases, et cetera, or are they spending their  
3 time up in Washington or up in Tallahassee or in some state  
4 capitol lobbying, or just what are they doing with their time?

5 Again, it is not trying to tell them what to do, but  
6 at least finding out how they are spending their time and keep a  
7 record of it. Any good law firm does that, and I don't see why  
8 they shouldn't do that.

9 The governing board issue I've already mentioned to  
10 you, which I think is a policy issue. It's a housekeeping issue  
11 more than anything else, and I think that's exceedingly  
12 importantly involved in this.

13 Another thing that is in that line is the restriction  
14 of the use of private funds. Congress passed several provisions  
15 back in 1981 -- the House did, at least -- that became part of  
16 the appropriations process, and those restrictions are still  
17 there, on lobbying, for one; the use of Legal Services  
18 assistance in the area of illegal immigrants, more recently.  
19 The area of abortion has always been controversial and Legal  
20 Services lawyers have been prohibited from being involved in  
21 some litigation concerning that. There are several other  
22 restrictions.

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1           It occurs to me and to a lot of others in Congress  
2 that the circumvention of this, which has been going on, is  
3 wrong. The way that has occurred is that Legal Services field  
4 lawyers have said, "We'll just go out and, through our grantee  
5 ability to get others to donate to us, we will get private money  
6 donated. We will use that private money to do those things that  
7 appropriated money is not allowed to be used for."

8           Well, Congress wasn't concerned just with restricting  
9 appropriated money from being used for these things. Congress  
10 did not want -- and still does not want -- Legal Services  
11 lawyers to do those things, especially not the lobbying. A  
12 tremendous amount of effort went into lobbying.

13           I can remember here fairly recently when the big  
14 Immigration Bill came through Congress, and I sat on that  
15 committee and went to conference.

16           Legal Services lawyers were sitting outside the doors  
17 of that conference, and two or three of my colleagues constantly  
18 were going out during the conference for hours and days to check  
19 with them, to see exactly what they wanted, getting their  
20 advice, getting their assistance, having them help on it, and  
21 being lobbied, of course, which I was, by that, all of that  
22 after the time of the prohibition on lobbying having been passed

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1 by Congress and being re-passed each time an appropriations bill  
2 went through.

3 Again, the excuse for all of this -- and apparently,  
4 it's perfectly technically legal -- is that they were up in  
5 Washington on monies provided to their grantee organization by  
6 private donations from the outside, and they weren't using  
7 appropriated money to lobby.

8 Again, it doesn't seem to me that they should be  
9 allowed to circumvent the intent of Congress through that  
10 process.

11 One of the other areas that I'd like to get into with  
12 you that I think is exceedingly important in the area that goes  
13 more to the question of the scope of what they do and follows on  
14 the same idea, is the idea of involvement by Legal Services  
15 lawyers in reapportionment or redistricting.

16 Back in the last time we had the census, back in '80  
17 and had the '82 redistricting going on, literally thousands of  
18 man hours of Legal Services lawyer time was spent in trying to  
19 influence the drawing of Congressional Districts and State  
20 Legislative Districts. It seems to me that is, of course, a  
21 role that somebody could argue they have a place for in a very  
22 indirect sense, but that's a highly political role.

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1           Once you get Legal Services lawyers involved in that  
2 level of politics, you are asking for trouble within the  
3 community and you are asking for trouble within Congress and the  
4 State Legislatures, because they are actively involved in a  
5 highly political fashion.

6           That is not something, I would submit to you, that  
7 they need to do to serve the poor. That goes back to the whole  
8 problem of the big picture that many of the lawyers have looked  
9 at over the years who have been employees of Legal Services,  
10 trying to shape and change the social fabric of the nation,  
11 rather than looking out for the individual needs of the  
12 constituent poor, rather than looking out, on a case-by-case  
13 basis, how do we solve the every day legal problems that poor  
14 people have.

15           So, one of the provisions of McCollum-Stenholm would  
16 very clearly state that Legal Services lawyers would not be  
17 allowed to engage in the reapportionment or redistricting.

18           I suppose the most controversial of the things that  
19 are in here -- at least, I hear it is; I didn't think it was at  
20 the time we did this -- is in the area of agriculture employment  
21 and in the area of representing agricultural workers. I don't  
22 think, since I've been in Congress, there has been any area

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1 where there's been more hue and cry about abuses by Legal  
2 Services grantees and their lawyers than from the agriculture  
3 community.

4 I don't doubt for a minute that there are abuses to  
5 agricultural workers. I happen to come from an area that has  
6 some. I'm sure that there are those who would say off the top  
7 that this is more common than not, but the fact of the matter is  
8 that there is justification to that concern.

9 I have seen cases as recently as this year in my own  
10 Congressional District where farmers have come in and said,  
11 "Bill, here it is. Here's a whole stack." In fact, this one,  
12 if you'd like to see, I'd be glad to submit it with you.

13 I don't have it with me today, but I'd be glad to ship  
14 it to the Board Members to look at, where somebody has filed,  
15 not in a formal court setting but privately given to a farmer  
16 and his attorney, a huge stack of complaints with a list of  
17 proposed names of his farm workers who are aggrieved in all of  
18 these instances, just an enormous litany of lists, with the  
19 threat very clearly there that if the farmer doesn't acquiesce  
20 in this, we're going to take you to court, tie you up and cost  
21 you thousands of dollars in court litigation. It's true that he  
22 would.

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1 I don't know how many of those case points are valid  
2 or not, but one thing is for sure, that every one of the would-  
3 be clients in this case were solicited. There was a process  
4 they went through where the Legal Services lawyers went right  
5 out to the fields and picked on somebody, and said, "Would you  
6 sign up? Sign here, sign here, sign here."

7 They went down the list, and I daresay that most of  
8 the people who signed up had no earthly idea of what the  
9 complaint was really all about, except that these were Legal  
10 Services lawyers, generally going to represent their interests,  
11 and here was the complaint that they were going to file or they  
12 were going to make.

13 Now, subsequent to this, this case was settled for a  
14 fairly large dollar amount, as are most of the farm workers  
15 settled, because farm owners, farmers, cannot afford this kind  
16 of litigation and the drawing out that Legal Services lawyers  
17 have done to them.

18 So, what we have attempted to do in what we presented  
19 to Congress last year and would present again this year, and  
20 hope you can give us your blessing for, are some restrictions,  
21 not a prohibition on activity in this area, but some  
22 restrictions, one of them a prohibition on soliciting clients.

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1 We don't think that, really, Legal Services lawyers ought to be  
2 out in the business of soliciting business and soliciting  
3 clients.

4 Number two, we think mediation is a preferable method  
5 whenever it is available. There is nothing in what we propose  
6 that would prohibit the lawsuit and, many times, we know  
7 mediation is not available, but if it is, then the grievances  
8 that are presented ought to be mediated rather than litigated in  
9 courts.

10 Number three, we would require the exhaustion of  
11 administrative remedies. I understand the American Bar is  
12 extremely displeased with this provision and, yet, I don't see  
13 why it should be, because exhaustion of administrative remedies  
14 is a long-standing rule of law.

15 It's the normal thing and, if you practice law,  
16 understand that. That's what you normally have to do before you  
17 can bring anything into court, so why shouldn't that apply,  
18 particularly in the agricultural area, to these kinds of class  
19 action suits that are being brought, with respect to Legal  
20 Services lawyers bringing them?

21 Lastly, something that seems like it ought to be done  
22 in every case anyway and any good judge ought to throw the case

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1 out if it isn't done, but unfortunately, that's not necessarily  
2 the case because whether it gets to the judge or not is part of  
3 the problem.

4 Farmers get these complaints at them without ever  
5 going through the process of going to the judge, because they  
6 are afraid of the cost. They don't know who it is who is really  
7 doing the complaining. They don't have specificity in this  
8 stuff. There's just huge stuff thrown at them.

9 The last requirement is simply that the plaintiffs  
10 have to be clearly identified: Who is going to do the suing;  
11 who is doing the complaining; and the specification of the  
12 factual basis for this claims against the farmer or the grower,  
13 in this case.

14 I think, really, though a lot has been said negative  
15 about these, these are fairly simple and they are very basic  
16 principles of law. There is nothing radical about the proposals  
17 in the agricultural area.

18 The other provisions are something that we don't think  
19 are controversial at all, the desire to allocate a certain  
20 amount of money, a very limited amount of resources percentage-  
21 wise, of Legal Services money to try to track down those fathers  
22 who are wayward in child support.

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1           As we discovered in some of our studies -- maybe  
2 you'll find out something differently, and I hope that you do  
3 because I was disturbed by it. In what we looked at last year  
4 and the year before, it looked like there were very low  
5 percentages of time being spent by Legal Services lawyers doing  
6 this. We wanted to earmark some of the funding so that it would  
7 clearly be done and, also, that some of it would be done in  
8 areas dealing with the drug war, although a very minor portion  
9 of the budget dealing with that.

10           Last, something Warren Rudman and I talked about at  
11 some length several years ago and is in the appropriations  
12 process now to become the rule, the day that all of you are  
13 confirmed by the Senate. Whether that actually happens -- I  
14 hope it does very soon, but if it doesn't, we want to continue  
15 to push this and make this provision happen sooner rather than  
16 later. That is to provide you, this Corporate Board, with the  
17 power to have competitive bidding among grantees.

18           Of all of the reforms that I can think of for Legal  
19 Services, it's long overdue. It's the opportunity for the  
20 Corporation at a national level to look down at what is going on  
21 with the various grantees in the field and say, okay, if the  
22 501(c)(3) is not doing what we really want it to do and there is

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1 somebody who can provide Legal Services to the poor in a fashion  
2 which is going to achieve the goals and objectives better, then  
3 we ought to have the right to do that simplistically rather than  
4 the current cumbersome process which requires extreme fault,  
5 grievances and everything else, before you can really have a  
6 grantee disenfranchised.

7           The idea of competition, again, is something I don't  
8 think anyone up here on the Hill has an objection to. We were  
9 not allowed, by the compromise we went into in the last two  
10 appropriations cycles, to get this into the governing law  
11 immediately, simply because of the politics of the previous  
12 Board.

13           Frankly, I think that was the only thing holding up an  
14 agreement on several of these reforms that are in McCollum-  
15 Stenholm, many not all of them but quite a number of them.  
16 Again, I've spoken a little longer than I intended, but I feel  
17 passionately about this issue, I really do.

18           I think Legal Services should be out there doing a  
19 great deal for the poor. I believe deeply in that. I have  
20 served, as I said to you before, with Legal Aid and Legal  
21 Services efforts with poor in my own community. There is a  
22 tremendous need for these services. The budget is not nearly

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1 adequate to take care of the problems that are out there.

2 We should do all we can -- we, being the members of  
3 Congress and you, being this Board -- to make certain that those  
4 services are provided in the way and in the manner that they  
5 were originally intended, and get rid of all the politics, as  
6 much, at least, as we can, both in terms of what happens in the  
7 business politics as well as in the politics inside the Legal  
8 Services grantee system, which I think, itself, has been the  
9 greatest problem to delivery of these services and the biggest  
10 potential black eye.

11 If that can be done, and I think, again, these reforms  
12 would go a long way to doing that, the ability for you to argue  
13 your case for the proper resource level and to gain the support  
14 broadly based in Congress that's been lacking the last few  
15 years, would be improved immeasurably, in my judgment.

16 Thank you, Mr. Chairman.

17 CHAIRMAN WITTGRAF: Thank you, Congressman.  
18 Questions? Comments? Mr. Collins?

19 MR. COLLINS: Well, Mr. Congressman, I was very much  
20 interested in your comments and your interest, longstanding as  
21 it is in this whole matter. It puzzles me somewhat to see the  
22 adversarial posture which exists between regional offices and

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1 field offices of LSC and the so-called central authority here,  
2 to which we are recently appointed potential trustees.

3 I interpret those in the field to say, "We are  
4 perfect. We know all the answers. Do not interfere with us.  
5 We know best what is good for the Board." On the other hand,  
6 there have been occasions in the past when it was found by some  
7 people here in Headquarters that there are gross and widespread  
8 and extraordinary abuses.

9 In other words, hyperbole seems to exist, to some  
10 degree, on both sides. It would seem to me that your proposals  
11 are, in the main, reasonable. The ABA has written a letter  
12 reiterating their opposition to your proposal as recently as  
13 yesterday, of which I received a copy.

14 It just seems to me that you and the ABA and others  
15 ought to be able to sit down. One thing in particular, is the  
16 ABA takes the position that the exhausting all administrative  
17 remedies -- "any and all," I think is the language that kind of  
18 bugs them.

19 They say that if you were to impose that obligation,  
20 that would be an aberration that exists nowhere else, in any  
21 other branch of the law, and that you would make all of the  
22 migrant farm workers a person bearing a unique burden.

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1                   Query: Are they right?

2                   CONGRESSMAN McCOLLUM: I don't think they are, but at  
3 yesterday's hearing -- which came back to me -- their comments,  
4 through this process of the letter to you and so on, is the  
5 first time I've heard that expression stated.

6                   My experience in the law has always been -- and I did  
7 practice trial law for a long time before I came to Congress--  
8 it has always been I had to exhaust my administrative remedies.  
9 Charlie and I had been under the impression we were doing  
10 nothing more in that regard than tracking very sound principles  
11 of trial law everywhere in the area of law.

12                   I would be happy, and we will sit down with some of  
13 the ABA people now that we've heard this, on that point. If  
14 that's the only thing they are objecting to in this, I'm  
15 surprised and pleased.

16                   MR. COLLINS: Well, they have multitudinous, other  
17 objections, but that's one area in which they feel the most  
18 strongly.

19                   CONGRESSMAN McCOLLUM: Well, I would be happy to sit  
20 down with them and talk about that, anything that's technical  
21 like that.

22                   Let me assure you there is no intent on my part, and I

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1 feel confident on Charlie Stenholm's or any other supporters of  
2 this proposal, to let the technical stand in the way of some  
3 kind of a working out of the details.

4 Our objective is to move this along. We've never been  
5 obstructionists. We are not out there to try to stop the  
6 process. We are not out there to get rid of Legal Services.  
7 We've had people accuse us of that. That's absolutely not true.  
8 We are out there to further it, to improve it, and to make it  
9 work better, so, yes, sir, I'd be more than happy to talk to  
10 them about that.

11 MR. COLLINS: Do you have a copy of this most recent  
12 letter?

13 CONGRESSMAN McCOLLUM: I don't, but I --

14 MR. COLLINS: I'll be happy to give you mine.

15 CONGRESSMAN McCOLLUM: Thank you, Mr. Collins.

16 CHAIRMAN WITTGRAF: Mr. Dana.

17 MR. DANA: Mr. Congressman, Howard Dana.

18 CONGRESSMAN McCOLLUM: Yes, Mr. Dana.

19 MR. DANA: Thank you for coming today. This is a  
20 help. Am I correct that, in the ideal world, these proposals  
21 would be debated by you, in an authorization hearing?

22 CONGRESSMAN McCOLLUM: That is correct. I am on the

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1 Judiciary Committee in the House. It would be debated now in  
2 the Administrative Law Subcommittee and then by the full  
3 Judiciary Committee, then to the Floor of the House. The Senate  
4 would do likewise. We'd reach a conference committee, and that  
5 would be the process.

6 MR. DANA: Although I was here once before, we are a  
7 brand new board. I get a sense that -- not you, but there are  
8 those that would like to force us into taking a position rather  
9 quickly on this, before we understand it, before we really know  
10 what all of the issues are.

11 My understanding is Congress may not have even had a  
12 hearing on your proposals.

13 CONGRESSMAN MCCOLLUM: Let me explain the politics of  
14 where this is, just to lay it all out for you as black and white  
15 as I know how. There are those in the House and the Senate, in  
16 the Majority party particularly -- again, this is no offense,  
17 Democrat or Republican, just stating a fact here -- who have  
18 believed for some time -- and, to an extent, Warren Rudman and a  
19 couple of Republicans agree with them on that, so it's not  
20 totally a Republican/Democrat thing -- that there should be no  
21 fundamental changes in the basic laws governing Legal Services  
22 Corporation until this new Board -- "a new Board" was the way it

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1 was worded several years ago, but until this new Board, now that  
2 we have one -- is confirmed by the Senate.

3 In the abstract, I would agree with that. Our problem  
4 has been that we've been fighting over this for a long time,  
5 trying to get some of these reforms through the process. The  
6 feelings of animosity that pre-existed your coming, which you  
7 have to overcome -- I am encouraged by your presence, because I  
8 think we are in the way of overcoming it now -- have held back  
9 this sort of stuff for a long time.

10 What I anticipate happening this year is that the year  
11 is going to trickle out without an authorization occurring.  
12 Barney Frank has just absolutely said -- he's the Chairman of  
13 the Administrative Law Subcommittee -- "I will not hold  
14 hearings. I will not move forward until the Senate confirms  
15 every single one of the new Board Members," every single one of  
16 you.

17 Well, the two of you former Members of Congress  
18 understand, as I suspect all of you do, we're in an election  
19 year that will cause Congress to shut down the first of October.  
20 As a practical matter, if we don't have hearings and don't have  
21 something on this marked up for an authorization matter by late  
22 spring or early summer, because of the time it takes for the

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1 Senate to do its work, for conference committees to act, all of  
2 the appropriations bills that come up, we're not going to see a  
3 Legal Services authorization reform or even the debate this  
4 year.

5 So, the reason why, I suspect, you are getting some  
6 pressure to get involved and support this is that shortly, the  
7 appropriations committees will again go through their process.  
8 The only vehicle we have -- Barney Frank's willingness to mark  
9 this up and have hearings on it -- is through the same mechanism  
10 we tried last year, and lost by about three votes on the Floor  
11 of the House, and that is to get the provisions that currently  
12 allow you to continue to exist on a year-to-year basis in the  
13 appropriations bill, get that amended with these provisions.

14 The hearings on that and the process on that will  
15 occur fairly soon, not during the next month, but sometime in  
16 May, June, or that period of time. I think that's the reason  
17 why. I'm not pressuring you, no, but I'm sure that must be the  
18 reason why you are getting some pressure.

19 MR. DANA: Just a personal comment.

20 CONGRESSMAN McCOLLUM: Sure.

21 MR. DANA: I think all of us who come to Legal  
22 Services got our mindset predominantly set when we arrived.

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1 Whenever we came upon a Legal Services Program, we sort of got  
2 oriented at that time. I am absolutely sure, because I think  
3 we're about the same age, that the way life was in Orange  
4 County, Florida, was not unlike the way life was in other parts  
5 of this country during the period 1965 to 1980.

6 The private Bar was -- in some cases, as I have said  
7 in the past -- the enemy, was seen as the enemy. Legal  
8 Services, they had the answers, they were going to solve the  
9 problems, they were going to end poverty, and we were more of a  
10 problem and a hindrance, and we were in the way.

11 I believe that has entirely changed. I believe that  
12 we are -- that the American lawyer has come back into the  
13 process, in part because of Congress' insistence that the Legal  
14 Services Programs use an eighth of their money to encourage  
15 private Bar involvement. Hundreds of thousands of lawyers that  
16 are full-time, timekeeping lawyers -- sometimes day-to-day  
17 lawyers are the magic words I hear -- are back into the process.

18 I do not believe that the Legal Services Programs,  
19 generally speaking, are the same as they were in the heyday that  
20 you described. I can't speak for Orange County, and I'm sure  
21 you can, but if your Legal Aid Bureau is not receiving  
22 substantial funding from the Legal Services Corporation or from

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1 IOLTA or from the State Legislature or in a different way, then  
2 it's one of the few programs in this country that is not  
3 becoming or has not been fully integrated with the various  
4 efforts that are being made in the public and private bar.

5 I just hope that we, as a Board, and you, as  
6 Congressmen, approach Legal Services of 1990 in the context of  
7 1990, rather than in the context of the mid-'70s because at  
8 least I think that there have been substantial changes and  
9 substantial improvements in the concerns that you raise, at  
10 least from my optic. If it has not occurred, I think we all  
11 ought to know that and we ought to look into it.

12 I'm hoping this Board -- I'm sure this Board will do  
13 that. If it turns out that this set of changes makes sense for  
14 the program of 1990, then I would support them, but as of now,  
15 I'm not prepared, on my limited exposure to the Legal Services  
16 in the nation as a whole, to accept that at this time. I think  
17 we should look into it.

18 My hope is that Congress will look into it in the  
19 context of an authorization bill, that we push Barney Frank and  
20 his committee to get going on that, that you testify and that  
21 others testify and let Congress decide what the Legal Services  
22 Program should be. They can hold the bill up until they get a

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1 confirmed Board, but it's --

2 CONGRESSMAN MCCOLLUM: I know exactly what you are  
3 saying, Mr. Dana, and I understand your feelings because I, too,  
4 share your feeling that there has been some improvement since  
5 the 1970s, in some parts of the country greater than in other  
6 parts with Legal Services, but, unfortunately, my sense is more  
7 than a sense.

8 I have been on the front line because I've been  
9 interested in this issue, and I have people coming to me,  
10 groups, individuals, and actually have spoken with many of the  
11 Legal Services field lawyers over the years, in recent years  
12 particularly.

13 I can assure you that you will find, when you check  
14 into this, unfortunately, that there is still that problem down  
15 there. It may be not as gross in every case, but it's still  
16 there with lobbying, with the desire to be involved in  
17 redistricting, and with the desire, particularly, not to have  
18 the local governing body of the local Bar or the group that has  
19 even been anointed by our provisions, actually direct the field  
20 activities.

21 Now, there is a great awareness and an interest in  
22 lawyers being involved in Legal Aid. I think if this set of

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1 reforms we've proposed here can be given to you to utilize, that  
2 this Board, with its new outlook and its fresh approach, working  
3 with local Bar Associations and existing Legal Services  
4 grantees, I think with competition into it and everything else,  
5 I think you can make it work. I really think the climate is  
6 good for it, but I don't think you can do it with any great  
7 degree of success without most of these reforms.

8 MR. DANA: Thank you.

9 MR. COLLINS: Mr. Chairman.

10 CHAIRMAN WITTFGRAF: Mr. Collins.

11 MR. COLLINS: Is there a historical Congressional  
12 precedent or mandate that suggests that Congressman Frank cannot  
13 hold full authorization hearings until the Senatorial  
14 confirmation, or is that just his individual judgment?

15 CONGRESSMAN McCOLLUM: That is his individual  
16 judgment.

17 MR. COLLINS: I see.

18 CONGRESSMAN McCOLLUM: That is the judgment that I  
19 think is probably shared without being articulated by others,  
20 but Barney will tell you that publicly if you wish to ask him,  
21 I'm sure.

22 MR. COLLINS: If I may ask you just one followup

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1 question to give you the point of view of one other new Member.

2 CONGRESSMAN McCOLLUM: Yes, sir.

3 MR. COLLINS: By no means do I believe that I know all  
4 that I want to know and intend to know about LSC and related  
5 issues, but I also know that to make no decision is, in fact,  
6 making a decision. If the system is not perfect, then to the  
7 extent that it is possible for us to do so, I think we should  
8 make some changes. It is for that reason that I reiterate my  
9 offer.

10 CONGRESSMAN McCOLLUM: I'll pick it up when I walk  
11 out. I'll walk right by there whenever the Chairman releases  
12 me. I'll go see if we can negotiate that one issue particularly  
13 with ABA.

14 CHAIRMAN WITTGRAF: Mr. Molinari.

15 MR. MOLINARI: Good to see you again, Bill.

16 CONGRESSMAN McCOLLUM: Good to see you, Guy.

17 MR. MOLINARI: Has there been any dialogue between  
18 yourself, Charlie, and the ABA or the Legal Services people that  
19 have been on the Hill to discuss the provisions of your  
20 proposal, and to see if there is some compromise ground?

21 CONGRESSMAN McCOLLUM: Not directly with them. We  
22 have discussed with the Congressmen and Senators who

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1 particularly have been associated with them over the years, but  
2 we have been in a somewhat adversarial role.

3 Some hostility has existed with these ideas, not just  
4 the agriculture provisions that the ABA has commented so  
5 strongly on, but with a number of others. For example, through  
6 staff and through those sources I know, there is a great  
7 resistance to the timekeeping requirements, which to me seem to  
8 be extremely simple and logical. I don't know why they don't  
9 want it.

10 MR. MOLINARI: I'd like to read just a moment from the  
11 same letter that Mr. Collins referred to. "Finally, the  
12 timekeeping requirements are unprecedented and excessive."  
13 Then, it goes on to say, "A sensible timekeeping system can no  
14 doubt be developed. The one proposed in these amendments would  
15 be so detailed as to be counter-productive."

16 So, at least on that item, there seems to be some  
17 give. I guess --

18 CONGRESSMAN McCOLLUM: I'll be glad to talk with them,  
19 Guy.

20 MR. MOLINARI: The problem we have and the problem  
21 that this Board has had over the years is the fact that Congress  
22 has failed to come through with the reauthorization measure, so

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1 it makes our job a lot more difficult. If there was a  
2 reauthorization measure, it would be a lot easier for us up here  
3 to have those guidelines in the law.

4 I know what you're up against and, frankly, it bothers  
5 me because I think that I don't know why your proposal, good or  
6 bad, should be tied down to the fact of whether we are confirmed  
7 or are not confirmed. I think Congress should do its work  
8 regardless, debate it, have hearings. If it is passed, fine; if  
9 it's not passed, okay. That's the way the process should work,  
10 but that does concern me.

11 CONGRESSMAN McCOLLUM: I can understand why it would,  
12 and I will say to you, as I have indicated in a sort of indirect  
13 way a moment ago, there has been a real hostility between most  
14 of us trying to get reforms in of this nature and existing Legal  
15 Services lawyers in the field. They have made no bones about  
16 it.

17 I've got a couple of them who I went to school with  
18 it. I can talk to them on the telephone about everything else,  
19 but when I start talking about these reforms, it's just, every  
20 one of them, "You guys are out here to tie our hands down and we  
21 don't want to have anything to do with that. We want to do what  
22 we want to do."

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1 Part of that comes, very frankly, from the fact that  
2 many of the attorneys themselves have been there in the system  
3 for a long time, who are the senior attorneys in Legal Services  
4 in the field. They still have the same passion with respect to  
5 wanting to make the social changes that, Mr. Dana, you said has  
6 gone from the system to some extent.

7 I don't think it is really gone. I think it has been  
8 restrained. I think the reality of the time has passed and  
9 public opinion is as strong as it has been against it, that they  
10 have become very restrained. I wish I could see it otherwise,  
11 but I will be glad to talk with them.

12 I am not averse to talking with them, if that would be  
13 the wish of the Board, to help iron this out as soon as we can.

14 CHAIRMAN WITTGRAF: Further questions?

15 (No response.)

16 CONGRESSMAN McCOLLUM: Thank you, Mr. Chairman.

17 CHAIRMAN WITTGRAF: May I have one question,  
18 Congressman?

19 CONGRESSMAN McCOLLUM: Yes, sir, absolutely.

20 CHAIRMAN WITTGRAF: Yesterday, we did hear, as you've  
21 been told, from representatives of both the agricultural  
22 community, including at least two gentlemen who were involved

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1 directly as producers, as well as from now a State Court Judge  
2 with some experience in the Legal Services community and a  
3 couple of other attorneys involved with farm workers in the  
4 Legal Services community.

5 I am focusing specifically on the provision dealing  
6 with agriculture. I'm from Iowa and Ms. Wobeck next to me is  
7 from Minnesota, so we are the two who come closest to the  
8 agricultural community, and I think in different ways, are  
9 involved directly. In fact, Jeanine is a producer, she and her  
10 husband, of dairy principally.

11 I agree with you that it is a rule of law, as you say,  
12 to exhaust administrative remedies. I'm a little concerned. If  
13 I understand correctly, we are dealing particularly with the  
14 AWPA, Agricultural Workers Protection Act, an Act that exists in  
15 its present form since 1983, if I've been led correctly in my  
16 understanding of its history.

17 CONGRESSMAN McCOLLUM: I think you are right, but you  
18 may know more about that particular law than I do, but go ahead.

19 CHAIRMAN WITTGRAF: Mr. Erlenborn was reminded  
20 yesterday that he was involved in the authorship of this, which  
21 he may or may not be pleased has been brought back in this  
22 visitation.

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1           CONGRESSMAN McCOLLUM: He may remember it better than  
2 you or I ever would.

3           CHAIRMAN WITTGRAF: He is going to be forced to  
4 remember it, if he ever chooses not to. If we have a law on the  
5 books and a law that is functioning, for better or worse--  
6 obviously, lots of laws are viewed by the people who are  
7 subjected to them as being fair and unfair, thinking  
8 particularly of the Internal Revenue Code, as another example.

9           If we have a law that exists, I'm wondering, on the  
10 one hand, how we can say that it should not be available to  
11 Legal Services attorneys as it would be to any other attorneys,  
12 and whether or not implanting additional mediation or  
13 administrative procedures or requirements that apparently do not  
14 exist under the terms of the AWPA today, is something that we  
15 would logically do through regulation or statute in connection  
16 with the appropriation for the Legal Services Corporation,  
17 rather than through changes in the AWPA.

18           Is it a contradiction? Why do we take one law, out of  
19 all of the laws that might be available to Legal Services staff  
20 attorneys, and somehow try to hyphenate that law or change that  
21 law, in effect, as you've noted now through the appropriations  
22 process, as opposed to any other law that might be on the books,

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1 a federal law, I guess we'll say, and available to Legal  
2 Services staff attorneys?

3 CONGRESSMAN McCOLLUM: Mr. Wittgraf, I think the  
4 bottom line is simply that in this area, in the farm worker  
5 area, there has been a grosser abuse by Legal Services lawyers  
6 of the process and procedures given to them than in any other  
7 area that has come to our attention. It is a long, long  
8 history.

9 There did not appear to be any significant change in  
10 the relationships between the problems that have existed for 20  
11 years or more in the farm worker/Legal Services lawyer  
12 connection. So, it is simply a desire to find a way that's not  
13 unfair and inappropriate, which I don't think these are, to  
14 change the procedures in a way peculiar to Legal Services  
15 participation, that kind of mitigates against the abuse that we  
16 see Legal Services lawyers engaged in, that we don't see  
17 necessarily other lawyers engaged in.

18 Maybe that's unique because, if you recall, farm  
19 workers are not going to likely be able to afford to go out and  
20 hire an attorney on their own, so it's going to be Legal  
21 Services lawyers who do this for them. You just aren't  
22 necessarily going to see the abuses in the Bar that you could

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1 with the Legal Services lawyers. If they are going to be there,  
2 they are going to be with Legal Services.

3 CHAIRMAN WITTGRAF: I assume another approach would be  
4 through changes in the law itself.

5 CONGRESSMAN MCCOLLUM: It would be, but then again,  
6 part of this is, as I guess Mr. Erlenborn would particularly  
7 know, the opportunity to change that in law. I don't know. I  
8 haven't researched this, so I don't want to make a statement  
9 without a footing on it, but my guess is that we're not going to  
10 see an opportunity likely out of the Education and Labor  
11 Committee to get at that law any time soon.

12 My experience in Congress tells me we don't get those  
13 opportunities very often, just as it's been, without going  
14 through the appropriations process, which is unique to this, by  
15 the way. The other law would not be -- we wouldn't be able to  
16 amend it in the appropriations process.

17 The only reason we were able to amend yours is because  
18 there is no authorization, and we're doing it every year, and  
19 it's in the appropriations bill, so there is a little  
20 frustration on how would we, and would we ever, in the  
21 foreseeable future, get hold of that other law to change it.

22 CHAIRMAN WITTGRAF: You do not foresee that you would

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1 in the foreseeable future.

2 CONGRESSMAN McCOLLUM: That's right. Let me add to  
3 this, while you've given me back the floor for a moment. It may  
4 sound like I'm here seeking to argue a case and I am, for these  
5 provisions, because I do feel your new Board, many of you are  
6 new to the subject, and you need to know why we want these  
7 things, those of us who worked on it.

8 But, that does not mean that we do not want your input  
9 that you've given. Mr. Collins has given some. You've brought  
10 each of you some different areas, a few of you have. If you see  
11 specific areas that you'd like to see us change in what we've  
12 done, or maybe there are some things even in the short run  
13 before this appropriations process comes up, there's nothing to  
14 lock us into concrete to what we've got here.

15 I want to make that very clear. We don't necessarily  
16 have the best ideas. These just simply have been a collection  
17 over time of what we think are the problem areas and how they  
18 are best addressed.

19 As time passes, I hope we get these changes sooner  
20 rather than later, but if we're talking about as long as next  
21 year, because of your confirmation being delayed and we don't  
22 win appropriations, surely, by then, you're going to have a lot

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1 of thoughts about these things, whenever they come.

2 Again, maybe we aren't the only ones, but we are the  
3 most active. Charlie Stenholm and Bill McCollum are open  
4 minded, is what I'm saying.

5 CHAIRMAN WITTGRAF: Further questions or comments?

6 MR. COLLINS: We have found a public figure with due  
7 humility.

8 CONGRESSMAN MCCOLLUM: A little humility, anyway.  
9 Coming from a public figure himself, that's an honor.

10 CHAIRMAN WITTGRAF: Thank you, Congressman.

11 CONGRESSMAN MCCOLLUM: Thank you, very much.

12 CHAIRMAN WITTGRAF: Ms. DiSanto. You have had 45  
13 minutes to prepare your answers.

14 MS. DI SANTO: Yes, I have. Mr. Molinari, you asked,  
15 number one, how does monitoring work; number two, are there any  
16 changes needed, are there sufficient proper safeguards; and,  
17 last, you asked about the number of complaints, the types of  
18 complaints we have and what we do with them.

19 It is easiest to talk about monitoring in terms of  
20 previsit preparation, on-site review, and monitoring report  
21 development and analysis. It's best to just look at it more or  
22 less like a triangle. In previsit preparation, we send each of

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1 our programs a notice of intent to monitor ten to fourteen weeks  
2 before we ever go on site.

3 At the same time, we will also provide the Legal  
4 Services Program with a document request letter. That document  
5 request letter is broken up into two forms. One part of the  
6 letter identifies those documents that are supposed to be sent  
7 to the Legal Services Corporation. The other part identifies  
8 those documents that are supposed to be prepared in original  
9 form for the first day of the on-site review.

10 Thereafter, the documents that are sent to LSC are  
11 reviewed. During that review process, we review and analyze the  
12 documents and identify the most salient documents and prepare a  
13 plan and a briefing book. That briefing book is then provided  
14 to each member of the team before the on-site review, and there  
15 is also a plan which will identify what areas we are examining  
16 in particular, of that particular program.

17 In addition, the briefing book will identify in very  
18 short terms a fact sheet. That fact sheet will identify who the  
19 Board Members are, where they are located, how much money the  
20 program receives, what is the name of the executive director, do  
21 they have any outside funding sources, how much those sources  
22 are, are there any subgrants available, are there any pending

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1 requests for purchases that are coming through the Legal  
2 Services Corporation.

3 Five to nine weeks before the on-site review, the  
4 specific dates of the on-site review are provided to the  
5 program. Thereafter, about one week before the visit, we have a  
6 telephone confirmation that occurs with each program. At that  
7 telephone confirmation, we identify the names of the individuals  
8 who will be coming on site.

9 We also try to check to see if there is any problem or  
10 anything that we need to resolve before we get on site. That  
11 is, more or less, the previsit preparation stage of the  
12 monitoring process.

13 Then, we are on site. We usually have a team that's  
14 made up of attorneys, management specialists and auditors which  
15 will go on site to the program. The visit could last anywhere,  
16 usually, from one week to two weeks, usually depending on the  
17 size of the LSC grant.

18 During the on-site review, each individual is  
19 responsible for a particular area. Interviews take place with  
20 regard to staff members, with regard to Board Members of the  
21 Legal Services Program. We will also usually interview judges,  
22 Bar representatives, and other outside parties on their views of

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1 the Legal Services Program.

2 In addition, on site, we will review a lot of original  
3 fiscal documentation, and we will attempt to verify information  
4 that has been provided to us at LSC. We will also try and get  
5 other information and talk to other Social Service agencies  
6 while we are on site, just to see that there is no overlap in  
7 the types of services that are provided, so that if one Social  
8 Service agency, for instance, is committed to providing "X" for  
9 a particular group of people, maybe the Legal Services Program  
10 might want to provide "Y" so that you have a larger scope of  
11 service that might be provided to a particular area.

12 Each evening, pretty much, our teams do get together.  
13 The first day on site, which is usually a Sunday night, our  
14 teams are required to get together and, more or less, scope out  
15 what they are going to be doing, flush out any questions that  
16 they might have about the grantee and make sure everyone knows  
17 what the other person is doing, so you're not duplicating any  
18 kind of work.

19 Once the on-site review is concluded, an exit  
20 conference is typically given to the Legal Services Program  
21 about what our preliminary review is of what just happened, what  
22 we saw during that one-week or two-week period. Each individual

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1 is then required to prepare an individual monitoring report.

2 MR. MOLINARI: Excuse me. Maybe I can interrupt. We  
3 do have a time problem here. I can take these items, and I  
4 think the Board can, with you directly, which I want to do,  
5 because I think you can help us a great deal.

6 What I'm really looking for is your assessment as to  
7 the system in place, just a brief description from your own  
8 workings there, your two and a half years or so at the helm.  
9 Are there problems out there that are serious? Does the present  
10 system allow for proper monitoring?

11 Can you give us some idea as to the amount of  
12 violations? We don't know whether the system is working,  
13 whether there are abuses out there and, if there are, to some  
14 degree of quantity, if you can.

15 MS. DI SANTO: I think that the team approach to  
16 monitoring is a successful one, and we also contract with  
17 independent consultants. Clearly, I think, as with any system,  
18 the system can always become increasingly more efficient and can  
19 always become better.

20 We are internally very cognizant of that. We are  
21 always trying to refine and retool to make things better and to  
22 make things better for the programs. Just as an example, we

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1 used to send out two letters with regard to a particular matter.  
2 They have now been compiled into one, trying to refine the  
3 language of document requests, trying to ensure --

4 MR. SUAREZ: Mr. Chairman, if I understand the  
5 question correctly, the Congressman is trying to get at what are  
6 the problems out there in the field, if any; to what extent they  
7 are happening; illustrate with some specifics. Don't tell us  
8 any more about the procedure, please, because you've gone on for  
9 quite awhile on that.

10 MR. MOLINARI: It's probably the result of bad  
11 questioning on my part.

12 MS. DI SANTO: No, no.

13 MR. MOLINARI: What I'm really trying to get at is:  
14 Is there widespread fraud or abuse out there on the part of the  
15 grantees and, if there is, could you give us some idea of how  
16 much, how many violations you handle a year and what  
17 disciplinary action is taking place, in numbers.

18 MS. DI SANTO: I can tell you that at any point in  
19 time, we are generally working, as far as complaints are  
20 concerned -- these are complaints or information that are  
21 brought to our attention from third parties -- eighty to ninety  
22 at any one point in time.

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1           The types of complaints more or less can run the  
2 gamut. They can run from someone complaining that they did not  
3 receive assistance and they should have received assistance.  
4 They can run to an individual, which recently occurred, called  
5 saying, "The program has closed its doors for two to three days  
6 a week. The health benefits are no longer being paid and I  
7 haven't been paid in three weeks. Someone come help us." So,  
8 we have received those types of complaints.

9           The more typical type of complaint, as far as  
10 eligibility and denial of service, are clearly the more typical  
11 type of complaint that we receive. However, we do receive--  
12 which is clearly a smaller number of complaints, which are more  
13 serious in number, which are questioning whether or not the  
14 Legal Services Program can engage in this particular activity,  
15 or "Do you know that X employee of this program is involved in  
16 this case, and I understand from your Act that they are not  
17 supposed to do that."

18           CHAIRMAN WITTGRAF: Excuse me. Can you give examples  
19 of those?

20           MS. DI SANTO: Excuse me?

21           CHAIRMAN WITTGRAF: Examples of the so-called major  
22 complaints.

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1 MS. DI SANTO: As a matter of fact, we recently  
2 received a complaint from an individual attorney on the west  
3 coast. The person called and said, "Do you realize (and gave us  
4 the name of a particular employee) is involved in a very, very  
5 large abortion-related case in this state?"

6 We said, "No, we really weren't aware of that." We  
7 immediately began making some inquiries. We asked the  
8 complainant to please provide us with as much information as  
9 they had, so we'd have some kind of foundation to work from.  
10 That complaint that blossomed into an on-site compliance review  
11 where we spent one week at a particular program looking into  
12 matters of outside practice of law.

13 We began to learn that outside practice of law was a  
14 very widespread matter in this particular program, and there  
15 were a lot of people, probably the majority of the staff, that  
16 was involved in outside practice of law of one type or another.

17 We were there for about a week. We came back. We  
18 started doing even more work, just trying to get a scope on how  
19 wide this problem was, and right now, where we are is that it is  
20 a very large problem. We are doing a lot of cross referencing  
21 and doing a lot of graphs on the particular matter. We will be  
22 probably returning to that particular program to re-examine the

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1 matter again, to close up some gaps.

2 We also just -- I think it was probably last week or  
3 the week before, we had another individual who called regarding  
4 a particular housing matter. He was an official with the  
5 housing authority in this particular city. He called and said,  
6 another one of those, "Do you know what is going on here?"

7 We said, "No, will you please tell us a bit more?" He  
8 proceeded to give us a scenario where an individual -- where he  
9 personally had gone to the apartment of some low-income  
10 individuals and found that they were in abysmal condition. He  
11 then proceeded to go into the procedure that's necessary to  
12 remove these people from this particular building, to put them  
13 in another building.

14 It was an elderly woman and she had a sick daughter.  
15 What happened is he was calling because he had gone through the  
16 motions to try and remove these people from this particular  
17 apartment, and he was then enjoined from doing so from one of  
18 the programs.

19 He called us up quite annoyed about the situation and  
20 went so far as to tell us that he had gone to the executive  
21 director of the program himself, and asked him to come look at  
22 the housing conditions of these people, and wanted to know why

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1 he was seeking a restraining order for them to have these  
2 individuals moved. That was a very interesting scenario for us,  
3 because we had examined some other related problems with that  
4 same grantee.

5 So, you start then building some kind of pattern that  
6 is occurring with a particular program, as you put these types  
7 of complaints together and begin examining it on a larger basis  
8 than you would just on that initial complaint that we had the  
9 first time around.

10 Those are just two examples that I have that have just  
11 recently come to fore in our office.

12 CHAIRMAN WITTGRAF: Perhaps -- Ms. Pullen.

13 MS. PULLEN: Yesterday, we were told by a former  
14 consultant monitor that there are programs which withhold or  
15 refuse to give the names of the cases to the monitors. Is this  
16 a fact, and is it common? Under what right do the grantees  
17 believe that they can withhold this public information?

18 MS. DI SANTO: We have been denied the names of  
19 clients by Legal Services Programs and we have been denied the  
20 names of cases that have, in fact, already been filed in court  
21 by Legal Services Programs. That is true.

22 MS. PULLEN: Is it rare or is it common?

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1 MS. DI SANTO: It is less common today than it once  
2 was. The argument is that regarding the attorney/client  
3 privilege regarding the name of the particular client. In the  
4 event that pleadings have not yet been filed in court, the  
5 argument is that that is subject to the attorney/client  
6 privilege.

7 The attorney/client privilege has also come up in  
8 instances where pleadings and a case had, in fact, been filed in  
9 the public domain, and the argument of attorney/client privilege  
10 with regard to the name of the case has also arisen.

11 MR. SUAREZ: Mr. Chairman, I'd like to ask a follow up  
12 question on that.

13 CHAIRMAN WITTGRAF: Mr. Suarez.

14 MR. SUAREZ: Is there any present instance of that  
15 happening, where we have a grantee agency that refuses, at this  
16 particular point, to divulge any of the cases that it has  
17 pending?

18 MS. DI SANTO: Mr. Suarez, I would have to just touch  
19 base with just my office to see if I have a current instance  
20 where that is being denied. I can tell you, for instance, we  
21 have been denied on occasion. For instance, access to original  
22 cash disbursement journal, what checks went to whom and why.

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1 I can check with my office and get back to you on  
2 that.

3 MR. SUAREZ: The books of the various grantee agencies  
4 presumably are open to us. I was just thinking of a whole  
5 different situation, as was being asked before, relating to the  
6 clients and to the cases.

7 The name of a client prior to the filing of a case, I  
8 suppose there is maybe some attorney/client privilege aspect to  
9 that, but once it's filed, it's public record and we should not  
10 have to go searching through the court records and the various  
11 agencies in the various jurisdictions in question to get that  
12 information.

13 MS. DI SANTO: Yes, sir.

14 MR. SUAREZ: It sounds like a very simple thing to  
15 solve. It doesn't sound like anything to write home about, if I  
16 may use that expression.

17 MS. DI SANTO: Yes. Unfortunately, sometimes -- we  
18 have found sometimes that things that at a first glance might  
19 appear to be pretty simple to solve can sometimes result in  
20 extensive exchanges of information.

21 We have one program where we have been trying to  
22 obtain the access to approval of outside practice of law forms.

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1 We have probably exchanged no less than eight to ten pieces of  
2 correspondence back and forth on this matter over the last four  
3 months.

4 CHAIRMAN WITTGRAF: Ms. DiSanto, if you'd stay there,  
5 I'd ask Ms. Smead to come forward after she pours her glass of  
6 water.

7 MR. HOUSEMAN: May I ask a procedural question?

8 CHAIRMAN WITTGRAF: Mr. Houseman.

9 MR. HOUSEMAN: Is it your intent to allow us to make a  
10 quick response of five to ten minutes or not? If not, which is  
11 fine, we would like an opportunity to do a somewhat thorough  
12 presentation at some later Board Meeting on all of these issues.

13 CHAIRMAN WITTGRAF: I think that makes probably more  
14 sense, Mr. Houseman. Obviously, you sat through all of  
15 yesterday's proceedings.

16 MR. HOUSEMAN: We didn't get into this kind of detail,  
17 though.

18 CHAIRMAN WITTGRAF: No, no. I understand. Yesterday,  
19 let's say, opened up a number of subjects for the Board. As I  
20 indicated any number of times yesterday, we consider yesterday  
21 and today, really, the beginning, certainly, and not the end of  
22 communication and dialogue. For the benefit of the eleven of us

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1 here who really are in the beginning of our learning curve, I  
2 think it is helpful.

3 Many of us have not actually had an opportunity to  
4 spend much time in the LSC Executive Offices to have some sense,  
5 so we can fit some of the comments and complaints of yesterday,  
6 to have some sense of what Monitoring, Auditing and Compliance  
7 is about, and also to get some sense particularly about the two  
8 recent -- I'll say paperwork requirements regarding both drug-  
9 related cases and client denial cases, to which course you've  
10 written us or at least regarding one of which you've written us,  
11 so that we can have a better sense of what your correspondence  
12 and that of others means. That's the long answer.

13 The short answer is: Another time.

14 MS. HOUSEMAN: Well, if you're going to get into drugs  
15 and denial, I think we should be heard for a few seconds.

16 MR. COLLINS: Mr. Chairman, I think that --

17 CHAIRMAN WITTGRAF: Mr. Collins.

18 MR. COLLINS: -- we listened to a lot of information  
19 yesterday and a lot of criticism of the manner in which the LSC  
20 staff is functioning. We are now trying to learn how they are  
21 functioning. I would suggest, Mr. Chairman, that we keep the  
22 information flow as it is going from the Board to those who have

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1 been invited, and we are not going to turn this into a Town Hall  
2 forum.

3 CHAIRMAN WITTGRAF: Ms. Smead, as I indicated while  
4 you were pouring your water, I think, in response to Mr.  
5 Houseman's inquiry, I think it would be particularly helpful  
6 regarding, particularly, those two most recent regulatory  
7 initiatives, if you could fill us in.

8 Even before you do that, bearing in mind that Ms.  
9 Bozell and Mr. Wear have been good enough to provide us with a  
10 four-page overview which does not only describe MAC but also, it  
11 describes the Office of Field Services, it may not be that all  
12 Board Members have read it or had an opportunity yet to read it.

13 Perhaps you'd say a little bit about yourself and just  
14 a little bit about your responsibilities, and then particularly  
15 address yourself to those two regulatorial reporting  
16 initiatives, if you would.

17 Presentation of Ellen Smead

18 MS. SMEAD: Thank you, Mr. Chairman. My name is Ellen  
19 Smead. I am the Director of the Office of Field Services. I've  
20 been with the Corporation since 1985 as a monitor and then, with  
21 the Office of Field Services.

22 Our principal responsibilities in the Office of Field

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1 Services is grants administration. That would include the  
2 annualized grants and one-time grant programs, such as the Law  
3 School Grants or unsolicited grant proposals.

4 We do what could also be called paper monitoring. We  
5 get quarterly reports from the programs and we look at those.  
6 We provide a lot of backup services in terms of analyzing  
7 refunding applications.

8 The two issues you asked me to talk about would be the  
9 Declination of Representation form and the other would be the  
10 drug form, as it's been called.

11 CHAIRMAN WITTGRAF: Yes, ma'am. Would you be good  
12 enough, for the Benefit of the Board Members, to tell us the  
13 Board action basis for the initiation of those requirements, if  
14 you can?

15 MS. SMEAD: The drug form I'm not as familiar with.  
16 That's been the Office of Policy Development that's been mostly  
17 involved in that.

18 CHAIRMAN WITTGRAF: Should I ask --

19 MS. SMEAD: It is my understanding --

20 CHAIRMAN WITTGRAF: Ms. Smead, excuse me. Should I  
21 ask Mr. Boehm to come forward?

22 MS. SMEAD: Yes, Mr. Boehm's office has also been

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1 involved in the Declination of Representation forms. I think it  
2 would be --

3 CHAIRMAN WITTGRAF: I didn't mean to unfairly put you  
4 on the spot here. I'd be happy to have the two of you or, if  
5 you want to bring Ms. DiSanto back in, the three of you to share  
6 response to the inquiries in any way you wish.

7 I'm concerned, as I think many of the Board Members  
8 are, with newly imposed regulatory or paperwork requirements,  
9 and need to know a little bit about the history, what prior  
10 Board action serves as the basis for them and what's been done,  
11 presumably, in an attempt to fulfill the requirements of those  
12 Board actions.

13 MS. SMEAD: On the declination of representation form,  
14 my understanding is that approximately one year ago, there was a  
15 concern about what the unmet need was. There always has been a  
16 concern about the unmet need, but there was a desire to try and  
17 quantify that in some way.

18 There are various ways of quantifying that and various  
19 instruments that could be used to do that. We understand there  
20 are legal need studies that have been done in some states. We  
21 also felt that programs have been saying several times that they  
22 have had to turn away potential clients because they lacked the

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1 resources.

2           So, we thought that we would try and get an idea of  
3 what they were having to turn away and why, so a form was  
4 devised that is very similar to the form that we get reports on  
5 closed cases on.

6           It gives about five or six reasons across the top that  
7 we thought people could turn away clients for, and then there  
8 are issues all the way down the side on what types of issues  
9 they might have been turned away for, for example, consumer  
10 bankruptcies or family law matters.

11           The reason we saw that they would be unable to  
12 represent the potential client is, for one thing, the client  
13 might not be eligible or the applicant might not be eligible, or  
14 the program may lack staff, it may lack resources, or it's not  
15 within their priority.

16           We sent out a preliminary draft of the form in  
17 January. We got --

18           CHAIRMAN WITTGRAF: Which January?

19           MS. SMEAD: January 1990. Some programs have been  
20 completing it. A lot of programs have submitted comments.  
21 We've also met with Mr. Houseman and some other representatives  
22 on it, as late as last week, trying to get some input on it and

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1 suggestions as to how to devise it better.

2 At this point, where we are is we're getting ready to  
3 revise the form a little bit more, send it out for a trial  
4 period of one month, make April the trial period, recognizing  
5 that programs may need some start-up time, some time to get  
6 glitches out, some time to call us with questions. Then we  
7 would start "in earnest" hard keeping data on May 1st.

8 Then we'll keep it for two months, two-month data, and  
9 then submit quarterly thereafter. It is intended that it be  
10 submitted on a disk so that it will be easier for inputting at  
11 one end, and it will be easier for us to analyze at this end.  
12 That basically summarizes the declaration of representation  
13 form.

14 CHAIRMAN WITTGRAF: Thank you. Does someone want to  
15 speak to the so-called drug form?

16 MR. ERLNBORN: Mr. Chairman, one part of your  
17 question was: What Board action preceded this and authorized  
18 this? I think that that has not been answered and I think that  
19 that is a very important question.

20 CHAIRMAN WITTGRAF: I think you referred generally,  
21 Ms. Smead, to Board action. Are you able, offhand, to be more  
22 specific?

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1 MR. ERLNBORN: No, I'm not able offhand, but  
2 Mr. Boehm has looked at it, too, if he knows.

3 MR. BOEHM: This preceded my involvement. I came on  
4 board in September and this goes back to about one year ago, but  
5 apparently, at previous Board Meetings, there were repeated  
6 questions by Board Members, because the biggest area, as I  
7 believe Emelia was testifying earlier, and the biggest areas of  
8 complaints that we get into our office from the field is from  
9 people that were declined representation in one form or another.  
10 So, we're --

11 MR. ERLNBORN: There was a series of questions. I  
12 don't believe there was a resolution.

13 CHAIRMAN WITTGRAF: Does any one of the four of you  
14 recall a specific Board action serving as the basis for that  
15 requirement?

16 MR. ERLNBORN: Was there a resolution?

17 CHAIRMAN WITTGRAF: It was a staff initiative, then,  
18 taken to attempt to fulfill what was perceived as a Board need  
19 for information?

20 MR. SUNDSETH: No, there were specific requests by  
21 specific Board Members to provide them with information to get a  
22 better handle on what the unmet need was. There were various

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1 needs surveys that had been conducted in various geographical  
2 locations by different organizations. The ABA recently did one,  
3 but this preceded the newest ABA study.

4 CHAIRMAN WITTGRAF: Mr. Erlenborn?

5 MR. ERLENBORN: Yes, Mr. Chairman, I think we have to  
6 understand the context in which this has occurred over the past  
7 several years, the kind of animosity that existed between Board  
8 Members, the inability for the Board to agree on very many  
9 things.

10 But, as a result of that, from the one meeting I  
11 attended before this Board was appointed, I learned that the  
12 staff, at times, would establish policy on their own. It was  
13 expressed at that Board Meeting that when the Board had not  
14 established policy, it then was the President's prerogative to  
15 establish policy.

16 I think that that was a very poor policy for the  
17 President to follow and something I think that this new Board  
18 should be aware of. I think that we should establish policy,  
19 and the policy should be implemented by the administration,  
20 rather than filling in by the administration with new policy  
21 determinations because the Board has failed to act in the  
22 opinion of the President or of the administration.

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1           So, I think it's very important that we establish that  
2 at this time, with this new Board, that we are the body in this  
3 Corporation to establish policy, and the administrators to  
4 implement that policy. I don't think that that has been the  
5 practice in the last year or two.

6           CHAIRMAN WITTGRAF: Mr. Dana.

7           MR. DANA: Mr. Chairman, this is a subject that has  
8 been of concern to me. I have drafted a motion that addresses  
9 that. Let me just read the motion. I won't make it now,  
10 because I think it's not an appropriate time, perhaps, but it  
11 does seem to me that this Board should set policy and that we  
12 should take charge of what this Corporation is doing.

13           I would like the Board to consider at some point,  
14 whenever the Chairman thinks it is appropriate, the following  
15 motion:

16           "Before imposing any condition, restriction,  
17 obligation or general data collection upon grantees of the  
18 Corporation, not specifically required by the LSC Act or  
19 regulation presently in effect or before taking any position  
20 with respect to policy, staff shall refer the matter to the  
21 Board or to the appropriate committee of the Board which, if it  
22 deems necessary, shall refer the matter to the whole Board."

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1 I agree with Mr. Erlenborn. I think that's a matter  
2 that should be relatively intuitive, but I think over the last  
3 little bit, we maybe have gotten away from that, and I think the  
4 Board should reassert itself as the policy-making body in this  
5 Corporation.

6 MR. COLLINS: Mr. Chairman? Mr. Chairman?

7 CHAIRMAN WITTGRAF: Just a moment, Mr. Collins,  
8 please. We've taken a bit of a diversion here. We will come  
9 back, I think, and discuss some more specifically MAC, Field  
10 Services, Policy Development, but I think we'll play this  
11 tangent out. Mr. Collins.

12 MR. COLLINS: No one can disagree with the general  
13 statement that it is the obligation, the right and the  
14 responsibility of the Board to set policy and that of the staff  
15 to carry it out. That, on its face, is obvious.

16 Thus far, and I believe, incidentally, that the motion  
17 is quite correctly described as having been read and not  
18 appropriate for discussion at this time, because it would seem  
19 to me that all that we've heard described here is an attempt to  
20 obtain information, which was requested in the course of a Board  
21 Meeting.

22 I think if they did not seek to get some information

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1 to give us an opportunity to make an informed judgment, they  
2 would not be doing their jobs.

3 CHAIRMAN WITTGRAF: Thank you, Mr. Collins. Before we  
4 go back to the panel, I think it would be appropriate to give  
5 the President an opportunity, as the chief administrative  
6 officer, to comment a little bit on the flow of activities and  
7 initiatives over the last year or two.

8 Mr. President.

9 MR. WEAR: Thank you, Mr. Chairman. I'm sorry that  
10 Mr. Erlenborn has gotten what I think is an erroneous impression  
11 at the one Board Meeting which he attended. In fact, the  
12 Corporation's Board of Directors, over the past years that I've  
13 been associated with the Corporation, has, in effect, set  
14 policy.

15 They were very precise and direct about that policy.  
16 The staff did not try to set policy on their own, on anything.  
17 Not all of the policy was always established by a formal Board  
18 vote. That's certainly accurate, and I think Mr. Erlenborn  
19 remembers that part of it.

20 The Board did, in fact, establish policy and the staff  
21 carried those policies out. That is what is being done with  
22 regard to these requests. In the one instance, the Congress has

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1 asked for the report on drugs; in the other, we are trying to  
2 measure to what extent people aren't served and why they are not  
3 served.

4 One of the principal issues associated with Legal  
5 Services is how Legal Services is rationed. It is clear that  
6 the demand exceeds the supply. At the present time, the local  
7 program decides how they will ration that service, and it's  
8 usually the program director.

9 As Mr. McCollum stated in his testimony, the local  
10 programs believe that their Board does not have any right to  
11 talk to them about specific cases and what kinds of resources  
12 will be spent on those cases. That is another reason for this  
13 report, to try to ascertain where resources are going, what kind  
14 of needs are out there that aren't being met, what kind of child  
15 support cases are being turned away. That was all put forward  
16 as the result of discussions with Board Members who are now not  
17 on the Board. Thank you, Mr. Chairman.

18 MR. ERLNBORN: Mr. Chairman.

19 CHAIRMAN WITGRAF: Mr. Erlenborn.

20 MR. ERLNBORN: Not to drag this out, but let me say  
21 that I think that we may have a different view, or I have a  
22 different view of what happened before, and I'm not familiar

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1 with all of the circumstances, but I have a somewhat different  
2 view than the President has expressed as his view.

3 I think that there is apparent agreement that the  
4 Board should be the policy-making body. One example that I  
5 would give, and I think it is something this Board should turn  
6 its attention to before very long, was the determination by the  
7 President to ask the designation of the President of the  
8 Corporation as the head of the Corporation for the purpose of  
9 appointing the Inspector General, and for the Inspector General  
10 to be, therefore, responsible to the President rather than to  
11 the Board. That was done without Board action.

12 Some other things were revealed in these earlier  
13 meetings, where the administration of the Corporation assumed or  
14 said they knew that a majority of the Board wanted to do this or  
15 do that, having to do with lobbying the administration and other  
16 things, but without any official Board action.

17 I think in the future, without any recriminations  
18 about the past, using these only as examples, in the future,  
19 these sorts of actions should not be taken on the understanding  
20 or the assumption of the administration that if the Board were  
21 to act, the majority would do this or that.

22 I think there ought to be official Board action, and I

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1 think we ought to reopen the question as to the responsible head  
2 of the agency for the purpose of appointing the Inspector  
3 General, and for the Inspector General to report to.

4 CHAIRMAN WITTGRAF: I don't believe, as indicated both  
5 by Mr. Dana and Mr. Collins, that there isn't necessarily a  
6 motion before us right now. We may take up the motion. Before  
7 we do, let's try to complete our discussion of recent  
8 initiatives.

9 I do have one question. Mr. Wear has referred to -- I  
10 am going to return to Mr. Boehm in a minute. Mr. Wear has  
11 referred to Congressional requests for drug case data. Perhaps  
12 you can speak to that more specifically so, again, we, as Board  
13 Members, have benefit of knowing the nature of the Congressional  
14 response for which that's designed.

15 Mr. Boehm, while we do have, thanks to Mr. Wear, Ms.  
16 Bozell and the rest of you, the overview, I think it would  
17 probably be just as well, as with Ms. Smead and Ms. DiSanto, to  
18 go ahead and say briefly who you are and what your  
19 responsibilities are, and what your office is responsible for,  
20 and then speak specifically to the so-called drug case reporting  
21 initiative.

22 Presentation of Kenneth Boehm

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1 MR. BOEHM: Sure. I'm Kenneth Boehm. I'm the  
2 Director of the Office of Policy Development Communications, and  
3 that includes the Policy shop, if you will, the entity within  
4 the Corporation that responds to request for information and  
5 research from the Board of Directors, and also includes our  
6 Public Affairs operation, as well as our Congressional Relations  
7 operation.

8 It is very small, within the overall context of Legal  
9 Services, with a very small number of folks involved, eight or  
10 nine staffers including support staff, but this particular  
11 initiative was, as mentioned, Congressionally initiated. It is  
12 a one-time information request that has been sent out.

13 It was done at the direction of Congress.

14 CHAIRMAN WITTGRAF: In what form? In what form was  
15 the directive or direction from Congress given?

16 MR. BOEHM: What had happened was as part of the  
17 appropriations process late last year, Senator Gramm of Texas  
18 had put forth a proposal on the Senate side saying there should  
19 be \$5 million set aside as part of the war on drugs for Legal  
20 Services grantees, 5 million of money already appropriated  
21 should be used to fight the war on drugs.

22 He was, in part, in his statements animated by the

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1 fact of what had happened with Secretary Kemp's initiative being  
2 blocked by Legal Services grantees and he wanted to see Legal  
3 Services join the government's war on drugs; that was his stated  
4 purpose.

5 In conference, in the conference committee, that, in  
6 effect, had gotten somewhat diluted. What came out of  
7 conference as part of the conference language was that Congress  
8 was encouraging us to get more involved in the war on drugs.  
9 They specifically mentioned the question of drugs in schools,  
10 drugs in public housing, but the general thrust was the drug war  
11 in general.

12 They asked us to do several things. One was they  
13 asked that we survey our programs and report back to them by May  
14 1, 1990 as to what our programs were doing, in terms of setting  
15 their priorities under Section 1007. Each entity out there,  
16 each one of our grantees, sets their priorities once a year.  
17 They at least review them. They don't necessarily have to  
18 change them from the year before.

19 So, they asked us to survey the programs and see  
20 whether drugs and fighting the war on drugs was a priority with  
21 our programs. Now, that portion of it was very cut and dried.  
22 One of the difficulties was that many of our programs make their

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1 annual priority setting review at different points of the year  
2 after May 1st.

3 So, for some programs, we already have letters on file  
4 saying, "We're going to be reviewing that later in the year. At  
5 present, it is or is not a priority," et cetera, and some  
6 discussion, some narrative.

7 MR. SUAREZ: Mr. Chairman, if I may interrupt for a  
8 second.

9 CHAIRMAN WITTFGRAF: Mr. Suarez.

10 MR. SUAREZ: I don't know if the rest of us are as  
11 confused as I am as to who "they" are that are making these  
12 requests.

13 MR. BOEHM: It was a conference report, I'm sorry.

14 MR. SUAREZ: And by what form. I thought the question  
15 by the Chairman was directed at any Congressional enactment,  
16 actual legislation, or anything specifically requiring this.  
17 You keep referring to "they" and the conference committee.

18 I don't know if it's individuals in the Congress that  
19 you like and respect or who exactly these people are, and how  
20 were they making this request of the Legal Services Corporation  
21 at all. I'm not convinced that they did at all, but try to  
22 convince me.

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1 MR. WEAR: Mr. Chairman.

2 CHAIRMAN WITTGRAF: Yes, Mr. President.

3 MR. WEAR: Thank you, Mr. Chairman. Mr. Suarez, in  
4 the conference report associated with the fiscal year 1990  
5 appropriation for the Legal Services Corporation, the conference  
6 committee directed, as they sometimes do, that the Legal  
7 Services Corporation submit this report that Mr. Boehm is  
8 speaking of.

9 It was not part of the legislation. The provision  
10 initially in the Senate Bill was dropped in conference. What I  
11 interpret to be a compromise language was included in the  
12 committee report asking for the report.

13 MR. ERLNBORN: Mr. Chairman.

14 CHAIRMAN WITTGRAF: Mr. Erlenborn.

15 MR. ERLNBORN: I might just say that it a common  
16 procedure and very often, agencies are given directions to  
17 undertake activities like this through the use of the conference  
18 report.

19 MR. BOEHM: The recipients on May 1st will be the  
20 Chairmen of the Appropriations Committees of the House and  
21 Senate.

22 CHAIRMAN WITTGRAF: Let me just ask one of the former

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1 members of Congress, what is either of your interpretation as to  
2 the binding or obligatory nature of such an inquiry?

3 MR. ERLNBORN: Whenever you are dealing with the  
4 Appropriations Committee, what they ask is very binding.

5 MR. BOEHM: That was our assumption, as well.

6 CHAIRMAN WITTGRAF: Mr. Suarez?

7 MR. SUAREZ: I guess it's recommendatory if not  
8 mandatory. It is in writing in some way? I mean, there is  
9 something there, other than what your perception may have been  
10 of the question and answer session?

11 MR. BOEHM: Yes, I'll provide --

12 MR. SUAREZ: Or Jack Kemp's statements or the  
13 President's or anybody else's?

14 MR. BOEHM: Yes, I'll provide all the members of the  
15 Board this afternoon with a copy of the actual language, the  
16 conference report to H.R. 2991.

17 CHAIRMAN WITTGRAF: Thank you. I think that clarifies  
18 that point. Proceed, if you will, as to the nature of the  
19 tentative inquiry, then.

20 MR. BOEHM: They asked us to get back by May 1st,  
21 reporting not just the priority setting of the various programs  
22 out there, and that's already well under way. We've received

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1 many letters back from programs saying it is or is not a part of  
2 our priority and we're going to be considering it after May 1st.  
3 All of that is going to be put together and sent to the  
4 Appropriations Committee Chairmen on May 1st.

5 The second thing is they wanted to know what the  
6 programs were doing currently and in the past with regard to  
7 drug issues. They did not say, "Do a report with the following  
8 questions." They didn't give it other than they wanted this  
9 information. They want some information about what our programs  
10 are doing. That was the basis of the initiative that brought  
11 all of this to come.

12 We put together a survey report with a variety of  
13 different types of legal issues in which drugs could be an  
14 issue, and some of them go beyond schools and public housing,  
15 which were the ones specifically mentioned. The reason is the  
16 way cases get categorized at Legal Services can sometimes run  
17 far afield of what the original issue is.

18 For example, child support might not be called child  
19 support in terms of how the case is categorized by Legal  
20 Services grantees. It could be a divorce case or it could be a  
21 custody case, and child support is another issue.

22 So, each case that comes into the system gets

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1 categorized by one category and it could actually include many  
2 other different categories, so we put together the issues that  
3 we thought could involve drugs as issues, asked the programs to  
4 list, just for the first quarter of this year, whether drugs  
5 were or were not an issue in there.

6 We made clear that this was a one-time request for  
7 information. Many of the programs we've already talked to on  
8 the phone, had questions, and said it's going to be zero, zero,  
9 zero because drugs are not an issue in many of these cases.

10 The biggest request for information we received from  
11 the field was, "Did the term drugs include alcohol or was it  
12 just legally prohibited hard narcotics and so forth?" The  
13 answer to that was, when we checked with the committee, that  
14 they just had in mind drugs within the meaning of the war on  
15 drugs, not alcohol, not caffeine or tobacco or anything else.

16 We expect we will get those reports back. We will  
17 report them to Congress as well as to the Board. As I say, it's  
18 a one-time deal. Our feeling from the beginning was what the  
19 Congressman had mentioned, that this was not an optional call on  
20 our part; that we should gather this information and report it  
21 by the deadline that they mentioned.

22 CHAIRMAN WITTGRAF: One question to any number of the

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1 four of you. How would you respond to the oft made point  
2 yesterday that, for whatever variety of reasons -- and, again,  
3 our purpose here is not to assess blame particularly, but,  
4 rather, to assess the present status of the situation -- how  
5 would you respond to the notion that the paperwork is such that  
6 it is impeding seriously upon the ability to provide Legal  
7 Services, as it pertains either to these specific initiatives or  
8 to any amount of paperwork that is required in connection with  
9 the refunding process or anything else?

10 MR. BOEHM: With regard to the drug survey and the  
11 declination, I think they both have something in common. The  
12 drug survey, as I say, was a one-time deal requested by  
13 Congress. The amount of time required to fill that out I think  
14 would be relatively light, especially with the numbers of  
15 programs reporting back to me that, in many of these cases, they  
16 know that there is absolutely no drug cases -- for example,  
17 Social Security.

18 The other fact is this. A lot of programs already set  
19 their priorities. They don't handle all the 14 or 15 case  
20 categories, so they can go down, without even looking at any of  
21 their files, since they don't handle those kind of cases, of  
22 course, the answer is zero.

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1           The amount of time required, I think, from talking to  
2 a lot of programs, is not going to be that excessive for that  
3 particular item. Again, there was a certain amount of lack of  
4 options on our part; we viewed that as something we needed to do  
5 to give to Congress.

6           On the declination, the point, I think, that needs to  
7 be made there time again, and it was mentioned yesterday, is  
8 that that really is a major issue out there. It's a major issue  
9 with the ABA or they wouldn't be doing the unmet needs surveys.  
10 It's a major issue for the Board in the sense that we have to  
11 ration a limited resource, Legal Services.

12           I think that's not something that's frivolous or  
13 something that is unneeded or something that wouldn't be put to  
14 good use. I think it is something that would benefit the local  
15 programs, since they have to ration this need, as well as to the  
16 decision makers, the Board of Directors.

17           CHAIRMAN WITTGRAF: Ms. Smead, generally, the  
18 paperwork load, is it excessive?

19           MS. SMEAD: I don't want to repeat what Ken has  
20 already said, so I won't.

21           CHAIRMAN WITTGRAF: Sure.

22           MS. SMEAD: Mainly, I guess it would be a question

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1 about the refunding applications, since that is mainly in my  
2 office, anyway. A lot of information in the refunding  
3 application is for compliance purposes. Some of it is also for  
4 preparing for monitoring reviews.

5 I recognize it does take time to fill out; however,  
6 there was an effort about a year ago or two years ago to try and  
7 streamline the process. In fact, a lot of our forms are  
8 basically check-off, and if people don't do certain things, they  
9 don't have to fill out certain forms.

10 We have tried to do away with narratives and put in a  
11 lot of yes/no questions, a lot of quantifiable -- we are asking  
12 for quantifiable information.

13 MR. SUAREZ: Mr. Chairman.

14 CHAIRMAN WITTGRAF: Mr. Suarez.

15 MR. SUAREZ: One comment and one question. As to the  
16 drug survey, I think the logical thing for the President to have  
17 done, faced with a conference committee that wanted to know how  
18 Legal Services Corporation was going to participate in the war  
19 on drugs, was to say, "We'll be happy to do commercials for you  
20 or otherwise be involved, but we have intuitively no involvement  
21 in this." I mean, it seemed evident to me and you have  
22 confirmed that from your answers.

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1           On the declination of representation form, you want to  
2 quantify that. I would ask if the staff has quantified the  
3 complaints. In other words, can you tell us right now, of the  
4 complaints that you have gotten, how many are related to what  
5 kinds of declinations of representation and what kinds of cases,  
6 for what kinds of reasons?

7           If you have done that preliminary work, then you ought  
8 to report back to the Board and the Board could maybe endorse it  
9 as a policy matter, which I think it is, whether we should be  
10 sending these forms out or not. Do you have any quantified  
11 tabulation of the declination of representation complaints that  
12 you have gotten and, if so, do you have any idea what the  
13 numbers indicate?

14           MS. DI SANTO: Mr. Suarez, I do not have these figures  
15 on hand at the moment, but I could easily get these figures for  
16 you that categorize the types of complaints that we received  
17 over a period of two years, and categorize them for you and then  
18 quantify everything for you.

19           MR. SUAREZ: How many, just as a total figure, did you  
20 get in one year in one region of the country, in one month,  
21 whatever?

22           MS. DI SANTO: I would say, on the average, probably

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1 we receive about 100 complaints a year from third parties, and  
2 that's just a rough estimate, but it may range anywhere from 90  
3 to 120 a year.

4 MR. SUAREZ: What is the principal reason or the  
5 principal kind of case?

6 MS. DI SANTO: The principal area would be declination  
7 of representation, ineligibility of client or eligibility,  
8 depending on what it is that they are arguing at the time, so it  
9 would be -- mainly, your complaints will be in those areas, and  
10 then sometimes on quality of service.

11 CHAIRMAN WITTGRAF: Ms. Pullen.

12 MS. PULLEN: I had the impression from a witness  
13 yesterday that the declination of representation form was  
14 retroactive. I have the impression from your comments today  
15 that it is prospective. Which is it?

16 MS. SMEAD: It is prospective. The preliminary draft  
17 did go out in January. I believe it was January 23rd. After we  
18 received some comments from the field, we said it would be  
19 voluntarily until April 1st. Then, based on the most recent  
20 discussions, we decided to make it after April 1st. There would  
21 be a test period for one month.

22 MS. PULLEN: So, you have not asked programs to

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1 research their files for the last six months or something and  
2 report on that activity?

3 MS. SMEAD: No, we have not.

4 MS. PULLEN: You have asked them to, for new  
5 applications that are denied, report that or compile reports of  
6 that and then file those reports as they are going through the  
7 process prospectively?

8 MS. SMEAD: That's correct.

9 MS. PULLEN: I'm glad to hear that. Thank you.

10 A PARTICIPANT: If I might just comment, I think there  
11 is some confusion here that can be cleared up very quickly.

12 CHAIRMAN WITTGRAF: What I would prefer to have you  
13 do, seeing we are making slow progress, is visit with one of  
14 these folks and then if they can clarify it, they will. I am  
15 reluctant at this point, for I think reasons I would assume, to  
16 open the floor.

17 Mr. Dana, did I --

18 MR. DANA: Yes. Is the operating premise behind this  
19 data search that these declination of representation forms are  
20 going to help the Corporation assess the legal need?

21 MS. SMEAD: It will help assess it, yes, sir. That  
22 wouldn't be the only purpose.

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1 MR. DANA: Then what are the other purposes?

2 MS. SMEAD: My understanding is there was requests for  
3 this information.

4 MR. DANA: From the Congress?

5 MS. SMEAD: From the Board in the past.

6 MR. DANA: I understood earlier that the purpose of  
7 these forms was to assess legal needs, that some Board Members  
8 were concerned about that, and that somebody in the Corporation  
9 thought that this would be a good way of assessing legal needs.

10 Now, I understand from you that there were other  
11 reasons for this?

12 MR. WEAR: Mr. Chairman.

13 CHAIRMAN WITTGRAF: Mr. President.

14 MR. WEAR: Mr. Dana, another reason for this report is  
15 to try to see what kinds of cases are not being handled by the  
16 programs. It's not just to measure need. It's to try to figure  
17 out who is not being served, to try to figure out why, whether  
18 there are patterns with certain kinds of cases.

19 We know, from some testimony that came in yesterday,  
20 that there is not a lot of work done in the child support area.  
21 There is not work done in other areas; in other areas, there is  
22 work done.

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1           From the combination of the case service reports that  
2 we receive on a quarterly basis and looking at these declination  
3 of service reports, we should be able to get a better handle on  
4 who is being served and who is not being served.

5           CHAIRMAN WITTGRAF:    At this point, the Chair is  
6 prepared to entertain Mr. Dana's motion. The Chair will also be  
7 recessing the meeting at 11:45 so that it is possible -- it is a  
8 very important matter for this Board, however short or long its  
9 lifetime -- to have its picture taken together. (Laughter)

10           I know many of you are fledgling or part-time  
11 historians, so perhaps you can appreciate that. Some of you may  
12 even write books later on about what it is we are going through  
13 right now. Then we will be going into Executive Session at  
14 about 11:50.

15           Mr. Dana.

16           MR. COLLINS:   Mr. Chairman, a point of parliamentary  
17 inquiry.

18           CHAIRMAN WITTGRAF:   Mr. Collins.

19           MR. COLLINS:   Why are we entertaining the motion now,  
20 just before we go into Executive Session? I would assume this  
21 is a discussion that we would want to have in the sunlight.

22           Therefore, I would suggest that we have our picture

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1 taken, go into Executive Session, come back and make the motion,  
2 and let's debate it.

3 CHAIRMAN WITTGRAF: Mr. Collins, the Chair is hopeful,  
4 perhaps naively, that the motion can be dealt with in the course  
5 of the next eight minutes. If it cannot, we will take up  
6 consideration of it when we come out of Executive Session.

7 Mr. Dana.

8 MOTION

9 MR. DANA: Mr. Chairman, I would move the following  
10 motion. Before imposing any condition, restriction, obligation  
11 or general data collection upon grantees of the Corporation (not  
12 specifically required by the LSC Act or regulation presently in  
13 effect), or before taking any position with respect to policy,  
14 staff shall refer the matter to the Board or to the appropriate  
15 committee of the Board which, if it deems necessary, shall refer  
16 the matter to the whole Board.

17 CHAIRMAN WITTGRAF: Is there a second?

18 MR. ERLENBORN: I'll second.

19 CHAIRMAN WITTGRAF: Discussion?

20 MR. COLLINS: Mr. Chairman.

21 MR. ERLENBORN: Mr. Collins.

22 MR. COLLINS: It seems to me that this is not policy

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1 setting. This is micromanaging the company. To suggest that  
2 you're going to impose some obligation that the staff shall send  
3 out nothing, or elicit further information to make it in a  
4 better position to advise the Board as to its policy  
5 authorizations, seems to me to be a far-ranging step from the  
6 general obligation to set policy into what would potentially  
7 become micromanagement and potential paralysis.

8 CHAIRMAN WITTGRAF: Further discussion?

9 MR. HALL: Mr. Chairman.

10 CHAIRMAN WITTGRAF: Mr. Hall.

11 MR. HALL: I agree with Mr. Collins. It seems to me  
12 like a lot of those things are what we hire the staff to do,  
13 aren't they? It just seems like we're crippling them. We're  
14 going to meet once a month and it just would seem to really  
15 impair the function in the every day running of the Corporation,  
16 instead I misunderstood the motion, which I may have.

17 CHAIRMAN WITTGRAF: Further discussion?

18 MR. SUAREZ: Mr. Chairman.

19 CHAIRMAN WITTGRAF: Mr. Suarez.

20 MR. SUAREZ: The circumstances we have witnessed over  
21 the last hour or so are the best reason for supporting this  
22 motion. We got all kinds of answers, very vague answers, as to

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1 why certain things were done, perhaps at the request of  
2 individual Board Members, past Board Members, which I think is  
3 fairly preposterous.

4           Otherwise, as to the fact that the Board has got to  
5 regain and retain control of policy, and I think that the least  
6 expression of that is in the form of that motion. It refers to  
7 general data collection and any other activities by the staff  
8 that the Board has not otherwise approved or are not in the Act.

9           Therefore, I am in support of the motion.

10           CHAIRMAN WITTGRAF: Mr. Molinari.

11           MR. MOLINARI: Mr. Chairman, reading this, I don't  
12 seem to have any problem with it myself; however, there have  
13 been some questions raised by Mr. Hall and by Mr. Collins. I  
14 think it might be helpful to all of us if we could get the  
15 President's view on how this would be implemented and whether it  
16 would, in fact, handcuff the staff and what they're doing on a  
17 general basis, especially since the President has announced  
18 he'll be leaving here soon.

19           I think it will be helpful if we could get some  
20 assessment from him as to whether this motion would in any way  
21 impact on the functioning of the staff.

22           CHAIRMAN WITTGRAF: Mr. Guinot.

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1 MR. GUINOT: Two points. I have no problem with the  
2 motion until it gets to the word "policy," basically because  
3 that's so general a term, and I would like very much to be able  
4 to delve into it a little more deeply.

5 What exactly is policy? Like Mr. Collins said, it  
6 could overlap into just plain old management of the Corporation  
7 and that's a concern of mine.

8 Secondly, just on the question of procedure, that is a  
9 rather long motion. It would be nice to be able to read it and  
10 see what all is in there. I don't know whether that's possible  
11 or not, but these are my two comments on it.

12 CHAIRMAN WITTGRAF: At this time, the Board will be  
13 received in its deliberations until the completion of its  
14 Executive Session, not only to provide Members of the Board with  
15 information regarding the motion or an opportunity to review the  
16 motion further, but also to give the President an opportunity to  
17 respond to the motion.

18 The Board will right now have its class picture taken  
19 and we'll come back and go into Executive Session.

20 (Whereupon, at 11:45 a.m., the meeting was recessed to  
21 Executive Session.)

22 \* \* \* \* \*

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## A F T E R N O O N   S E S S I O N

2:35 p.m.

1  
2  
3           CHAIRMAN WITTGRAF: Without objection, the Chair is  
4 going to delay further consideration of Mr. Dana's motion for  
5 the time being. Is there objection?

6           (No response.)

7           CHAIRMAN WITTGRAF: Hearing none, we will move at the  
8 moment, as provided in the agenda, for consideration of  
9 budgetary proposals for fiscal year 1991. The Chair has asked  
10 Mr. Erlenborn, the Vice Chairman of the Board, in the interest  
11 of time, to propose a budget alternative, or a budget  
12 recommendation so that we will all have a vehicle from which we  
13 can proceed. Mr. Erlenborn?

## M O T I O N

14  
15           MR. ERLENBORN: Mr. Chairman, thank you. Mr.  
16 Chairman, at the first meeting that I attended as a member of  
17 the Board on December 15th, there was discussion of the budget  
18 submission to the congress. No action was taken.

19           Subsequent to that, I believe that there ought to be  
20 another budget alternative before the Board than were just  
21 presented at that December 15th meeting. Together with Mr.  
22 Smegal, another Board member at that time, we prepared a budget

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1 that is based upon the appropriation that was adopted last year  
2 by the congress, with approximately an eight-percent, across-  
3 the-board increase -- not changing any of the priorities, not  
4 removing funding from any programs, but providing for, first of  
5 all, an addition to account for the cost-of-living increase over  
6 the baseline, plus a modest increase in all accounts in addition  
7 to that. That is known as attachment number five in the  
8 submission that has been made to the members of the Board.

9 The total appropriation would be three hundred forty-  
10 one million dollars. As I say, this does not change the ratio  
11 of allocation. It merely is an across-the-board, approximately  
12 eight-percent increase. I submit that to the Board for their  
13 consideration. I move its adoption.

14 CHAIRMAN WITTGRAF: Thank you. Is there a second to  
15 that motion?

16 MR. DANA: Second.

17 CHAIRMAN WITTGRAF: Thank you. It's been moved by Mr.  
18 Erlenborn and seconded by Mr. Dana, I believe, that the Board  
19 consider attachment number five as a budgetary proposal for  
20 fiscal year 1991.

21 Before we begin with any Board discussion, the Chair  
22 will ask Mr. Richardson, on behalf of the staff and in his

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1 capacity as chief fiscal officer, if he has any comments he  
2 would like to make regarding attachment number five, the  
3 Erlenborn motion.

4 MR. RICHARDSON: Yes sir. I have worked, of course,  
5 with Mr. Dana, and I feel that the Corporation's administration  
6 line that's in this particular budget is nine point two million  
7 dollars. That is not enough funds for the Corporation's  
8 management and grant administration to continue functioning,  
9 even at the present staffing levels.

10 As far as across-the-board, I helped Mr. Erlenborn and  
11 Mr. Smegal prepare this. Just to reiterate, it was six point  
12 two percent over the three-twenty-one appropriation level, and  
13 it does work out to about an eight-percent increase over the  
14 three- sixteen, five-twenty-five sequester levels that we're  
15 receiving this year.

16 MR. DANA: Mr. Chairman?

17 CHAIRMAN WITTGRAF: Mr. Dana.

18 MR. DANA: I've been working with Mr. Erlenborn and  
19 Mr. Richardson and have a proposed -- what I hope will be a  
20 friendly amendment to the proposal. It is to add two million  
21 dollars to the bottom line and distribute it as follows.

22 We're on page 24 of the handout, for those people who

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1 are not with us on attachment five. Under the field programs,  
2 to have a half a million dollars -- add a half a million dollars  
3 to deal with emergency needs similar to what we dealt with at  
4 the last meeting, California, North and South Carolina, people  
5 who have instant need for substantially-increased legal  
6 services. That's a half a million dollars at that juncture.

7 Then, I believe that we are currently spending -- the  
8 management and administration anticipates spending ten million  
9 five this year, and I think I'm correct that we anticipate--  
10 and correct me if I'm wrong, Mr. Richardson -- I think you  
11 anticipate carryover funds from this year to next to be in the  
12 neighborhood of eight hundred thousand.

13 MR. RICHARDSON: When we had talked -- it's eight  
14 hundred thousand at a minimum. There could be, of course, more,  
15 based on how the expenses go for this current year.

16 MR. DANA: Misusing again the word "conservative,"  
17 conservatively you would say eight hundred thousand?

18 MR. RICHARDSON: Yes sir.

19 M O T I O N

20 MR. DANA: Since that only gets us up to a little over  
21 ten million, and we currently anticipate spending ten five, it  
22 would seem that we should add nine hundred thousand to the

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1 management and administration line, just to do what we're doing  
2 now. We ought to add, in my judgment -- a new Board coming in  
3 with the responsibilities that congress is imposing upon us, the  
4 presidential search, a variety of other issues that this Board  
5 will be facing -- we ought to add five hundred thousand for  
6 competition and other Board initiatives.

7 Competition, again assuming we're confirmed, is a  
8 responsibility that congress has imposed on us. Sometimes I've  
9 heard the number of a million dollars to implement it, but a  
10 half a million seems fair for that -- to get going -- exploring  
11 that area and implementing it.

12 Finally, I think in the M&A area, we should have a  
13 contingency account that would remain a contingency account  
14 unless money was moved from it by the Board to some other area.  
15 I would suggest a hundred thousand for that. That brings the  
16 bottom line up to three hundred forty-three million. I think  
17 that -- that's the proposed motion.

18 CHAIRMAN WITTGRAF: Is there a second?

19 MR. ERLENBORN: Mr. Chairman, I'll second the motion.  
20 Mr. Chairman, if I might address the motion.

21 CHAIRMAN WITTGRAF: Mr. Erlenborn.

22 MR. ERLENBORN: It's my understanding -- and correct

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1 me if I'm wrong, Howard -- that you would intend for the  
2 emergency grants, five hundred million dollars to be added as  
3 item A-4.

4 We have under A, field programs, basic, native  
5 American, migrant programs. This, I believe, should be a  
6 separate line item, so that those funds are identified and  
7 separate and would be available for emergency grants by the  
8 Corporate Board, the Corporation's Board determining that there  
9 were worthy grant applicants.

10 MR. DANA: Correct.

11 MR. ERLBORN: Then the additional amount that you  
12 would add in your amendment would be just one gross figure,  
13 rather than separate line items under item three, corporation  
14 management and grant administration, so that you would just  
15 increase that nine million two hundred forty-six thousand figure  
16 to -- what figure would that be?

17 MR. DANA: It would be ten million, seven hundred  
18 forty-six thousand. That's correct.

19 MR. ERLBORN: Mr. Chairman, as the one who has moved  
20 for the adoption of the budget, I would accept this amendment.  
21 I expressed myself at our last meeting as being unhappy that we  
22 didn't have the ability to meet the needs for emergency grants,

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1 and at that time said we should in the future have funds  
2 separately segregated and identified for that purpose.

3 As far as the M&A funds are concerned, I was laboring  
4 under a misapprehension in believing that the funds represented  
5 in the earlier appropriation and the appropriation as reduced by  
6 sequestration were the only funds that were being spent. I was  
7 not aware of the fact that the carryover funds had been  
8 historically in the past allocated to M&A and would, no doubt,  
9 be allocated to M&A this year.

10 In light of that, I think that the addition to the M&A  
11 item in the budget is justified. Therefore, I not only second  
12 the motion of Howard, but also would urge its adoption.

13 CHAIRMAN WITTGRAF: Is there further discussion on the  
14 amendment to the motion; that is, the amendment adding two  
15 million dollars to the three hundred forty-one million dollars?  
16 Mr. Hall?

17 MR. HALL: As I understand it, that's going to become  
18 ten million, seven forty-six, and then we'll also have at least  
19 eight hundred in carryover?

20 MR. RICHARDSON: Yes sir.

21 CHAIRMAN WITTGRAF: Further discussion?

22 (No response.)

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1           CHAIRMAN WITTGRAF: Those in favor of the motion to  
2 amend Mr. Erlenborn's motion, a budget proposal of three hundred  
3 forty-one million dollars by adding to that two million dollars,  
4 five hundred thousand dollars for emergency needs funds and then  
5 another one million, five hundred thousand dollars to go under  
6 the management and grant administration category of the budget,  
7 please signify by saying "aye."

8           (A chorus of ayes.)

9           CHAIRMAN WITTGRAF: Those opposed, "nay."

10          (No response.)

11          CHAIRMAN WITTGRAF: The ayes appear to have it. The  
12 ayes do have it. The motion on the floor is Mr. Erlenborn's  
13 motion, as amended, a budgetary proposal as outlined for three  
14 hundred forty-three million dollars. Is there discussion?

15          (No response.)

16          MR. DANA: I think that in the best of all worlds,  
17 probably everyone in this room would like to ask congress for  
18 more -- for a whole lot more money. But I think that  
19 realistically in 1990, if we can persuade congress to give us  
20 three hundred and forty-three million dollars this year, that  
21 would be a good first step and it is a reasonable request.

22          I don't disagree with those people who feel that we

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1 ought to ask for a lot more, but we also need to be viewed as  
2 credible requesters of the public resources, and I think that  
3 three forty-three fulfills that requirement.

4 CHAIRMAN WITTGRAF: Further discussion?

5 (No response.)

6 CHAIRMAN WITTGRAF: Hearing none --

7 MR. WEAR: Mr. Chairman?

8 CHAIRMAN WITTGRAF: Mr. President.

9 MR. WEAR: Thank you, Mr. Chairman. With regard to  
10 the monies for the special emergency fund and the special  
11 contingency mentioned by Mr. Dana, as an administrative matter I  
12 would recommend that we break them out into three separate  
13 categories; that is, the Corporation management figure then  
14 would be ten one four six, competition and other Board  
15 initiatives would be item B under Roman III and the special  
16 contingency would be item C under Roman III.

17 The only reason for that, Mr. Chairman, is to show to  
18 the appropriations committee -- the House Committee is going to  
19 be taking up this tomorrow morning at ten-thirty. They're not  
20 going to have a lot of notice as to what all these numbers mean,  
21 and it may be a little easier for them to grasp.

22 MR. ERLBORN: Mr. Chairman, I think that's an

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1 excellent suggestion.

2 CHAIRMAN WITTGRAF: Is there any objection?

3 (No response.)

4 CHAIRMAN WITTGRAF: Hearing none, the budget proposal  
5 will be amended in that way. Further discussion the three-  
6 hundred-and-forty-three-million-dollar budget proposal?

7 (No response.)

8 CHAIRMAN WITTGRAF: Hearing none, those in favor,  
9 signify by saying "aye."

10 (A chorus of ayes.)

11 CHAIRMAN WITTGRAF: Opposed, "nay."

12 (No response.)

13 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
14 ayes do have it. The budget proposal is adopted. We're now  
15 moving in our agenda to consideration of the fiscal year 1989  
16 consolidated operating budget and carryover funds from fiscal  
17 year 1989, as they pertain to fiscal year 1990.

18 The Chair calls the attention of the Board members and  
19 anyone else to, I believe, page 34 which contains the summary  
20 and recommendations of the staff in this regard. At this time  
21 the Chair recognizes the president, Mr. Wear, to speak to this  
22 matter.

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1 MR. WEAR: Thank you, Mr. Chairman. During the last  
2 Board meeting we had some discussions of the allocation of the  
3 carryover funds from fiscal year 1989. The summary of that  
4 memorandum dated February 6th appears on page 34 of the Board  
5 book.

6 As I mentioned previously, the total uncommitted  
7 carryover is approximately two million dollars. A large portion  
8 of that is carryover in the management and administration line.  
9 The proposal that I would make to the Board is the remainder of  
10 the funds; that is, approximately one million dollars, be  
11 reprogrammed to Corporation management and grant administration.

12 Last Board meeting we made arrangements to take care  
13 of certain requests for emergency funding. In fact, the further  
14 explanation in the first paragraph of that page has now been  
15 completed. There has been approximately -- forty-seven  
16 thousand, eight hundred and five dollars were removed from the  
17 migrant line, which appears on page 31 of the memorandum.

18 Those monies, together with other monies that were  
19 remaining in the meritorious grant awards line, were in fact  
20 awarded or reserved for those programs that the Board decided  
21 should receive emergency assistance during the course of the  
22 last Board meeting.

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1           The transfer of monies in this manner to the  
2 management and administration line is something that we have  
3 done on a routine basis in the past. As I mentioned, we would  
4 be reprogramming a total of nine hundred fifty-six thousand,  
5 four hundred and eighty-one dollars into the management and  
6 administration line.

7           Mr. Chairman, I'd be glad to respond to any questions  
8 that you or others may have.

9           CHAIRMAN WITTGRAF: Perhaps before we begin  
10 discussion, the Chair is interested in receiving a motion, if  
11 there is to be one, consistent with the recommendations outlined  
12 on page 34.

13           MS. ROGOFF: Excuse me. If it's going to be at all  
14 possible, we would have a presentation on carryover that we  
15 would like to make.

16           CHAIRMAN WITTGRAF: Do we have a motion?

17                           M O T I O N

18           MS. PULLEN: I so move.

19           CHAIRMAN WITTGRAF: Ms. Pullen moves the allocation of  
20 the fiscal year 1989 carryover funds, consistent with the  
21 recommendations contained on page 34. Is there a second to that  
22 motion?

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1 MR. MOLINARI: Second.

2 CHAIRMAN WITTGRAF: The motion has been made and  
3 seconded. Is there discussion?

4 (No response.)

5 CHAIRMAN WITTGRAF: The Chair is willing to entertain  
6 discussion from the floor at this time.

7 (Whereupon, documents were distributed to the Board.)

8 CHAIRMAN WITTGRAF: Would you like to have the Board  
9 members take a moment to read your memorandum?

10 MS. ROGOFF: That is what I was going to do.

11 CHAIRMAN WITTGRAF: Thank you.

12 (Board members peruse documents.)

13 PRESENTATION OF REGINA ROGOFF

14 FUNDING CRITERIA COMMITTEE

15 MS. ROGOFF: My name is Regina Rogoff.

16 MR. COLLINS: Ms. Rogoff, just one moment. Mr.  
17 Chairman, if I may. Just as we continue to learn the identify  
18 of our players, you are co-chair of the Funding Criteria  
19 Committee of what?

20 MS. ROGOFF: I'm sorry, of the Project Advisory Group.  
21 It says that in the first introductory paragraph.

22 MR. COLLINS: Would you be good enough to tell me how

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1 your group is funded?

2 MS. ROGOFF: The Project Advisory Group is a group  
3 made up of field programs and support centers nationwide. Each  
4 of those programs subscribes to the Project Advisory Group  
5 Update, which you may have seen.

6 I know the Corporation is familiar with it, and some  
7 of the Board members have seen it, but it goes out on a regular  
8 basis to field programs advising them about actions that have  
9 been taken by this Board, reporting on actions taken by congress  
10 and by -- mainly by LSC and congress, but other relevant  
11 information, and by dues that are paid by member organizations  
12 to the Project Advisory Group.

13 MR. COLLINS: So, since we're talking about budgets,  
14 is it appropriate for you to tell me the amount of your budget?

15 MS. ROGOFF: Oh, the Project Advisory Group's budget?

16 MR. COLLINS: Yes.

17 MS. ROGOFF: I believe it's approximately four hundred  
18 thousand dollars -- oh, three hundred.

19 MR. COLLINS: Okay, thank you.

20 MS. ROGOFF: I am not an employee of the Project  
21 Advisory Group. The Project Advisory Group itself has two  
22 employees, a coordinator and an administrative assistant or

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1 secretary. The bulk of the work is performed by volunteer--  
2 people from the field who serve as elected representatives to--  
3 is this on? Can people hear me? I don't feel that it's on.

4 MR. HALL: I can hear you.

5 MS. ROGOFF: You can hear me? Okay. The field  
6 representatives are elected to serve on the Project Advisory  
7 Group's Steering Committee and to serve on other committees such  
8 as the one that I co-chair, the Funding Criteria Committee.

9 In analyzing the carryover issue, the Project Advisory  
10 Group recommends that you follow five principles that are set  
11 out in my brief memo here. The first one is that uncommitted  
12 carryover funds from service delivery categories should retain  
13 their delivery-category character and should be used as intended  
14 by congress; that is, that they should be used for delivery of  
15 legal services within the particular line that they were  
16 originally allocated to.

17 That means that service delivery funds for basic  
18 delivery of legal services should remain in the basic field line  
19 item. Service delivery funds for migrant funding and native  
20 American funding should remain in their respective line items.

21 Number two, the three hundred thousand dollars in  
22 program development allocated by the former LSC Board of

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1 Directors for timekeeping should not be considered as committed,  
2 which was the character that was assigned to them by Mr. Wear in  
3 his memo to you -- I believe it's dated February 7th or February  
4 9th -- and remain unexpended. Therefore, they should be  
5 considered as available for reallocation as part of the current  
6 carryover, and available for allocation into management and  
7 administration for 1990.

8 Additionally, fifty thousand dollars allocated by the  
9 prior Board of Directors for client/Board training, as I  
10 understand it based on my last inquiry to the Corporation, have  
11 not been expended, and therefore also remain available for  
12 reallocation to the management and administrative line item for  
13 1990.

14 Disaster relief funds, including those funds that were  
15 designated by this body a month ago, should not come from a  
16 basic field line item such as migrant, but should come from the  
17 management and administration carryover. I will show you that  
18 that can be done in a way that will provide management and  
19 administration a budget that exceeds what congress expected it  
20 and intended management and administration to have for fiscal  
21 1990.

22 Similarly, excess carryover for management and

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1 administration above the amount anticipated in the conference  
2 committee report and in the congressional appropriation, should  
3 be allocated to those programs which lost funding as a result of  
4 the sequestration that took place of 1990 funds as a result of  
5 the Gramm-Rudman Act, and programs currently on month-to-month  
6 funding should receive the level of funding that congress  
7 intended them to have, based on the current appropriation.

8 This is an issue that I don't believe has been brought  
9 to your attention, but there are a number programs that are on  
10 month-to-month funding. Some have been in that status since  
11 1988.

12 Their funding has not been adjusted to the current  
13 funding appropriations levels. In fact, the programs that are  
14 on month-to-month funding dating back to 1988 are still being  
15 funded at the 1988 level. It is our understanding that  
16 sequestration has been applied -- sequestration being a  
17 reduction in funds.

18 A percentage decrease in funds has been applied to  
19 their 1988 funding level, so we would ask that those programs  
20 that are on month-to-month funding -- we are not saying that  
21 those programs -- that the funding status should be changed as  
22 part of the allocation of carryover. We're simply saying that

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1 those programs should be funded at the level that congress  
2 intended in the adoption of the appropriation bill.

3 If you will look at my budget format on the second  
4 page of this memo, you will see that in a number of line items,  
5 the Project Advisory Group's funding criteria committee does not  
6 disagree with the Corporation's analysis of carryover. We  
7 concur that the full nine hundred seventy-five thousand, five  
8 hundred eighty-nine dollars in management and administration  
9 should be reallocated to management and administration.  
10 Likewise the funds in the meritorious grant line, grant  
11 recoveries, interest, training, development, all of those should  
12 correctly be reallocated into management and administration, as  
13 Mr. Wear has proposed.

14 Where we disagree with Mr. Wear is on the allocation  
15 of funds, the reallocation of funds, from basic field, native  
16 American, migrant, law school clinics, regional training  
17 centers, albeit minimal, national support and state support.  
18 Each of those is a service delivery line item and should retain  
19 that character and be reallocated to service delivery.

20 Additionally, as I indicated in the earlier testimony,  
21 we believe that the fifty thousand dollars for client/Board  
22 training and the three hundred thousand dollars for program

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1 development also are available to this body to be reallocated  
2 into management and administration.

3 The totals that you will see under each of those  
4 columns reflect what would be available carryover. The  
5 conference committee report indicated that congress anticipated  
6 a one-point-seven-million-dollar carryover for management and  
7 administration when their budget was adopted. The budget that  
8 the Funding Criteria Committee is proposing to you today would  
9 exceed that one point seven million dollars, and would make  
10 available to management and administration one point eight,  
11 almost one point nine million dollars of carryover for  
12 management and administration.

13 What Mr. Wear has proposed to you would exceed two  
14 million dollars in reallocated fund balance. The line that is  
15 identified as FY90 M&A appropriation -- "a-p-p" stands for  
16 appropriation -- is the figure out of the 1990 appropriation  
17 bill, added to the carryover figure you will have what have been  
18 labeled as the total M&A budget under each of those columns.

19 As you can see, again, what FCC and the Project  
20 Advisory Group are proposing exceeds what congress would have  
21 anticipated and projected for the management and administration  
22 of this Corporation. It exceeds it sufficiently that you can

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1 reallocate the emergency assistance funding out of the migrant  
2 line item and from the management and administration line item  
3 and still have a total M&A budget in excess of what congress  
4 intended for the Corporation -- eighty-six thousand dollars in  
5 excess of what congress anticipated for the Corporation.

6 The other way of interpreting this budget is to see  
7 that, assuming the program development and client/Board training  
8 funds are available, that the Corporation is proposing for  
9 itself an eleven-million-dollar budget, as opposed to the ten  
10 point two eight that congress intended.

11 We would encourage and request that you adopt in your  
12 deliberations for purposes of the FY90 consolidated operating  
13 budget, the FCC proposal for allocation of carryover that I have  
14 just outlined.

15 I'd be happy to answer any questions you might have  
16 about this proposal.

17 MR. DANA: Ms. Rogoff, am I correct that whatever we  
18 do is, in effect, a proposal to congress? We have to at least  
19 tell them what our intent is, with respect to reprogramming. Am  
20 I correct or not?

21 MS. ROGOFF: Yes, you have to inform congress.

22 MR. DANA: Do they have the right to reason with us in

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1 the way congress does?

2 MS. ROGOFF: Reprogramming is the process of  
3 submitting to congress the intent to reprogram. Congress has a  
4 designated period of time -- not congress as a body, but the  
5 appropriations subcommittees -- have a designated time in which  
6 to respond. That is not binding on the Corporation. It is  
7 basically precatory or advisory.

8 MR. DANA: But they are the same people we are trying  
9 to persuade to give us more money next year?

10 MS. ROGOFF: That is correct. I would just indicate  
11 that the budget proposal that the FCC is offering to you is  
12 consistent with what congress intended in its legislative  
13 language.

14 MR. DANA: Well, maybe we'll have a kinder and gentler  
15 congress as well. The three hundred thousand that has  
16 previously been set aside for timekeeping by a prior Board, and  
17 the fifty thousand which had been earmarked, if that's the right  
18 word, for client training, you want us to use for something  
19 else. Am I correct?

20 MR. ROGOFF: I don't have any proposal for how they  
21 should be used, other than they should be reallocated to  
22 management and administration for management and administration

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1 purposes -- that they are available to be reallocated for that  
2 purpose.

3 Congress didn't indicate where the one point seven  
4 million dollars in carryover was to come from. That's why under  
5 the conference committee column on this budget I don't indicate  
6 where congress expected it to come from. The conference report  
7 simply says, we expect, based on historical experience, that  
8 this corporation will have a carryover, and we expect that it  
9 will be in the range of one point seven million dollars.

10 Congress also indicated that all funds for delivery  
11 should remain in their delivery category. It's the intention of  
12 congress to provide delivery of legal services as a primary  
13 function of this body. In our analysis of the budget, I was  
14 simply showing where funds could come from to meet, or exceed in  
15 this instance, the congressional expectation.

16 MR. ERLNBORN: Howard, would you yield for a  
17 clarification question? Did I understand you to say that  
18 congress expressed the expectation that carryover funds would  
19 remain in the category from which they came?

20 MS. ROGOFF: Yes.

21 MR. ERLNBORN: Where was that contained?

22 MS. ROGOFF: That was in the conference -- I'm sorry

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1 it's the Senate committee. It's in the Senate language in the  
2 appropriations --

3 MR. ERLNBORN: Not the conference report?

4 MS. ROGOFF: No.

5 MR. RICHARDSON: If I may to help clarify, in August  
6 of each year, we are asked to submit a projection to both the  
7 House and Senate. In August, middle of August last year, we  
8 supplied such a projection to them, so they are aware before the  
9 appropriation process where the money is coming from, and are  
10 completely cognizant of each line item.

11 For instance this year we did project one point seven  
12 million dollars in carryover. The reason there's a little bit  
13 more is because we had additional grant recovery money. We  
14 don't know when that's coming in, so I couldn't project that in  
15 supplying the information to them. Plus, there was some new  
16 hires, or I should say new hires were delayed when people left,  
17 so in essence the information in regards to the carryover is  
18 supplied to them from the Corporation.

19 MR. ERLNBORN: Mr. Chairman, just a question maybe  
20 Mr. Richardson can answer. What has been the practice in past  
21 years, as to the allocation of carryover funds?

22 MR. RICHARDSON: In past years the money has been

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1 allocated to M&A. That, again, has been pursuant to information  
2 that we have supplied them with projections for the carryover.

3 CHAIRMAN WITTGRAF: Thank you. Mr. Wear?

4 MS. ROGOFF: I'm sorry.

5 MR. WEAR: Go ahead.

6 CHAIRMAN WITTGRAF: Ms. Rogoff.

7 MS. ROGOFF: I was just going to quote the language  
8 out of the Senate conference committee which is, "If the actual  
9 amount of carryover exceeds one million seven hundred thousand,  
10 the committee directs the Corporation to apply such excess to  
11 the service components of the budget."

12 I might also point out that, for example in the  
13 migrant line, part of the reason that there is a surplus here is  
14 that funding for four states that congress has intended to go to  
15 the states of Alabama, Arkansas, Mississippi and Tennessee, have  
16 never been disbursed by the Corporation.

17 The Corporation has never seen fit to make grants to  
18 recipients in those states, thereby creating a surplus in this  
19 line, a carryover in this line, even though those funds were  
20 specifically earmarked for migrant services. Consequently,  
21 these states have gone without migrant services.

22 CHAIRMAN WITTGRAF: Mr. Wear?

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1 MR. WEAR: Thank you, Mr. Chairman. A couple of  
2 points: first of all, the money labeled client/Board training,  
3 the fifty thousand dollars, has been committed for that purpose.  
4 We're producing materials for that now, and that money is not  
5 available for reprogramming.

6 Second point: the timekeeping money has been  
7 committed for that purpose and is not also part of  
8 reprogramming. The third thing I would mention, Mr. Chairman,  
9 is that in the conference report to HR 2991, which was the  
10 appropriations bill for FY90 for State, Commerce, Justice and  
11 other agencies, including the Legal Services Corporation, does  
12 talk about reprogramming funds. It's the first full paragraph  
13 on page three. I believe that was distributed to the Board this  
14 morning.

15 It says, "The conference agreement assumes that one  
16 point seven million funds carried over are available to the  
17 Corporation for management and administration." It goes on to  
18 say that the Corporation is directed to submit a report to the  
19 House and Senate appropriations committees regarding the source  
20 of any carryover funds; and, to the extent the amount exceeds  
21 one point seven million, to submit a reprogramming pursuant to  
22 section 606 of this Act.

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1 Mr. Chairman, I think the conference committee did  
2 anticipate that there would be carryover and that the money  
3 would be reprogrammed. I think that the Senate report language  
4 to which the PAG representative refers has been overridden by  
5 that report.

6 MR. SUAREZ: Mr. Chairman?

7 CHAIRMAN WITTGRAF: Mr. Suarez.

8 MR. SUAREZ: I'm really confused. I understood that  
9 we were deciding on carryover funds; mainly funds that were not  
10 spent in the fiscal year in question and were therefore  
11 available for the next fiscal year.

12 CHAIRMAN WITTGRAF: We're talking about fiscal 1989,  
13 which of course is completed, and its reallocation for spending  
14 in fiscal 1990, which we are midway through.

15 MR. SUAREZ: So if I am told now by the president that  
16 somehow the funds are committed, that's almost a contradiction  
17 to what I thought we were doing.

18 CHAIRMAN WITTGRAF: I think we're into a bit of  
19 definitional distinction or a projection or a planning  
20 distinction, because we are midyear, obviously the staff can say  
21 we're going to do this. Ms. Rogoff can say, well I don't think  
22 you're going to end up doing that. Obviously there's some

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1 difference of opinion.

2 MR. SUAREZ: Our fiscal year is from when to when?

3 CHAIRMAN WITTGRAF: From October 1st to September  
4 30th.

5 Mr. Wear?

6 MR. WEAR: Yes, Mr. Chairman.

7 MR. SUAREZ: Mr. Chairman, I would like to complete--

8  
9 CHAIRMAN WITTGRAF: I'm sorry. I thought you asked a  
10 question. Go ahead.

11 MR. SUAREZ: The second part of my question relates to  
12 the bigger amount. There's fifty thousand dollars, you know, we  
13 could argue about forever. I suppose it would cost more than  
14 fifty thousand dollars for us to argue.

15 As to the three hundred thousand dollars, it sounds  
16 like part of the objection is not only to have more monies  
17 available for positive things, but part of the objection is an  
18 objection to the expenditure of this money as a negative thing  
19 somehow, because of the timekeeping requirements, or something.

20 Should we not focus on that? Is that really what's at  
21 issue here, the three hundred thousand dollars being for  
22 timekeeping? Whatever would cause us to think that we ought to

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1 spend three hundred thousand dollars -- is this for attorneys'  
2 timekeeping?

3 CHAIRMAN WITTGRAF: Mr. Wear?

4 MR. WEAR: Thank you, Mr. Chairman. The three hundred  
5 thousand dollars in question, Mr. Suarez, is to be used to  
6 develop timekeeping systems or performance standards for the  
7 Legal Services programs, when timekeeping is implemented.

8 MR. SUAREZ: For attorneys to keep track of their  
9 time?

10 MR. WEAR: For Legal Services program attorneys to  
11 keep track of their time, yes sir.

12 MR. SUAREZ: Do it for free. I'll do it for free for  
13 you. Why would we spend three hundred thousand -- I would never  
14 vote for anything that included a three-hundred-thousand-dollar  
15 expenditure for somehow implementing timekeeping.

16 By the way, that was also done in my city. A few  
17 years ago there was a city attorney who had a fairly lax way of  
18 functioning. A new one came in, and he all of a sudden required  
19 all the attorneys to keep track of their time. He gave them  
20 some forms, which I presume he got from Ramco or somebody, made  
21 copies of them. They're not very expensive, and I'm sure we can  
22 get some donor to give them to us -- and asked all the attorneys

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1 to keep track of their time.

2 I can't imagine that that would cost three hundred  
3 thousand dollars. It didn't in that particular case, and it was  
4 a good idea in many ways, I suppose, but not at the expenditure  
5 of three hundred thousand dollars that apparently is needed for  
6 other programs that have been underfunded in the past.

7 CHAIRMAN WITTGRAF: Mr. Suarez, to keep us moving here  
8 -- I don't want to presume here for you, but Ms. Rogoff has  
9 presented us with a memorandum analyzing Mr. Wear's proposal,  
10 which is certainly well and good. We need a vehicle. Are you  
11 wishing to take her so-called FCC proposal and, in the form of a  
12 motion, put that before the Board, either as a substitute or an  
13 amendment?

14 MR. SUAREZ: Yes, if the import of it is that it would  
15 allocate all the carryover funds for the categories, the funding  
16 categories that were intended in the congressional  
17 appropriations of the prior fiscal year, yes.

18 CHAIRMAN WITTGRAF: The Chair interprets your  
19 comments, Mr. Suarez, and certainly correct me if I'm not  
20 interpreting them for you correctly, to be a motion substituting  
21 for the motion that's now on the table, the motion consistent  
22 with the material on page 34, which has been made and seconded.

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1  
2           Yours is a substitute for that, consistent with the  
3 so-called FCC proposal made by Ms. Rogoff, or prepared by Ms.  
4 Rogoff. Is there a second?

5           (No response.)

6           CHAIRMAN WITTGRAF: There does not appear to the Chair  
7 to be a second. We are, in the Chair's opinion, on the matter  
8 of discussion of the motion that's pending, that being the  
9 motion made initially by Ms. Pullen, to adopt the recommendation  
10 made by the staff through Mr. Wear, as presented at page 34 of  
11 today's Board materials.

12           Is there further discussion? Ms. Rogoff?

13           MS. ROGOFF: No. There are other issues to discuss,  
14 but not on this particular point.

15           CHAIRMAN WITTGRAF: Further discussion?

16           (No response.)

17           CHAIRMAN WITTGRAF: Hearing none, those in favor of  
18 the motion made by Ms. Pullen, which again is essentially to  
19 adopt the recommendations made by Mr. Wear and the staff as  
20 contained at page 34 of today's materials, the last page of a  
21 memorandum dated February 8, 1990, signify by saying "aye."

22           (A chorus of ayes.)

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1 CHAIRMAN WITTGRAF: Those opposed, "nay."

2 MR. SUAREZ: Nay.

3 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
4 ayes do have it. The motion is adopted.

5 The Chair wishes to turn to the matter of the further  
6 consideration of the emergency funds request.

7 MR. RICHARDSON: Excuse me, Mr. Chairman, if I may.

8 CHAIRMAN WITTGRAF: Mr. Richardson.

9 MR. RICHARDSON: As a matter of housekeeping, there is  
10 a document, page 47 and 48, which actually shows the sequestered  
11 levels of our budget with the program adjustment, and there's  
12 also a reallocation of FY89 carryover, as we have just voted to  
13 allocate it.

14 As a matter of housekeeping, we need to look at this  
15 and actually seek your ratification of this operating budget for  
16 the fiscal year.

17 CHAIRMAN WITTGRAF: Based upon the allocation of the  
18 carryover funds from FY 1989?

19 MR. RICHARDSON: Yes sir, and the program adjustment  
20 that is discussed -- it's shown in column four and it's  
21 discussed in the memo on the prior page.

22 CHAIRMAN WITTGRAF: Column four, as carried through

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1 pages 47, 48 and 49, represents the FY 1990 budget as adjusted,  
2 based upon the motion just approved?

3 MR. RICHARDSON: Yes sir.

4 CHAIRMAN WITTGRAF: Is there a motion then to adopt  
5 the revised FY 1990 budget?

6 M O T I O N

7 MR. COLLINS: I so move.

8 CHAIRMAN WITTGRAF: A motion to that effect has been  
9 made by Mr. Collins. Is there a second?

10 MR. ERLENBORN: Second.

11 CHAIRMAN WITTGRAF: There's a second by Mr. Erlenborn.  
12 Discussion?

13 (No response.)

14 CHAIRMAN WITTGRAF: Hearing none, those in favor  
15 signify by saying "aye."

16 (A chorus of ayes.)

17 CHAIRMAN WITTGRAF: Those opposed, "nay."

18 (No response.)

19 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
20 ayes do have it. The motion adopting the amended fiscal year  
21 1990 budget is approved.

22 MR. ERLENBORN: Mr. Chairman?

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1 CHAIRMAN WITTGRAF: Mr. Erlenborn.

2 MR. ERLBORN: Just a question. I think you  
3 identified the column as column four. Is it not column three?

4 MR. RICHARDSON: There's two items. One is the  
5 carryover, and item four is actually a program adjustment, where  
6 we have a program who receives their funds. They provide basic  
7 field services, but because they're a native American unit, they  
8 asked that we earmark the money as native American money, so in  
9 the past we have made this program adjustment and it has been  
10 approved by the Board.

11 CHAIRMAN WITTGRAF: The final figure that we've just  
12 approved. Is that column six?

13 MR. RICHARDSON: Yes sir, it is.

14 CHAIRMAN WITTGRAF: Would it be fair to say, Mr.  
15 Richardson, that what we did was a form of fine tuning?

16 MR. RICHARDSON: Yes sir.

17 CHAIRMAN WITTGRAF: Thank you. At this point then the  
18 Chair is prepared to move on the agenda to the matter of further  
19 consideration of the emergency funds request. That request is  
20 in the Board materials, beginning at page 53; that request in  
21 particular being one that will be discussed, I believe, this  
22 afternoon by Mr. Pfeffer on behalf of California Indian Legal

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1 Services of Oakland, California. Actually it is picked up  
2 through on page 69 and carried on to page 70.

3 Mr. Pfeffer, are you prepared to proceed at this time?

4 MR. PFEFFER: Yes I am.

5 CHAIRMAN WITTGRAF: Finally after all this time?

6 PRESENTATION OF MR. PFEFFER

7 CALIFORNIA INDIAN LEGAL SERVICES

8 MR. PFEFFER: First I would like to thank the Board  
9 for revisiting this matter. Obviously you've had a full agenda.  
10 Although it's not a lot of money to the Corporation, it is  
11 important money to us.

12 For the past seven and a half years, it has been my  
13 privilege to be the project director for California Indian Legal  
14 Services. We are funded by the Corporation as a statewide  
15 program providing special services to California Indians.

16 California, as probably most people in this room don't  
17 know, is home to one-third of all the Indian tribes in the  
18 United States and to more than ten percent of the Indian people.  
19 Of the 99 federally-recognized Indian tribes in California and  
20 26 non-recognized tribes, virtually ninety percent of them are  
21 eligible for free legal services under the Corporation Act.

22 Of the 240,000 native Americans in California, we

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1 estimate 80,000 are currently eligible. Those of you with  
2 experience in municipal government can understand our task in  
3 providing legal services to over 100 local governmental  
4 agencies. Not only are they governments, but they are subject  
5 to control of the Bureau of Indian Affairs, congress, and often  
6 times subject to state and local authorities, as well.

7 Issues of California Indians pertain not only to  
8 matters of representing tribes, but individuals as well. A male  
9 Indian child born in California today is unlikely to live past  
10 the age of 57. We heard yesterday from women who had the  
11 unfortunate situation of not having adequate child support.  
12 Seven percent of all Indian children in California are taken  
13 away from their mothers at birth.

14 The problems of California Indians are monumental,  
15 complex; and, as far as we can tell, are not about to end any  
16 time soon.

17 Going back to my program, in 1979 the board of  
18 directors of our program adopted a salary schedule. That was  
19 adopted in February of 1979. In March of 1979, because of  
20 budget crisis, they froze salaries and experience of all staff.  
21 That freeze stayed in effect until 1984. Between 1979 and 1984,  
22 employees of our organization did not receive any increase in

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1 funds -- or in their salaries.

2 In 1984, we received our first IOLTA grant, which  
3 allowed us to unfreeze the experience level of staff. In 1985,  
4 in January, we were able to revise the salary schedule to  
5 partially make-up for almost seven years of intense inflation.

6 Since 1985, no salary increases have been given. Last  
7 year, when the board froze not only salaries but froze the  
8 experience levels of staff, it was with the understanding that  
9 in 1990 we would attempt to recoup again five years of lost  
10 inflation. We realized that that would create a deficit  
11 situation for California Indian Legal Services.

12 If you will look on the Xeroxed portions of our  
13 refunding application, you will notice that our 1990  
14 consolidated operating budget called for one million, four  
15 hundred forty thousand in expenses, and that we will have  
16 available to us, we project, one million four hundred and forty-  
17 six thousand in revenues and other sources of support.

18 Of that one million, four hundred forty-six thousand;  
19 two hundred sixty-eight thousand of that is one-time monies.  
20 Those are monies that we have accumulated, in large part,  
21 because salaries have not been raised or have been raised so  
22 infrequently.

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1           What this means in practical terms is on December  
2 31st, 1990, CILS will have an operating budget of excess  
3 expenses over revenues of almost two hundred and sixty thousand  
4 dollars. In making the request to help us offset some of the  
5 costs we experienced in the loss of our Oakland office in the  
6 October 17 earthquake, as I understand it that request was  
7 denied because of the perception that we had adequate resources  
8 to cover these losses.

9           I would submit that we do not have such resources;  
10 that if a program that is going to face an operating deficit in  
11 now what is nine months away of almost one-sixth of its total  
12 budget is in good shape, I'd hate to see a program that's in bad  
13 shape. The simple fact of the matter is that the losses we've  
14 sustained could not have come at a worse time. We would like to  
15 request that the Board at least make a supplemental  
16 appropriation to CILS equal to our first year losses, which, now  
17 that we are in the final stages of negotiating new space -- we  
18 have not had permanent offices since October 17th -- we have a  
19 better handle on what expenses we actually will incur out of  
20 pocket.

21           This, of course, does not include the fact that we  
22 have spent -- had to divert from the provision of free legal

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1 services -- untold staff hours dealing with earthquake matters.

2 MR. COLLINS: Mr. Chairman?

3 CHAIRMAN WITTFGRAF: Mr. Collins?

4 MR. COLLINS: I certainly sympathize with the  
5 difficulties in servicing a hundred different tribes. Would you  
6 explain to me what may be the source of some confusion? When I  
7 look at your fiscal situation, there seems to be a substantial  
8 non-LSC balance. How much is it?

9 MR. PFEFFER: It was, as of January 1st, approximately  
10 two hundred sixty-eight thousand dollars.

11 MR. COLLINS: Why don't you spend some of it for this  
12 purpose? Why are you asking us for more money?

13 MR. PFEFFER: Well, we are spending some of this. We  
14 are spending a good deal of that for this purpose, but the fact  
15 is that that money is not a recurring source of money. It is  
16 literally cash in the bank that we will be spending, and which  
17 we would have spent absent the earthquake in this year. Once  
18 the year is over, that money is gone, and we now are faced with  
19 a deficit situation of over a quarter of a million dollars.

20 MR. COLLINS: Over how much?

21 MR. PFEFFER: Over a quarter million dollars will be  
22 our annual deficit, as of December 31st, 1990.

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1 MR. COLLINS: Over a quarter of a million dollars?

2 MR. PFEFFER: Yes.

3 MR. COLLINS: You're asking for how much here?

4 MR. PFEFFER: We are asking for thirty-six thousand,  
5 three hundred forty dollars.

6 MR. COLLINS: There doesn't seem to be any match.

7 MR. PFEFFER: Well, we're not asking -- believe me, if  
8 you want to make up my entire deficit --

9 MR. COLLINS: I don't want to make it up, but I don't  
10 know how you go so quickly from a two-hundred-fifty-thousand-  
11 dollar surplus to a potential two-hundred-fifty-thousand-dollar  
12 deficit.

13 MR. PFEFFER: The reason we have that surplus is  
14 simply because we have -- what I believe -- we have been good  
15 fiscal managers of our program for a number of years. One of  
16 the ways that we have managed to reduce expenses is literally on  
17 the backs of our staff attorneys and support staff and  
18 paralegals.

19 We have probably if not the most experienced Legal  
20 Services staff in California, and perhaps the country. Most of  
21 our attorneys have been with the program for over ten years.  
22 Some have been with us for as long as fifteen years. We have

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1 other staff that have been with the program for twenty years.

2 All those staff have experienced, up until 1990, a  
3 single raise or a single adjustment for cost of living in our  
4 salary scale during that entire period. It was not our intent  
5 to finally raise salaries in 1990, to experience the earthquake.  
6 We would have had that deficit regardless of the earthquake. It  
7 is only a matter of perverse chance that we had the earthquake  
8 at the same time that we were undertaking an operating budget  
9 that was, shall we say, risky, but we had no choice.

10 MR. COLLINS: I don't want to continue this too long,  
11 but good fiscal managers really don't budget for a two-hundred-  
12 fifty-thousand-dollar deficit.

13 MR. PFEFFER: The fact of the matter is, the Board of  
14 the corporation felt that they really had no alternative; that  
15 absent raising salaries, we would have unplanned attrition of  
16 staff. We would have staff leaving randomly because of economic  
17 reality, and that we would have to raise salaries this year to a  
18 level we needed. If we had to cut back, at least we could do  
19 that through a managed process and decide where to cut and how  
20 much.

21 MR. COLLINS: That was a good answer. One other, I  
22 think sympathetic, question. I'm sure you've done a great deal

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1 of good for the Indians or tried to. Have there been any  
2 examples at all of Indians who are able to go to school and  
3 graduate and become lawyers to help in this process?

4 MR. PFEFFER: Yes. We have five attorneys -- five of  
5 our attorneys on staff are native American. Four of them are  
6 natives of California, who now live and work within their  
7 communities. One of our two paralegals is also a native  
8 California Indian, as is all of our support staff but one.

9 CHAIRMAN WITTGRAF: Ms. Smead, would you care to  
10 elaborate, perhaps, on the materials contained in your  
11 memorandum, or the information contained in your memorandum of  
12 March 22?

13 MS. SMEAD: Thank you, Mr. Chairman. As you  
14 referenced, my memorandum of March 22nd is on page 69 of the  
15 Board book. This is sort of an update of also what was in the  
16 other memorandum that we gave to you at the last Board meeting.

17 The basic thing that we looked at was we understood  
18 that most of the money was going to be going for staff salary  
19 increases. About two hundred fifty thousand was projected in  
20 staff increases.

21 In looking at that, we saw that last year their  
22 salaries were seven hundred thousand -- or the last audit

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1 figures were seven hundred thousand. We are trying to  
2 understand why there would be that substantial of an increase in  
3 pay in one year. That was one reason why we had recommended  
4 that -- we still felt they had adequate resources available.

5 I understand that there might be an operating deficit  
6 at the end of the year of approximately two hundred sixty  
7 thousand, but that would be against the fund balance of about  
8 three hundred thousand, still leaving, as my understanding,  
9 about forty thousand dollars left as a net fund balance at the  
10 end of the year, if I'm understanding the numbers correctly.

11 MR. PFEFFER: Well, I'm not sure what numbers you're  
12 referring to, but for those of you familiar with nonprofit  
13 accounting, a fund balance is not all cash by any means. I'm  
14 not sure -- I don't have my June 1989 audit in front of me, but  
15 I do know that our true cash reserves, what was available to us,  
16 was closer to two hundred sixty-eight, not three zero one. That  
17 might have included some property account or the value of a law  
18 book or two. Other than that, I'm not --

19 MS. SMEAD: Based upon looking at his audit, it said  
20 three zero one was non-LSC fund balance.

21 CHAIRMAN WITTGRAF: Is his suggestion conceivable that  
22 there would be, in so-called nonprofit accounting, some non-cash

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1 items?

2 MS. SMEAD: Oh yes. My understanding is yes, there  
3 could be.

4 CHAIRMAN WITTGRAF: Before the Board begins the  
5 discussion, the Chair wants to know whether or not there's a  
6 motion regarding this, so that we know whether we should in fact  
7 enter into such discussion. Mr. Hall?

8 M O T I O N

9 MR. HALL: To put it before the Board, I'll make a  
10 motion that we grant his request and make an additional  
11 appropriation of thirty-six thousand, three hundred forty  
12 dollars to the California Indian Legal Services to be used  
13 pursuant to the uses that he's given us on the hand-out. Each  
14 of us has it.

15 CHAIRMAN WITTGRAF: Is there a second to the motion?

16 MR. DANA: Second.

17 CHAIRMAN WITTGRAF: There is a motion; it has been  
18 seconded. The motion has been made by Mr. Hall, and I believe  
19 seconded by Mr. Dana. Discussion? Ms. Pullen?

20 MS. PULLEN: Ms. Smead, we find in your memo in the  
21 second-to-the-last paragraph on page 70, a reference to  
22 apparently extensive -- I shouldn't say extensive. That sounds

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1 like large amounts -- several salary increases. Mr. Pfeffer  
2 indicates that they haven't been given any salary increases.

3 MS. SMEAD: Our information we took from the funding  
4 applications, we took the ones that were submitted for 1988,  
5 1989 and 1990 and compared salary levels for people. We found  
6 that not everybody necessarily got pay raises. Some people  
7 didn't get them, in part maybe because they were terminated.  
8 The pay raises ranged anywhere from two-percent to seventeen-  
9 percent pay increases.

10 MR. PFEFFER: May I address that?

11 CHAIRMAN WITTGRAF: Mr. Pfeffer.

12 MR. PFEFFER: I'd like to clarify that when I was  
13 talking about salary increases, I was talking about our pay  
14 scale. Employees are paid pursuant to a formally-adopted scale  
15 which provides for certain levels of pay for certain levels of  
16 experience.

17 Between 1979 and mid 1984, not only was the scale not  
18 increased, but nobody was granted extra experience -- sort of  
19 the magic of Legal Services accounting, where no matter how old  
20 you get, you always get to be a fresh young attorney out of law  
21 school.

22 Between 1985 and 1989, we were able -- we were not

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1 able to increase the scale, but some employees, those who had  
2 not maxed out under the scale, were able to get increases in  
3 their pay because of increases in experience. However, that  
4 basic scale was still a 1985-dollar scale. In 1989, the scale  
5 is basically frozen again, so between 1988 and 1990 was, again,  
6 another two-year period of virtually no increases.

7 I should also point out, in our last monitoring report  
8 it was pointed out, as I recall, that probably the greatest  
9 problem facing the program was the fact that we had -- as well  
10 as our greatest attribute -- was that we had a very experienced  
11 level of staff, most of whom had maxed out on the salary scale,  
12 and thus they were not getting any increases at all any more.

13 CHAIRMAN WITTGRAF: Discussion?

14 MR. MOLINARI: Mr. Chairman.

15 CHAIRMAN WITTGRAF: Mr. Molinari?

16 MR. MOLINARI: I raised the question at our last Board  
17 meeting, and I'd have to raise the same question here. It's not  
18 any personal objection to the use of the money as much as a  
19 question I, as a new member, have as to the purpose of Legal  
20 Services Corporation.

21 I have the same problem that I had last time, looking  
22 at capital requests for building damages, relocation of phone

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1 service, move to permanent quarters, destroyed library  
2 materials, space, costs, earthquake losses not covered by FEMA.  
3 I just wonder what the policy of this Board is going to be  
4 towards those items.

5 I'm not raising any specific objection to your  
6 request, sir. I'm just trying to determine for the Board  
7 itself, what is our policy going to be, because I would  
8 anticipate we're going to have a whole host of these requests  
9 coming in, in the future. I don't blame them for making the  
10 requests, if we're going to be granting them.

11 I don't know whether we'll have the money to grant all  
12 the requests, and my question to this Board is, is this a  
13 question of policy? Has this been done in the past? Is this  
14 going to be the policy of the Board in the future? I think we  
15 have to answer it to ourselves, so we know where we're going  
16 from here on in.

17 CHAIRMAN WITTGRAF: Mr. Dana?

18 MR. DANA: While Mr. Molinari was witnessing the  
19 recent addition of a congressperson to the United States, we  
20 adopted a budget request for next year which included five  
21 hundred thousand dollars for emergency aid for just this  
22 situation. Assuming congress goes along, I think we will have-

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1 - whether or not we want to as a Board entertain those requests  
2 or whether we want to set up a procedure for having the  
3 Corporation deal with it, I think we're moving in the direction  
4 of coming to the aid of our programs who are, through no fault  
5 of their own, in deep trouble.

6 The alternative, really, is for all these programs to  
7 go out and buy insurance. This is a way of, in effect, self  
8 insuring the catastrophes that inevitably occur.

9 MR. MOLINARI: If I understand you, Howard, then what  
10 you're suggesting is that where they have the ability to buy  
11 insurance, they shouldn't be buying it; that in fact any losses  
12 will be covered by Legal Services and we'll pay for them?

13 MR. DANA: Well, if congress goes along with our  
14 recommendation, we'll have five hundred thousand dollars. When  
15 that's gone it's gone, so there's a risk for anybody not to buy  
16 insurance, if it's reasonable and available.

17 I think the short answer to your question is, I think  
18 the Board is recommending to congress that we set aside some  
19 money in our budget for just this kind of a situation, and how  
20 in effect we allocate it over the year and who does it, we  
21 haven't decided.

22 CHAIRMAN WITTGRAF: Ms. Pullen?

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1 MS. PULLEN: Mr. Chairman, I am concerned about  
2 revisiting an issue that was settled last month. This Board  
3 drew a line last month that I personally believe was  
4 appropriate. One of the criteria for the drawing of that line,  
5 it appeared to me at least, was availability of some form of  
6 reserve funds -- non-LSC funds, if you will -- in amounts that  
7 are adequate to cover what is being sought.

8 In the case of this request, the apparent reserve fund  
9 is well in excess of the amount that is covered by the motion.  
10 I am concerned that if we erase the line that was drawn last  
11 month out of good intentions, that all of those other grantees  
12 who were turned down last month will return next month with good  
13 cause to hope that the line has been erased forever.

14 I believe that it would be an error for this Board to  
15 make an exception for this particular agency, without  
16 recognizing that it is rescinding, in effect, the decision that  
17 it made last month and opening itself to a tremendously greater  
18 expenditure than what is being sought in this motion.

19 Whether or not the budget request, the appropriations  
20 request that was adopted a few moments ago, includes a line item  
21 for emergency needs, that certainly is prospective, nor has it  
22 been approved by congress. I think we would be better served to

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1 look to the wise decision we made last time in drawing a line.

2 CHAIRMAN WITTGRAF: Further discussion?

3 MR. HALL: Mr. Chairman.

4 CHAIRMAN WITTGRAF: Mr. Hall?

5 MR. HALL: I have a question for the witness. Are  
6 these items already paid for? Have you already used some of  
7 your fund to pay these, and if you are given this grant you will  
8 reimburse your fund?

9 MR. PFEFFER: No, we still have not successfully  
10 located new space. We've been in temporary quarters. We're  
11 actively negotiating for new office space. We have two lease  
12 proposals on the table, and we hope to conclude lease  
13 negotiations this week.

14 MR. HALL: What about the replacement of furniture?  
15 Have you replaced the furniture using those funds?

16 MR. PFEFFER: No. We, I think, are using folding  
17 tables and chairs at the moment.

18 MR. HALL: Phone service, any of the other items?

19 MR. PFEFFER: Phone service, FEMA pays for one move.  
20 They paid for some of the expenses associated with our move to  
21 temporary emergency quarters, but won't pay for any further  
22 relocation expenses.

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1 MR. HALL: Why didn't you ask us for forty-three  
2 thousand, nine hundred twenty? Why are you only asking for  
3 thirty-six thousand, three hundred forty?

4 MR. PFEFFER: Because I don't think that it is  
5 appropriate for the Corporation to be the ultimate guarantor of  
6 all of our expenses in this area.

7 MR. HALL: What are those other expenses that you are  
8 going to pay, and where are you going to pay those from? How is  
9 that going to affect the raises?

10 MR. PFEFFER: The increase in rent over three years is  
11 what the additional expenses will be, that number below the  
12 line. When our building we rented space in was damaged beyond  
13 repair in the earthquake, we lost a very advantageous, long-term  
14 lease. The difference in rent over that for just the three  
15 years will be forty-three thousand past the first year.

16 MR. HALL: I was reading your paper wrong. I'm sorry,  
17 go ahead.

18 MR. PFEFFER: To be frank, if you look at the  
19 materials we gave, the additional increases in successive years  
20 are just a minor part of the financial difficulties we are going  
21 to be facing in 1991 and successive years.

22 MR. HALL: My last question is, if we don't give you

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1 this money, this thirty-six thousand dollars, and you have to  
2 use some of your overage fund to pay it, will your attorneys  
3 still get a raise? How will that affect the amount?

4 MR. PFEFFER: The affect of us having thirty-six  
5 thousand, or having to divert thirty-six thousand that we  
6 originally hadn't budgeted would be, if we do make cutbacks,  
7 which is likely in the program, rather than those cutbacks  
8 happening on January 1, 1991, they will be accelerated. It was  
9 simply a question of that, rather than --

10 As our budgets point out, we have enough money to get  
11 us through 1990. We're hopeful that with either increases in  
12 congressional appropriations, other sources of funds, that we  
13 can make up in the time remaining to us in this year, our  
14 deficit.

15 Having to divert thirty-six thousand extraordinarily  
16 for increased expenses increases the pressure and reduces the  
17 time we have to secure additional funds to keep the program  
18 running in its current configuration and size.

19 MR. HALL: How many lawyers do you have there?

20 MR. PFEFFER: We currently have thirteen attorneys and  
21 we have one vacancy at the moment.

22 MR. DANA: Mr. Chairman?

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1 CHAIRMAN WITTGRAF: Mr. Dana.

2 MR. DANA: I'm frankly sympathetic with the position  
3 that Penny Pullen has expressed, that we visited this issue at  
4 the last meeting, and as a Board voted on X amount of dollars.  
5 We not have had the benefit of your input, but I think we looked  
6 at this issue. We may have been wrong, but we made the  
7 decision. My apprehension is that if you are  
8 successful here today, and there is a part of me that hopes you  
9 are, we'll see others at the next meeting who said, I didn't  
10 believe we'd get a third bite at that apple. So we'd be doing  
11 that right along.

12 A part of me says, we've done this. The flip side of  
13 this is, we've just taken money out of the native American line  
14 and reprogrammed it for administration, and we arguably have the  
15 money. I guess maybe I'd ask the president to tell us if--  
16 he's got another problem.

17 Apparently, the president is looking to determine what  
18 the consequences of our granting your request in whole or in  
19 part would be towards our budget. We just adopted a budget.  
20 We're going up to congress tomorrow to try and sell it.

21 Mr. President, do you have an answer as to whether or  
22 not we have the resources to grant this request?

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1 MR. WEAR: Mr. Chairman?

2 CHAIRMAN WITTGRAF: Mr. Wear.

3 MR. WEAR: Thank you, Mr. Chairman. Mr. Chairman, I'm  
4 a little confused, I guess, by the request. Last month when we  
5 considered it, the total was thirty-three thousand dollars. We  
6 were told by Nanci Clinch that the program had gotten a grant of  
7 ten thousand dollars, and that they'd reduce their requirement  
8 to twenty-three thousand dollars. I see it's grown back up.  
9 I'm not quite sure. The amount is now thirty-six thousand  
10 dollars.

11 We looked at it very carefully when the staff went  
12 through this, Mr. Chairman; tried to analyze where the money was  
13 going to come from. As I said last month, even with the  
14 allocation of the carryover to M&A, we're going to be spending  
15 less money this year than was allocated last year. I don't  
16 think that the money is there.

17 Indeed, the directions from the Board prior to these  
18 members joining the Board, was to look at these issues as if we  
19 had all the money in the world, and to try to ascertain which  
20 ones were meritorious and which ones weren't. We did that. We  
21 looked at other monies available to the programs and came up  
22 with the recommendations that we did last month.

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1 I share the views of Ms. Pullen with regard to  
2 requests. I think there are any number of programs that can  
3 make a request for more money. I used to be on the Hill. I  
4 used to see government people come up and each one of them could  
5 make a very solid request for more money, but we were limited in  
6 the amount of budget authority and the amount of money available  
7 to the committee to deal with that, and we had to make hard  
8 choices.

9 Unfortunately, I think this is another hard choice  
10 that the Board will need to make today. I would recommend that  
11 the Board reaffirm its decision last month with regard to the  
12 carryover. In that case it will have unfortunate consequences  
13 for California Indian Legal Services, but I believe that that is  
14 where we should go.

15 CHAIRMAN WITTGRAF: Mr. Pfeffer?

16 MR. PFEFFER: Yes, I also was confused, having after  
17 the fact seen some of the numbers that were presented to the  
18 Board at the last meeting. I had gotten a call from Ms. Clinch  
19 the evening before the Board meeting; and, to be frank, I'm not  
20 sure that she got everything I was telling her. It was late,  
21 and I can understand that.

22 I should point out that the other requests from other

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1 programs -- none of those suffered direct financial loss in the  
2 earthquake. It was temporary funding to provide an increased  
3 level of services. The only other program that suffered the  
4 loss of an office did receive funding. That was the Legal Aid  
5 Society of Santa Cruz.

6 As a part of history, I know personally when the main  
7 offices of DNA, which is the Indian Legal Services program in  
8 Arizona, burned down a few years ago, there was a supplemental  
9 appropriation made to help them out of their temporary financial  
10 losses.

11 I did tell, in the one conversation I had with a  
12 member of the Corporation earlier on about this issue, I did  
13 confirm both the amount of the carryover, as well as presented  
14 to them the fact that we also had an amount -- almost an  
15 identical amount -- of current operating deficit. Yet, that did  
16 not get to the Board either as presented by the Corporation or,  
17 unfortunately, by Ms. Clinch.

18 I can't speak for the rest of the California programs  
19 that -- quote -- "if you give it to us that they will all be  
20 back," but I do think we are in a separate category. These were  
21 losses that were unavoidable and not otherwise --

22 MR. MOLINARI: Mr. Chairman, with your indulgence --

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1 CHAIRMAN WITTGRAF: Mr. Molinari.

2 MR. MOLINARI: Are you saying that Nanci Clinch was  
3 wrong when she said you were getting a ten-thousand-dollar  
4 grant, and therefore the amount that you requested was going to  
5 be ten thousand dollars less?

6 MR. PFEFFER: What I told her was that we had gotten  
7 ten thousand from FEMA -- actually it was eighty-nine hundred--  
8 but that -- we still don't know precisely, but we know a lot  
9 better that the other expenses were, to some degree,  
10 underestimated, both as to what it would cost for new space, as  
11 well as telephones and repair of equipment, and so on and so  
12 forth.

13 MR. MOLINARI: But the FEMA grant was not to cover the  
14 items that you are asking the Board here --

15 MR. PFEFFER: That's right.

16 One point, just for Mr. Molinari's enlightenment, FEMA  
17 has a regulation that says, you won't get a grant unless you  
18 can show us that you're going to go out and get earthquake  
19 insurance. However, that requirement is waived when there is no  
20 possibility of getting such insurance. In fact, in California,  
21 you can't get it.

22 We are covered -- had the building burned down rather

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1 than collapsed, we would have been covered for most of these  
2 losses.

3 CHAIRMAN WITTGRAF: Further discussion?

4 MR. WEAR: Mr. Chairman?

5 CHAIRMAN WITTGRAF: Mr. Wear.

6 MR. WEAR: Thank you, Mr. Chairman. Just one other  
7 point that I should have mentioned, and that is that even with  
8 the projected deficit that the program says it will have at the  
9 end of this calendar year, the program will still have an excess  
10 fund balance that is greater than the amount of money that the  
11 program is requesting here.

12 I would reiterate my earlier comments. I think that  
13 every program can make a well-reasoned request for more money.  
14 I think that we need to wait and see how the congress reacts  
15 with regard to the request for emergency funding that is in this  
16 year's request for appropriation. I think it would be a mistake  
17 to create the precedent that the program is requesting here  
18 today.

19 CHAIRMAN WITTGRAF: Further discussion? Mr. Hall?

20 MR. HALL: Mr. Chairman, if we're going to grant this  
21 one, we're going to have some more requests. I don't know if we  
22 have unlimited funds or if we don't. It seems like last time it

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1 was ninety-seven thousand dollars. This one has increased, and  
2 the others may increase theirs. I'm sure they'd come back and  
3 ask for it. Somebody's going to be left with the short end of  
4 the stick if we start granting these, I suppose.

5 I guess where my thoughts were leading to is, I wonder  
6 if we shouldn't wait and find out exactly what is going to be  
7 requested, the total amount that's going to be requested. It  
8 may have to be given in a pro rata manner.

9 Let me say also that the reason that I voted against  
10 this last time was because I thought they had two hundred  
11 seventy-five thousand dollars. I don't mind to say I don't  
12 really catch on to where all the money went, I mean the deficit.

13  
14 I didn't get an answer to my question, I didn't feel,  
15 as to whether or not the attorneys will still get a raise, which  
16 I think they're deserving of it; it just won't be as much if we  
17 don't grant this. It seems like this thirty-six is going to  
18 come from their raises, and I'm trying to get a feel how badly  
19 that will hurt their raises.

20 MR. PFEFFER: No, this will come from laying off  
21 staff, is how we would make up this part of our deficit.

22 MR. HALL: You've already done some of that, haven't

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1 you?

2 MR. PFEFFER: Yes, and this will accelerate that  
3 process.

4 MR. HALL: So the attorneys will go ahead and get the  
5 raise?

6 MR. PFEFFER: Yes, the raises are in place and have  
7 been granted, yes.

8 MR. HALL: Okay.

9 CHAIRMAN WITTGRAF: Further discussion?

10 (No response.)

11 CHAIRMAN WITTGRAF: Hearing none, we'll proceed to a  
12 vote. I think you all understand that the motion is whether or  
13 not an emergency allocation of funds of thirty-six thousand,  
14 three hundred forty dollars should be made to California Indian  
15 Legal Services, Incorporated at this time.

16 Those in favor of the motion, signify by saying "aye."

17 (A chorus of ayes.)

18 CHAIRMAN WITTGRAF: Those opposed, "nay."

19 (A chorus of nays.)

20 CHAIRMAN WITTGRAF: The nays appear to have it. The  
21 nays do have it.

22 MR. SUAREZ: Mr. Chairman, you kind of stated the

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1 motion as "whether or not." I presume the motion was in favor,  
2 was it not, of the granting?

3 CHAIRMAN WITTGRAF: I think that's correct, Mr.  
4 Suarez. Do you wish to call -- a roll-call vote?

5 MR. SUAREZ: Yes, I would like that. I voted yes.

6 CHAIRMAN WITTGRAF: The Chair certainly apologizes to  
7 any of the members of the Board if there was any uncertainty  
8 left by the Chair in his restating of the motion. I believe  
9 that the motion, for the group at this time, is whether or not-  
10 - and that is the objectionable wording -- that thirty-six  
11 thousand, three hundred forty dollars should be provided to  
12 California Indian Legal Services, Incorporated, as emergency  
13 funds for the current funding year.

14 The Chair will call the roll. Those in support of the  
15 motion will signify by saying "aye." Those opposed to the  
16 motion will signify by saying "nay." Mr. Collins?

17 MR. COLLINS: Nay.

18 CHAIRMAN WITTGRAF: Mr. Dana?

19 MR. DANA: Nay.

20 CHAIRMAN WITTGRAF: Mr. Erlenborn?

21 MR. ERLENBORN: Aye.

22 CHAIRMAN WITTGRAF: Mr. Guinot is absent. Ms. Love?

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1 MS. LOVE: Nay.

2 CHAIRMAN WITTGRAF: Mr. Molinari?

3 MR. MOLINARI: Nay.

4 CHAIRMAN WITTGRAF: Ms. Pullen?

5 MS. PULLEN: Nay.

6 CHAIRMAN WITTGRAF: Mr. Suarez?

7 MR. SUAREZ: Aye, yes, whatever.

8 CHAIRMAN WITTGRAF: Mr. Wittgraf votes aye. Ms.  
9 Wolbeck?

10 MS. WOLBECK: Nay.

11 CHAIRMAN WITTGRAF: The motion appears to fail.

12 Mr. Suarez?

13 MR. SUAREZ: Mr. Chairman, I would like to let the  
14 Board know that the fact that I'm leaving is not dissatisfaction  
15 with the prior vote or any other votes, although I could have  
16 probably expressed some dissatisfaction on some of them. It's  
17 just that I have to get back to my city and attend to the  
18 business the city, and in no way reflecting on the proceedings  
19 today, which I think have been enormously helpful to the future  
20 functioning of the Board.

21 MR. HALL: Mr. Chairman, I will vote for the motion.

22 CHAIRMAN WITTGRAF: Mr. Hall changes his vote from

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1 "nay" to "aye."

2 MR. HALL: I didn't have a -- I was not called.

3 CHAIRMAN WITTGRAF: I'm sorry.

4 MR. HALL: That's okay.

5 CHAIRMAN WITTGRAF: Whatever list I was looking at,  
6 Mr. Hall, I'm sorry, didn't include your name.

7 MR. HALL: I'm used to that kind of treatment.

8 (Laughter.)

9 CHAIRMAN WITTGRAF: And you're from Texas!

10 It's the Chair's belief the motion did fail. Thank  
11 you very much, Mr. Pfeffer.

12 At this time the next item on the agenda is Paul  
13 Mullin, executive director of the Middlesex County Legal  
14 Services Corporation from the State of New Jersey.

15 Mr. Mullin is coming forward. The Chair asks Mr. Shea  
16 to come forward to the table, as well.

17 We're passing out not only your materials, Mr. Mullin,  
18 but others as well. Do you want the Board to take a few minutes  
19 to read your materials, or are you going to summarize them?

20 MR. MULLIN: Actually the first two pages is my  
21 letter, and the remaining material is just background. The  
22 letter pretty much states what I wanted to state to the Board,

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1 and I can summarize and give and give a little more history.

2 CHAIRMAN WITTGRAF: Please.

3 PRESENTATION OF PAUL MULLIN

4 MIDDLESEX COUNTY LEGAL SERVICES

5 MR. MULLIN: First of all, I'd like to thank the Board  
6 for amending the agenda. I know it's a late hour, and you're  
7 very tired after two days.

8 CHAIRMAN WITTGRAF: It's very early, compared to  
9 yesterday. We're just kind of getting our second wind for the  
10 afternoon. Go ahead.

11 MR. MULLIN: I wanted to thank you for allowing  
12 Middlesex County Legal Services the opportunity to address this  
13 issue. I'm Paul Mullin. I'm the executive director of  
14 Middlesex County Legal Services. We are located in New  
15 Brunswick, New Jersey. We serve Middlesex County.

16 We have been receiving federal funds for legal  
17 services since 1966, and have continued to receive them, at  
18 least up until the end of this week. Our Legal Services funding  
19 comprises approximately one-third of our operations budget.

20 I'm here today to address a serious and urgent  
21 problem. Unless this Board takes action on Friday, Middlesex  
22 County Legal Services will no longer be receiving funding from

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1 the Legal Services Corporation. What I am here today for is to  
2 request of this Board to continue funding of Middlesex County  
3 Legal Services Corporation, and to instruct Legal Services  
4 Corporation staff to negotiate with Middlesex County Legal  
5 Services Corporation on the issue of the new grant conditions on  
6 access to personnel files.

7 At the beginning of this year, the Legal Services  
8 Corporation disseminated new grant conditions. Most of those  
9 conditions, Middlesex County Legal Services can comply with. We  
10 can create new files, employee verification files, they're  
11 called. We already have such files. They're called personnel  
12 files.

13 We can have certain documents in these files. We can  
14 provide access to certain of these documents. We can provide  
15 access to all documents, if an employee consents to access to  
16 all the documents, but there are certain documents that we  
17 cannot provide access to. Those documents pertain to employee  
18 evaluations, disciplinary actions and grievances.

19 If the employee consents to access to those documents,  
20 there is no problem. Without consent, though, we cannot provide  
21 access.

22 I should point out that through our entire history, it

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1 was not until 1988, in May, that we were ever requested by any  
2 funding source for access to personnel files. That was by a  
3 monitoring team of the Legal Services Corporation.

4 We have approximately eight other funding sources.  
5 They have never asked for access to personnel files.

6 There is an expectation by all staff that what is in  
7 their personnel files is private. It is understood that  
8 supervisory management employees are familiar with what is in  
9 those files, and use those files for management purposes.  
10 Further, in Middlesex County Legal Services, the non-  
11 administrative staff is unionized, and there is a collective  
12 bargaining agreement.

13 A provision of the collective bargaining agreement  
14 provides, and has provided for approximately the last ten years,  
15 that certain documents, such as evaluations, disciplinary  
16 matters and grievances, shall be kept in personnel files and  
17 shall not be accessible to any persons outside of Middlesex  
18 County Legal Services Corporation.

19 When the program received these new grant conditions,  
20 the board of the program immediately recognized there was a  
21 problem. Reviewing these conditions, the board decided that it  
22 could not agree to things that it had already agreed not to do.

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1 Therefore, they deleted portions of the grant conditions.

2 This was returned to the Corporation with a cover  
3 letter explaining the difficulties and asking for some  
4 discussion, if this created problems. Those were sent in, in  
5 January. In early February, I guess it was, this Board met.  
6 Apparently another program had a similar problem to Middlesex.  
7 Apparently, the Board intervened in that matter and encouraged  
8 staff to work with the program to try and resolve the matter.

9 We had thought that the problem, as far as Middlesex  
10 was concerned, was not a problem until later on in February we  
11 received a letter from Mr. Wear advising us that we would no  
12 longer receive funding unless we signed the grant assurances,  
13 but the Corporation was willing to negotiate.

14 Fine. We contacted the Corporation and we began  
15 negotiations. In order to negotiate this, we requested LSC to  
16 advise us what the needs of the Corporation were, so that the  
17 needs of the Corporation to monitor could be addressed, as well  
18 as the needs and expectations of the program, and the rights of  
19 the employees.

20 There was back and forth. It revolved around two  
21 issues. One was the manner in which the board of Middlesex had  
22 changed the grant conditions. Apparently, there's a policy that

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1 no recipient program can change a grant condition, and it was  
2 suggested to Middlesex that we do a cover letter. Where it was  
3 last left was that we were talking about an addendum to a grant  
4 condition.

5 The other issue was in what particular instances would  
6 the Corporation need to have access. Those instances mostly  
7 center around claims of discrimination. Right below my letter  
8 to the Board, you will find what I had sent to Corporation  
9 staff, that I had hoped addressed the needs of the Corporation  
10 and addressed the needs and rights of employees of Middlesex  
11 County Legal Services.

12 On Friday I was contacted and was told that this issue  
13 is no longer negotiable. The reason for that position by the  
14 Corporation was that they felt the expiration of a collective  
15 bargaining agreement -- the collective bargaining agreement that  
16 had been in force at Middlesex was from a term of January, 1989,  
17 through December 31st, 1989. They felt that since December 31st  
18 had come and gone, that Middlesex County Legal Services should  
19 be negotiating with its staff, not LSC -- just change the  
20 collective bargaining agreement.

21 There's a problem with that. There was agreement with  
22 staff that the only issue to be negotiated was the salary issue.

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1 We have done this for a number of years. It limits the time and  
2 effort spent on negotiations. Both management, the board and  
3 the staff are satisfied with the provisions of the collective  
4 bargaining agreement, other than salaries. Neither the board,  
5 management nor staff are satisfied with the salaries, but that  
6 is a result of our funding, basically.

7 I've tried since Friday to negotiate this further,  
8 unsuccessfully. I just want to say that I ask this Board to  
9 instruct staff to negotiate this issue, as well as -- and more  
10 importantly, I guess -- to continue funding of Middlesex County  
11 Legal Services Corporation.

12 I'm a little nervous about making such a request,  
13 because in the back of my mind I'm thinking, well what if we  
14 negotiate this, they're instructed to continue funding, but the  
15 next Board meeting is a month away and our funding is cut.  
16 Normally, there's a procedure when Legal Services Corporation  
17 wants to defund a recipient program. It's an administrative  
18 procedure whereby the Corporation notifies a recipient program  
19 that they will no longer receive funding. That recipient  
20 program has the right to contest the defunding and to request an  
21 administrative hearing; and, in the interim, to request funding  
22 pending the resolution, and that will automatically continue

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1 funding.

2 I have made such a request, but I am told that this is  
3 not an issue of continued funding. Maybe Mr. Shea could  
4 elaborate a little better than I can on the position, but it  
5 seems that, since I didn't sign, and the board chair did not  
6 sign the conditions as were put to us, we are not entitled to  
7 any further funding.

8 I want to thank you for this opportunity. I would be  
9 more than happy to address any questions/concerns you may have.  
10 Basically it's in your hands.

11 CHAIRMAN WITTGRAF: Mr. Shea, I think the Board would  
12 like your thoughts. Let us back up one step, though. On  
13 February 12th, at about this time of the day, we had a similar  
14 conversation with two representatives of the Pittsburgh  
15 Neighborhood Legal Services Association, if I'm not slightly  
16 misstating the association's name.

17 It's my understanding that that stand-off has since  
18 been negotiated to the satisfaction of both sides. Would you  
19 elaborate on that a little bit for the Board's benefit, so that  
20 we know what did happen in that instance, and then share with us  
21 what thoughts you have regarding this matter?

22 MR. SHEA: Certainly. Let me even descend a little

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1 bit from that specific case.

2 This particular grant condition was executed by all of  
3 the grant recipients with the exception of Mr. Mullin's program.  
4 It was executed as well, I think, by the Pennsylvania program.

5 The Pennsylvania program wrote in -- I might add that  
6 a number of programs wrote in that they might have some  
7 contractual problems that may constrain the way in which they  
8 will be able to observe that, but they nevertheless signed--  
9 they signed without reservation the grant condition.

10 I might add, there were two features to that. The  
11 first feature is that the program will create and maintain this  
12 EVA file. Number two, for those programs that have collective  
13 bargaining agreements, that when their collective bargaining  
14 agreement expires, that they will not include any revisions in  
15 that agreement which will constrain the access of Legal Services  
16 Corporation in getting personnel files. If they do, presumably  
17 they'll know there will be a serious question about whether  
18 they'll get any funding from Legal Services Corporation.

19 Again, that undertaking was made by all the Legal  
20 Services programs, with the exception of Mr. Mullin's program.  
21 The Board, the prior Board, had a long-standing position that  
22 unilateral modifications of grant conditions could not be

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1 addressed by the staff; that is, they would be left to the sole  
2 discretion of the Board.

3 I think from a legal point of view, that is perfectly  
4 appropriate, insofar as you are making an offer, a contract  
5 offer to these recipients, which is consistent with and  
6 implements the Legal Services Corporation Act. To the extent  
7 that they unilaterally modify terms, it's a counteroffer. This  
8 particular matter was, at least as far as I know, the only  
9 counteroffer we had in connection with this year's funding.

10 With respect to the matter of a hearing, it is the  
11 Corporation's obligation, in my estimation, to require as a  
12 condition of any funding that a recipient agree in advance to  
13 observe the Legal Services Corporation Act and regulations and  
14 such other requirements as are consistent with the Act.

15 That's essentially what we've done. I think that that  
16 is a precondition for getting funds. The recipient must make  
17 that undertaking, in order to be able to obtain the funds. Here  
18 we had a situation where a recipient essentially wouldn't make  
19 some of the undertakings that we requested.

20 To my mind, a hearing wouldn't lie, for the simple  
21 reason, first of all, that hearings are intended to resolve  
22 disputed issues of material fact. There is no disputed issue of

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1 material fact here. It is purely a question of law.

2 I don't know that there is ample precedent that--  
3 you're not required to have a hearing when there are no facts at  
4 issue. Hence, I don't see any occasion to have a hearing in  
5 this circumstance.

6 Let me pass on to the substance of this particular  
7 presentation. That is, as I understand it, for this program  
8 they -- first of all, the modification they made to the grant  
9 condition suggested that they wouldn't create the files in the  
10 form that they were requested. I might add, going back to the  
11 Pennsylvania program, the Pennsylvania program at first  
12 indicated they would not create and maintain the files.  
13 Thereafter they since then undertook to create and maintain the  
14 files. They have also undertaken to let us inspect the files.

15 I will hasten to add that from time to time when we go  
16 to look at the files, they either don't look like they're  
17 supposed to look or sometimes we don't get access to them, even  
18 though the program says they want to give us access to them. In  
19 that case, we have a separate problem. That happens from time  
20 to time, and that may still happen in Pittsburgh, to be  
21 perfectly honest, but they have agreed to create the file and to  
22 program to make it available.

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1           Here, this program said they wouldn't maintain the  
2 file, number one. Number two, the larger issue -- future issue,  
3 from our point of view -- when the time comes to renegotiate  
4 their contract, they will not take out the provision that  
5 precludes access by the Corporation.

6           That's particularly important in this case. With  
7 respect to this program, their collective bargaining agreement  
8 expired at the end of last year. They have been extending the  
9 old agreement by -- I don't know by -- by consent, while  
10 negotiating on other issues.

11           Consistent with the grant term, they would be required  
12 to put our access, Legal Services Corporation access to records,  
13 on the table and to get it out of the agreement. Failing that,  
14 then pursuant to the grant condition, they'd know that their  
15 Legal Services Corporation funding is in great jeopardy.

16           Management has to make the decision about which is  
17 more important, who they want to negotiate with, Legal Services  
18 Corporation or their union. They're already negotiating with  
19 their union. Insofar as -- the Corporation has gotten these  
20 kinds of assurances from virtually every other recipient  
21 organization -- and, I might add, the national affiliate of this  
22 union represents many of these other programs. This isn't new

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1 to the national union; it's not new to the program. I think  
2 it's up to the program to decide which is more important.

3 CHAIRMAN WITTGRAF: Mr. Mullin?

4 MR. MULLIN: If I may just respond to a few things to  
5 clarify. Middlesex County Services have never said that these  
6 files would not be created. That's the first paragraph of the  
7 grant assurance; that was left in tact.

8 The problem arises from certain items that are  
9 required to be in these files, if these files are to be  
10 accessible. As far as the position Middlesex County Legal  
11 Services Corporation won't take this provision out of the  
12 collective bargaining agreement, that agreement is settled but  
13 for one remaining issue of salaries.

14 I don't know if any of you have ever negotiated  
15 collective bargaining agreements, but you cannot promise that  
16 you are going to have a certain result at the end of collective  
17 bargaining. It's bargaining; it's negotiating. You don't know  
18 what you're going to end up with.

19 As far as Middlesex County Legal Services being the  
20 only recipient in this position, a few pages back in the  
21 materials you will not -- I think it's the fifth or sixth page--  
22 - there's different phrases that were suggested to Middlesex to

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1 use, qualifications on these grant assurances. These were taken  
2 from various recipient programs.

3 Middlesex may have taken the most direct approach, but  
4 if you as a Board were faced with a demand to sign a document  
5 that violated another agreement, I expect you would alter that  
6 document before signing it, so that it did not conflict with  
7 prior agreements.

8 As far as the administrative hearings are only for  
9 fact issues, maybe I should clarify what I was talking about:  
10 an administrative procedure where an independent authority can  
11 decide this issue. There may not be fact issues, but there are  
12 certainly issues of law here, and whether by signing and doing  
13 what the Corporation, for instance, requires us to do would  
14 subject Middlesex County Legal Services to charges of unfair  
15 labor practices.

16 But there is a larger issue here, larger than the  
17 collective bargaining agreement. I had initially hoped we could  
18 have addressed this issue in negotiating with the Corporation  
19 and resolved it. That issue is the right to access by an  
20 outside party to personnel files.

21 Why is it that the Corporation needs to see this  
22 information? If the Corporation has a legitimate basis, I'm

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1 sure we can work with the Corporation and resolve this issue.  
2 That's what that proposed addendum to the grant assurance is all  
3 about. We were told, these are the concerns.

4 We thought we addressed those concerns. Once those  
5 were addressed, we were told, we're sorry, this is no longer  
6 negotiable. We asked, well, what other instances would you need  
7 access to these files, these personnel documents.

8 It's not negotiable. Well, give us something to work  
9 with. We're not getting anything. The bottom line is, just the  
10 plain facts, is that Corporation staff want to go fishing in  
11 personnel files.

12 MR. ERLENBORN: Mr. Chairman?

13 CHAIRMAN WITTGRAF: Mr. Erlenborn.

14 MR. ERLENBORN: A question. Mr. Mullin, you have  
15 several times referred to the fact that you were bound by an  
16 agreement, which apparently took affect January 1st of this  
17 year, which was an extension of last year's agreement.

18 MR. MULLIN: Before the expiration of the last  
19 collective bargaining agreement, the union notified management  
20 of its intent to renew the agreement as is, but for the salary  
21 provision. That was agreeable to the board.

22 MR. ERLENBORN: That was before the expiration of last

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1 year's agreement?

2 MR. MULLIN: Right, right.

3 MR. ERLENBORN: The reason that I'm interested in the  
4 timing; I see here that on January 18th you returned the  
5 application with the modifications, which means you must have  
6 had it some time prior to that. Did you have that grant  
7 application and know that these conditions were attached to it  
8 prior to January 1st, when this new collective bargaining  
9 agreement went into effect?

10 MR. MULLIN: I don't recall when we received it. My  
11 recollection is that it was already understood and agreed that  
12 the only issue we have here is salaries, prior to getting --

13 MR. ERLENBORN: Was it a verbal agreement, written  
14 agreement?

15 MR. MULLIN: Like I say, I don't -- it was certainly  
16 verbal, because before they even gave me the notice, it was  
17 understood that that was the case.

18 MR. ERLENBORN: See, the reason I have a concern about  
19 this timing is, if the Corporation is going to be limited in  
20 what it can do in monitoring compliance by a grantee by whatever  
21 the grantee negotiates and agrees to with the union, we're just  
22 going to be out of business, I think.

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1           If you were aware at the time, January 1st, when this  
2 new agreement went into effect that this was one of the  
3 conditions of your new grant and you just gave that away, and  
4 now you say, well, our hands are tied because we have an  
5 agreement with the union.

6           MR. MULLIN: That would only delay the problem until  
7 December. The reason why I responded to the Corporation asking  
8 for information on what's the need for access is so that I would  
9 have something to work with. I'm not a very effective  
10 negotiator when I say, I want this because LSC says so. I can  
11 be very effective if I say, there is a concern that -- LSC has a  
12 concern about certain types of situations, where they feel they  
13 would need access, such as allegations of discrimination.

14           I am confident that those types issues can be worked  
15 out. LSC has a lot of experience doing monitoring. They say  
16 they've come across a number of problems. I don't expect it's  
17 as widespread as it may be implied, but if they have come upon  
18 situations where lack of access has caused a problem, let us  
19 know so that we can address those problems.

20           MR. DANA: Mr. Mullin, am I correct that this grant  
21 restriction arrived for the first time this year?

22           MR. MULLIN: It had been in no prior contracts with

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1 the Corporation, yes.

2 MR. DANA: Am I correct that this was added by the  
3 staff without prior discussion with the Board or public comment  
4 with the community?

5 MR. MULLIN: Yes, it came out of the blue, I believe.  
6 I have no knowledge of any discussion before any Board, present,  
7 previous --

8 MR. DANA: Tim, is that correct?

9 MR. SHEA: Well, it was not -- no Board approval was  
10 sought or obtained for this particular condition. It was a  
11 source of continuing interest and concern for Board members. To  
12 the extent there may have been informal consultation, frankly I  
13 just plain old don't remember, but it was not put to a Board  
14 vote. There's no question about that.

15 MR. DANA: Prior to imposing this on the grantees, had  
16 there been any prior public discussion of the consequences of  
17 this for them?

18 MR. SHEA: The general issue, of course, of access was  
19 a source of constant concern. This particular condition arose,  
20 at least in part, as a result of the dispute that arose with  
21 respect to Multnomah, the organization in Oregon, where the  
22 program asserted it was ready, willing and able to furnish the

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1 files. The union resisted it and sought and obtained judicial  
2 intervention.

3 This proposal was intended to deal with two things:  
4 one, the concern that there were things in the file that we had  
5 no particular interest in -- medical records and perhaps family  
6 relationships and things like that; and, secondly, to do with  
7 prospective collective bargaining agreements, so that future  
8 agreements wouldn't impede the access of the Corporation with  
9 respect to personnel files.

10 MR. WEAR: Mr. Chairman?

11 CHAIRMAN WITTGRAF: Mr. Wear.

12 MR. WEAR: Thank you, Mr. Chairman. I might also add,  
13 Mr. Dana, that in the course of discussing this grant condition,  
14 it was made known, I've forgotten by whom, whether by Legal  
15 Services Corporation staff or by program staff to Mr. Houseman.  
16 Mr. Houseman who normally represents the programs on these and  
17 other issues brought it to our attention.

18 We discussed it in great detail with him and worked  
19 out this proposal, whereby the separate file would be set up and  
20 then maintained. We reviewed -- I thought we talked to you,  
21 Alan.

22 MR. HOUSEMAN: No, you never talked to me at all about

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1 any of this. I'm sorry.

2 MR. WEAR: Are you sure our staff didn't?

3 MR. HOUSEMAN: Your staff never talked to me about the  
4 separate file or any of these matters.

5 MR. WEAR: Okay. I thought we did --

6 MR. HOUSEMAN: No.

7 MR. WEAR: -- because I know I talked to the staff and  
8 asked what the reaction was, and I was told what it was. I  
9 asked the staff to figure out what we needed to look at for  
10 monitoring, what we didn't need to look at and to set up this  
11 separate file. I had the impression that we had talked to you;  
12 that some of the OFS staff had discussed this with you.

13 MR. HOUSEMAN: No, I had no conversations with the OFS  
14 staff on any of these matters.

15 CHAIRMAN WITTGRAF: Mr. Molinari?

16 MR. MOLINARI: How much money does Middlesex County  
17 Legal Services Corporation receive from LSC?

18 MR. MULLIN: The annual grant is approximately three  
19 hundred twenty-two thousand dollars a year. That's one-third of  
20 our operating budget.

21 MR. MOLINARI: Tim, I'd like you to go into a little  
22 greater detail on how this provision was brought up for the

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1 first time with them. What I'm hearing is that this wasn't a  
2 provision that was thrust at them before, but one that's been--  
3 something that's been given to them recently.

4 My impression would be that if this is standard policy  
5 for LSC for all grantees and they have to abide by it, then  
6 Middlesex would have to make a choice whether they want the  
7 funding or not. On the other hand, if they've received funding  
8 and we have not put that burden upon them in the past, and it's  
9 a new burden being put upon them for the first time, then I  
10 think there would be an argument as to whether the funding  
11 should continue or not, but certainly an argument.

12 MR. SHEA: Well, I understand. First of all, our  
13 position has been clear that -- there's never been any serious  
14 contention that personnel files are covered by any applicable  
15 privilege. The programs have always given us assurances going  
16 back to at least 1980 and perhaps earlier, that they will give  
17 us access to any files that are not covered by attorney-client  
18 privilege.

19 There's no contention in this case or in any -- to the  
20 extent that there have been other disputes -- that these files  
21 are covered by any applicable privilege. Hence, they are well  
22 within the general assurance. This new provision, the EVA file

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1 provision, lends greater specificity to what our prior  
2 assurances have been. It was born, in large measure, out of the  
3 experience with Multnomah County.

4 I might add that there have been assertions about the  
5 extent to which particular monitors have sought files. I don't  
6 know that in monitoring they invariably are under any obligation  
7 to assert each and every power and authority that they may have,  
8 so some monitorings, they may not look at files, and some they  
9 may.

10 This particular requirement -- it was new in the sense  
11 it is more specific than the prior undertakings.

12 MR. MOLINARI: That was issued, Tim, if I'm hearing  
13 you right, across the board to all grantees?

14 MR. SHEA: That's right, that's right, and it was  
15 towards the latter part of last year. I cannot assign a  
16 specific date.

17 MR. MOLINARI: Well, it's a matter of months.

18 MR. SHEA: Yes, I'm sure it was some time in January-  
19 - excuse me -- I believe it was some time in December that it  
20 would have been sent out, but I don't have the specific date.

21 MR. MOLINARI: In that case, we're talking about maybe  
22 three months.

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1 MR. SHEA: Yes.

2 MR. MOLINARI: Can you tell the Board what reaction  
3 you're receiving from the grantees across the country? Are  
4 there others who are raising problems with the new provisions?

5 MR. SHEA: Yes. A number of programs have written--  
6 first of all, all programs signed the grant assurance, with the  
7 exception of this program.

8 No programs, as far as I know, altered the terms of  
9 the assurance itself. Many programs, and I think there are  
10 about forty -- that's an estimate. It could be more; it could  
11 be fifty or sixty, but not much different than that -- wrote in  
12 cover letters saying that they would observe all applicable--  
13 they reserved all rights under the Legal Services Corporation  
14 Act and other applicable law.

15 There may be contentions that under some sort of local  
16 law, and here and there are some state constitutional concerns  
17 with respect to -- statutory concerns about personnel files,  
18 which may apply.

19 The signing of those assurances constituted an  
20 undertaking by the program that they will observe the Act and  
21 regulations, which made them eligible to be funded. The failure  
22 to sign those was the problem that precipitated the advice to

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1 the program that they had essentially proffered a counteroffer.

2 We nevertheless have, and I expect will, encounter  
3 problems with getting access to files. There is some ongoing  
4 problems now, even where the collective bargaining agreements, I  
5 might add in my estimation, clearly permit us to get access to  
6 the files.

7 Those are separate, because at least the program has  
8 made the general undertaking that they will create the files and  
9 maintain them.

10 CHAIRMAN WITTGRAF: With the Board's concurrence, I  
11 suspect we have a discussion here that could go on for some  
12 period of time. We do still have some other matters. Whether  
13 only coincidentally or otherwise, it was possible when this  
14 problem arose in our February 12th meeting for the two sides,  
15 the Legal Services Corporation and the grantee, to reach a  
16 reconciliation. I guess the Chair is still hopeful that that's  
17 possible in this instance, as well.

18 If there is no objection, the Chair would ask that the  
19 president and staff be directed to continue Middlesex's funding  
20 for one more month, and we'll be meeting again apparently on  
21 April 30th, and I think we would hope that between now and then,  
22 some five weeks, it will be possible to resolve this matter.

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1           The Chair hopes this isn't a precedent that each month  
2 we're going to get somebody in this situation, but it is a  
3 relatively new area. There will be ongoing concerns. In fact,  
4 I believe Mr. Loines, who was good enough not to address us  
5 yesterday, hopes yet to address us for a few minutes today in  
6 this general area. Is there objection?

7           MR. MOLINARI: Mr. Chairman?

8           CHAIRMAN WITTGRAF: Mr. Molinari.

9           MR. MOLINARI: I'm not going to object to it, but I  
10 think that we're going to have to come to a decision. I'm  
11 leaning in a direction of saying the policy apparently is being  
12 observed across the board.

13           We're going to have to establish a policy, and  
14 Middlesex County, if you want LSC funding, you're going to have  
15 to adhere to the same rules and regulations that all other  
16 grantees are adhering to. If not, you're not going to get the  
17 funds. That would be my vote. Now, I can't speak for the rest  
18 of the Board.

19           MR. MULLIN: If I may respond to that.

20           MR. MOLINARI: Sure.

21           MR. MULLIN: As Mr. Shea pointed out, many programs  
22 have expressed in a cover letter or some other means that they

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1 intend to abide by applicable laws. Labor law, in many  
2 instances, would prohibit the program from giving access. There  
3 is nothing specific in the Legal Services Corporation Act that  
4 allows the Corporation access.

5 MR. MOLINARI: Are you willing to sign the same  
6 letter, then? That's what you seem to be indicating.

7 MR. MULLIN: The chairman of the board of the program  
8 has a problem signing a grant assurance promising one thing that  
9 he knows is a violation of the collective bargaining agreement.  
10 It's not just the chair. This was discussed by the full board,  
11 the majority of whom are lawyers, and they understand when you  
12 sign a contract, it better contain what you're agreeing to.

13 CHAIRMAN WITGRAF: Mr. Hall?

14 MR. HALL: I was just going to say, Tim, how many  
15 recipients or legal aid clinics do we have in this position now?

16 MR. SHEA: First of all, everybody has signed the EVA  
17 undertaking, so they will create and maintain the files, and  
18 they have agreed in future contracts not to have provisions in  
19 there that limit LSC access.

20 MR. HALL: Well, I'm just saying that I don't see how  
21 we could help but fund this program, because you can't leave all  
22 those folks hanging there. In connection to what Guy said,

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1 develop a policy on it and put everybody on notice for next time  
2 around. I couldn't see --

3 CHAIRMAN WITTGRAF: Mr. Erlenborn?

4 MR. ERLENBORN: Mr. Chairman, let me ask Mr. Mullin  
5 one last question. Have you asked the union to negotiate this,  
6 in light of the insistence of the Legal Services Corporation?

7 MR. MULLIN: In light of our agreement and  
8 understanding that there was only one issue to be negotiated, I  
9 do not want to put this item on the table. However, I have had  
10 informal discussions with them regarding, for instance, the  
11 reasons that were provided to me for access, and I am confident  
12 that, at least for those reasons, there would not be a problem,  
13 when there's allegations of a certain sort being made.

14 MR. ERLENBORN: Are you telling me that if you can  
15 reach an agreement as to the terms of access that are  
16 reasonable, that you then believe that could be incorporated in  
17 your collective bargaining agreement?

18 MR. MULLIN: Perhaps not in the present one, but in  
19 the future I'm very confident. As a practical matter, from --

20 MR. ERLENBORN: You have not yet signed the one for  
21 this year, have you?

22 MR. MULLIN: Right, right. I am confident -- you see,

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1 the problem is, this issue won't get on the table without some  
2 understanding of the parameters of it. I can assess that before  
3 that happens. But as a practical matter, the grant assurance  
4 that was returned to the Corporation will 99.9 percent -- I am  
5 sure -- have no effect whatsoever on Legal Services  
6 Corporation's ability to assess our operations.

7 We were monitored last month. We were monitored in  
8 May of '88, and we denied access, and the final report on the  
9 monitoring said that they were denied access, but in light of  
10 the effective and efficient management, they did not see the  
11 need and they withdrew the request.

12 CHAIRMAN WITTGRAF: Ladies and gentlemen, we are  
13 moving on. You will have your money for April. We'll be here  
14 April 30th. You may not have your money after then unless some  
15 satisfactory arrangement is made. I think you have a sense of  
16 the Board's feeling. We don't want undue hardship because of  
17 the relatively short notice.

18 MR. MULLIN: There's one problem. This is a sense  
19 that I -- it first occurred Friday, is that Corporation staff  
20 don't see the need to negotiate. We were working on reasons why  
21 they needed access, but we'll be at the same loggerheads.

22 MR. COLLINS: Well, Mr. Chairman?

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1 CHAIRMAN WITTGRAF: Mr. Collins.

2 MR. COLLINS: We've heard what you've said. I'm  
3 perfectly willing to let it go for another month, but you may  
4 not want to put it on the table, but you may decide you're going  
5 to have to put it on the table. Negotiations means  
6 negotiations, not dictation from one side or the other.

7 MR. MULLIN: Right, but the Corporation doesn't care  
8 about the negotiations. They're saying we have to promise the  
9 result of negotiations will be such and such. To negotiate, I  
10 don't have anything to work with, other than because LSC says  
11 so, and that is not helpful; that is detrimental.

12 CHAIRMAN WITTGRAF: That is still a reason -- we will  
13 be here April 30th, it appears, but we certainly encourage some  
14 middle ground to be found. We do expect that the staff will be  
15 in a negotiating frame of mind in dealing with you, and that you  
16 and your board will likewise.

17 MR. MULLIN: Thank you.

18 CHAIRMAN WITTGRAF: Thank you. In this context,  
19 Dwight Loines, who visited briefly with us on February 12th, and  
20 who does represent not the boards, not the management, but  
21 rather the collective-bargaining staffs, indicated that he would  
22 prefer to visit with us a few minutes today. I do underline,

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1 I'm afraid at this point, the word "few," although we do  
2 appreciate his willingness to bypass the opportunity to visit  
3 with us yesterday.

4 In this context, just a few minutes if you could, Mr.  
5 Loines, before we move on.

6 PRESENTATION BY DWIGHT LOINES,

7 NATIONAL ORGANIZATION OF LEGAL SERVICES WORKERS

8 MR. LOINES: Believe me, I'm going to be very brief.  
9 I appreciate it is probably more difficult for you, sitting in  
10 your capacity, but it's also not the best situation to sit for  
11 almost two days in the same room. At any rate, though, just let  
12 me say that --

13 CHAIRMAN WITTGRAF: Mr. Loines, why don't you go ahead  
14 and identify yourself so that everybody's up to speed, in terms  
15 of who you are and where you're coming from.

16 MR. LOINES: My name is Dwight Loines. I am the  
17 president of the National Organization of Legal Services  
18 Workers, District 65, UAW.

19 If you recall, I did have the opportunity to speak  
20 briefly to this issue at your first Board meeting. I want to  
21 bring a couple of points to your attention at this stage.

22 One is, one thing you have to recognize, the employees

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1 of the local programs are private employees. There is a law in  
2 this country called the National Labor Relations Act. It  
3 happens to cover private employees.

4 The Legal Services Corporation, as we all know, is a  
5 different sort of animal, but I think all of you agree that you  
6 are not a public entity. Therefore, neither you nor the local  
7 programs are exempt from the National Labor Relations Act.

8 Now, I don't want to get into a lengthy discussion  
9 about the law here. We would perhaps, at least some of us,  
10 would disagree. Some comments have indicated that you think  
11 that regardless of whatever other law might be out there, you  
12 have the right to say to a local grantee that they take  
13 unilateral action, and that they do not recognize their  
14 obligation to bargain in good faith. Bargaining in good faith  
15 is a term of art.

16 Putting that aside for a second, and I don't mean to  
17 minimize that. I think that's very important, but a number of  
18 your fellow Board people have expressed very strong concern  
19 about the degree to which the Corporation is intruding into the  
20 activity of local programs, and they specifically address the  
21 question of personnel files and records.

22 Regardless of the legal obligations to bargain, it

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1 seems to me that at least some of you are very concerned that  
2 you do the right thing here, for lack of a better phrase. It  
3 seems to me that reasonable people can come to some conclusions  
4 as to what, and in what manner, information that is of a  
5 confidential nature should be disclosed to LSC.

6 I think one of your members, in fact, said that they  
7 thought the Corporation had the burden of proof here. I agree.  
8 I think that in the next thirty days, at least between now and  
9 when the question of the Middlesex funding situation comes up  
10 again, that the Corporation should be instructed to frankly look  
11 at this entire policy.

12 I hope that you're not simply saying to the  
13 Corporation that they could continue to follow their belief that  
14 they have total unfettered discretion in this area. If you so  
15 instruct the Corporation, you can be assured that the union will  
16 be reasonable and will attempt to deal with this.

17 The one last point I want to make: the only thing  
18 that really distinguishes Middlesex from the other programs is--  
19 - it's a technical question, and it's the kind of question  
20 lawyers often get involved in. That is whether or not what  
21 Middlesex did constituted a rejection and a counteroffer, as  
22 opposed to perhaps simply, as the other programs did, write

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1 cover letters raising precisely the same concerns, I would point  
2 out.

3 Unless you want to treat Middlesex differently because  
4 of that technicality, you should understand that with respect to  
5 the other programs, the issue has only been postponed. This  
6 issue precisely will come up in other programs every time you  
7 begin to monitor and every time you begin to ask for access to  
8 personnel files.

9 Don't be fooled here. The letters that you got from  
10 all the other programs raised the precise issue. The only thing  
11 that happens here is that the day of reckoning, perhaps, is  
12 postponed, so you should understand that.

13 CHAIRMAN WITTGRAF: Thank you, Mr. Loines. It's  
14 conceivable someone may have a question or comment for you. Mr.  
15 Dana?

16 MR. DANA: I would just like to follow up on Mr.  
17 Loines' suggestion and ask for the next meeting, or in advance  
18 of the next meeting, I would like our staff to generate a  
19 document which sets forth the policy reasons why this is an  
20 important -- why we are pushing a number of programs to the  
21 wall, and why it is important for a national organization to get  
22 into the personnel files of all the employees of all of our

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1 grantees.

2           There may be good reasons for it. I've sat through  
3 two of these sessions, and I haven't heard any yet. If there  
4 are good reasons for it, then I think I would support the notion  
5 that people are going to have to chose between Legal Services  
6 money or not, especially in a situation where the contract has  
7 run out. But if there's no real policy basis and no prior Board  
8 of ours has endorsed this policy directive, then I think we  
9 ought to take a look at it, rather than having fifty or sixty  
10 programs suing us the way some are.

11           MR. COLLINS: Mr. Chairman?

12           CHAIRMAN WITTGRAF: Mr. Collins.

13           MR. COLLINS: I have to catch a plane. I simply  
14 wanted to say that I may have heard a different reason or some  
15 other factual reason, but it occurred to me there was a question  
16 of setting up something in the nature of a segregated file,  
17 leaving out of that file the kind of confidential personnel or  
18 other information that employees may want to have private.

19           Your suggestion was an excellent one, but we also  
20 should have before the next meeting a memorandum from Mr. Loines  
21 reacting to the memorandum from our staff, so that at that point  
22 we will have saved ourselves two or three or four hours of

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1 arguing.

2 If I may make one final comment, you have my vote for  
3 your amendment. It's coming up next. I'm sorry, I have to  
4 leave. Good-bye; thank you all.

5 CHAIRMAN WITTGRAF: Thank you, Mr. Collins.

6 (Whereupon, Mr. Collins departed.)

7 CHAIRMAN WITTGRAF: Further questions or comments for  
8 Mr. Loines?

9 MR. LOINES: It's tempting, but I won't make any  
10 further comment.

11 CHAIRMAN WITTGRAF: Thank you, Mr. Loines.

12 I think at this point the Chair is prepared to return  
13 to the matter of the so-called Dana motion.

14 MR. ERLNBORN: Mr. Chairman, just one thought.  
15 Following up on what Mr. Dana said, it seems to me in your  
16 capacity you could be very helpful to us in trying to solve this  
17 dilemma, because it's one obviously we're going to revisit from  
18 time to time.

19 I would appeal to you in your capacity as a leader to  
20 try to help us. I'm sure you can come up with some suggestions  
21 knowing why we need what we need, and the material that would be  
22 objectionable to you, as a union leader.

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1 MR. LOINES: I'm prepared, obviously.

2 MR. ERLNBORN: Great, I appreciate it.

3 CHAIRMAN WITTGRAF: The Chair is prepared then to move  
4 once again, or back to the so-called Dana motion. In that  
5 regard and before the Chair does, at this time the Chair would  
6 ask Alan Houseman -- who was perhaps going to make some remarks  
7 about different regulatory requirements, particularly those  
8 recently initiated yesterday, but did instead, and in part at  
9 the Chair's urging, spent almost all of his time and made all of  
10 his remarks along the lines of the requirements of the proposed  
11 McCollum-Stenholm Amendment -- to make a few comments at this  
12 point.

13 Actually, if Ms. Smead, Mr. Santo --

14 MR. HOUSEMAN: I'm not sure that's necessary. Maybe I  
15 don't understand the Dana motion. I was only going to address  
16 the drug form and the declination of representation report,  
17 which I am perfectly prepared to do. But if the Dana motion  
18 takes care of one or more of them, that may not be a problem.

19 CHAIRMAN WITTGRAF: The Chair's interpretation of the  
20 Dana motion, for which there's about to be a substitute, but in  
21 any case, the spirit if not the letter of the Dana motion is  
22 that it's quite broad. I do think it may still be of some value

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1 for the seven of us, because we have discussed some this morning  
2 with Ms. Smead and Mr. Santo, the several recent reporting  
3 requirements -- now a third one in a sense; not a reporting  
4 requirement, but a third administrative requirement or  
5 regulatory requirement being added to that -- perhaps to just  
6 close the loop, at least for the month of March, if you would  
7 comment.

8 If Ms. Smead and Mr. Santo would come forward, if  
9 there are any questions for them or any comments they'd like to  
10 make, let's at least close that loop, figuring that the seven of  
11 us that are here right now still have a little bit of  
12 flexibility in our schedules and aren't catching planes yet this  
13 afternoon.

14 MR. HOUSEMAN: Thank you very much. I will be brief.  
15 Let me make quite clear what our concerns are.

16 CHAIRMAN WITTGRAF: Mr. Houseman, I would just  
17 suggest, and you did identify yourself yesterday and your  
18 academic background and everything. If you don't mind, you  
19 might even elaborate a little bit in terms of not only your work  
20 with the Center specifically now, but also what your role is, as  
21 you see it, in attending our meetings. I anticipate that you  
22 will be one of a number of people who will be good enough to be

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1 with us from start to finish every time we meet.

2 MR. HOUSEMAN: I hope not.

3 (Laughter.)

4 CHAIRMAN WITTGRAF: I won't even ask for a Board  
5 response.

6 (Laughter.)

7 PRESENTATION BY ALAN HOUSEMAN,  
8 CENTER FOR LAW AND SOCIAL POLICY

9 MR. HOUSEMAN: I am Alan Houseman. I am the director  
10 of the Center for Law and Social Policy. The capacity that I am  
11 addressing you today, and hopefully on the few occasions that I  
12 have to, is that I am counsel for the National Legal Aid and  
13 Defender Association and the Project Advisory Group with regard  
14 to legal and regulatory matters.

15 I am addressing you on behalf of NLADA and PAG, and  
16 through them, the legal services programs which I represent on  
17 legal and regulatory matters. I do not represent them on budget  
18 matters or on numerous other matters that will come before this  
19 Board.

20 The first thing I want to talk about, which is our  
21 major concern, the so-called declination of representation  
22 report form. We, the legal services programs, are not opposed-

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1 - and I want to make this quite clear at the outset -- to  
2 collecting information about why cases are turned down. We  
3 think there may be appropriate circumstances when such  
4 information should be collected. We are perfectly prepared to  
5 work with the Corporation to try to work out a vehicle by which  
6 they can get such information.

7           However, we have serious problems with the proposed  
8 form and process for collecting the information. We, of course,  
9 have not seen any revised form, nor have we any idea of what the  
10 new computer program will look like. Based on the prior form  
11 which programs received without any notice or warning, and  
12 knowing what we did from a brief conversation last week, it's  
13 quite clear that this form is going to cause considerable  
14 problems for programs.

15           There are going to be considerable costs involved in  
16 obtaining the information in the way that LSC is proposing.  
17 There's going to be considerable burdens on programs, and it  
18 seems to us, in light of that -- and some of these burdens and  
19 costs have been outlined in communications to the Corporation  
20 already.

21           There are over fifty comments that have raised serious  
22 concerns on a cost and an administrative level. Then, in light

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1 of that, before the Corporation unilaterally imposes a form and  
2 a computer program on programs, we ought to do two things.

3 First, we ought to have an opportunity to review the  
4 form and an opportunity to look at the computer program. More  
5 importantly, before the Corporation imposes such a reporting  
6 form -- which is not necessary, there is no act of congress,  
7 there's no conference report, there's no nothing that suggests a  
8 need for this -- that this approach ought to be field tested in  
9 a few programs, the costs look at, the burdens understood, see  
10 what works, what doesn't work.

11 Then, after the field tests, after the opportunity to  
12 review the evaluations of those programs that have been field  
13 tested, that then the form be modified accordingly, if  
14 necessary, and then put into place.

15 What LSC has done -- let me add that that approach, a  
16 notion of a field test to make sure that this form is collecting  
17 information that will be useful to the programs and useful to  
18 LSC is precisely what the General Accounting Office recommended  
19 with regard to functional accounting, and made it quite clear  
20 that unless such an approach was used, it was likely that a  
21 system that a corporation unilaterally imposed would not be a  
22 useful system.

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1           That's our view here. What LSC has done is not to do  
2 what we suggested, which seemed to us a very reasonable  
3 suggestion. It now suggests, from what I heard this morning,  
4 that they will impose this form as of April 1st. Mind you, no  
5 program has received this form, no program has a copy -- that  
6 is, a revised form -- no program has any idea what the computer  
7 program is going to be that goes with it; that they will ask  
8 programs to do a test run during April and start collecting in,  
9 I assume a mandatory sense, the information in May.

10           Of course, the problem with that is that that is not a  
11 field test of a sample program to determine the cost and  
12 benefits, et cetera. What we're suggesting is you run a field  
13 test with a few programs of relatively different sizes. You can  
14 chose the programs. We'll help you if you wish. If not, fine.  
15 You look at the cost and benefits and then determine whether  
16 this is a sensible way to proceed.

17           There's no reason for this information. The  
18 Corporation hasn't had this information since it began. There's  
19 no reason why an opportunity for a field test, an opportunity to  
20 work-out the bugs and then impose a form shouldn't be granted.  
21 It seems to me that's the only effective, consistent with GAO  
22 recommendations and consistent with effective management, the

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1 only way you should proceed.

2 That's our major concern. That's what I wanted to  
3 bring to your attention with regard to the declination of  
4 representation form. We asked for a meeting on this the minute  
5 this form came out, which was in late January. We had a meeting  
6 finally after repeated efforts on my part last Wednesday, where  
7 we made this same request, which is why we're making it today,  
8 and we'll stand by that request and will work with you to  
9 develop an appropriate form.

10 With regard to the drug form, congress has required  
11 the Corporation to submit certain information. We are  
12 absolutely prepared for every program to give to you the  
13 information that you need to report to congress. That's no  
14 problem to provide, and we will do that willingly.

15 That is not, however, what you have done. Instead, on  
16 February 28th, you mailed out to programs a detailed new form  
17 with a detailed set of questions, which asked programs to answer  
18 and provide much more information than congress had requested.

19 Congress requested, if you read the language, they  
20 requested information about priority setting and information  
21 about what programs were doing -- ongoing and planned efforts by  
22 local programs to provide information about the assistance that

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1 they were giving to eligible clients in making public housing  
2 and schools free from drug-related activity. I am quoting from  
3 the conference report.

4 We will be glad to give you that information. We will  
5 willingly give you that information. But that's not what you've  
6 asked. You've asked us to complete a huge form that's going to  
7 require, if you're going to do it conscientiously, it's going to  
8 require programs to after the fact go back and review every  
9 single case since January and decide whether there was any--  
10 quote -- "drug-related activity" -- unquote -- at issue in those  
11 cases. This is far beyond what congress wanted.

12 There was no warning that this was coming. There was  
13 no discussion with anybody before it came. There was no  
14 opportunity to sit down and work out a vehicle by which you  
15 could get the information you needed to report to congress, and  
16 that is what happened.

17 The instructions, by the way, were very difficult to  
18 understand. They did not indicate, contrary to what we found  
19 out last Wednesday for the first time, that this was only a one-  
20 time request. They did not clarify what type of substances were  
21 included. They did not indicate the scope of it.

22 We, by the way, immediately sought a meeting on this

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1 when this form came out, and it was only until last Wednesday  
2 that we were able to get this.

3 What is our concrete recommendation to you? Our  
4 concrete recommendation is simply to ask programs to provide the  
5 information that congress requested. They will do it. You will  
6 have it in time to get it to congress by May 1st, and if we then  
7 want to talk about additional information, let's sit down and go  
8 through the same kind of process that I proposed earlier.

9 I want to make quite clear that our major concern is  
10 not with the drug reporting form, as burdensome as that is going  
11 to be. Our major concern is with the declination of  
12 representation report, which I think, if you follow our advice,  
13 is an appropriate approach to take in order to work-out the bugs  
14 and to move forward together on this issue.

15 We want to work with you on this. We are willing to  
16 work with you on this, and we will work with you on this, but to  
17 have a form unilaterally imposed, a computer program  
18 unilaterally imposed, no opportunity to field test it, no  
19 opportunity to assess the burdens, makes no sense to us. Thank  
20 you.

21 CHAIRMAN WITTGRAF: Thank you, Mr. Houseman. Any  
22 questions or comments to Mr. Houseman?

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1 (No response.)

2 CHAIRMAN WITTGRAF: Ms. Smead, did you want to say  
3 anything further?

4 MS. SMEAD: Well, I think we discussed a lot this  
5 morning. I would say that there has, in essence, been sort of a  
6 field test going on since January. Programs have been filling  
7 them out, have been sending them in to us. It's a limited  
8 number, but they have been sending them in to us. They've also  
9 been sending us comments as they've been filling them in.

10 CHAIRMAN WITTGRAF: On the declination reports?

11 MS. SMEAD: On the declination reports. This is how,  
12 for example, we found out some of the concerns that Alan raised  
13 with us on the exact points for changing the forms. He has seen  
14 a draft form or the revision last week, and he did see that we  
15 have taken quite a few of the suggestions that were made to try  
16 and answer questions that came from the field on how to fill it  
17 out.

18 CHAIRMAN WITTGRAF: Mr. Houseman?

19 MR. HOUSEMAN: Just for the record, I did not see a  
20 draft form last week. I saw a computer print-out of something.  
21 I have not seen the computer program; I have not seen the  
22 instructions that go with the form, which -- The last form

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1 raised all kinds of problems. For example, the definition of  
2 fee-generating case was absolutely inconsistent with your own  
3 regulations in that form.

4 I haven't seen any of that. I'm not asking that I  
5 need to see it, but I think to do this properly, the form and  
6 computer program should be field tested. People should have an  
7 opportunity to comment on it, and then you can put it in place.

8 CHAIRMAN WITTGRAF: Ms. Smead, do I understand  
9 correctly that unlike the so-called drug report, that the  
10 declination report or reports will be ongoing?

11 MS. SMEAD: Yes, it will be ongoing and would be due  
12 quarterly.

13 CHAIRMAN WITTGRAF: I think we established this  
14 morning that this didn't come from any specific -- either  
15 congressional mandate or even Board mandate; something that the  
16 staff felt would be beneficial, I guess to the Board and to the  
17 congress in future decision making, and it is the expectation  
18 that this will be ongoing on a quarterly basis?

19 MS. SMEAD: Yes.

20 CHAIRMAN WITTGRAF: Further questions or comments?

21 MR. HALL: Mr. Chairman?

22 CHAIRMAN WITTGRAF: Mr. Hall.

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1 MR. HALL: Just one comment. Alan, as you so artfully  
2 are capable of doing, you seem to paint this last request as an  
3 intentional burden on the recipients. I see and sense some nods  
4 of heads, and I just want to say that I would like to hear from  
5 Ellen. Certainly it wasn't anything done intentionally to  
6 burden you, but was needed.

7 That may not be what you're telling me, but that's  
8 kind of what I've read from some of your comments.

9 MR. HOUSEMAN: I'm not sure what you mean by  
10 intentional.

11 MR. HALL: Unnecessary.

12 MR. HOUSEMAN: I think the information that you want,  
13 that could be useful to us, could be gathered in a far less  
14 burdensome, costly manner than you're proposing.

15 MR. HALL: I understand.

16 MR. HOUSEMAN: We can get you that information, and we  
17 can get it in a far less burdensome and costly manner than  
18 you're proposing. But if you're going to go ahead with this  
19 approach, at least field test it. We don't have a disagreement  
20 over ends. We have a serious disagreement over means.

21 MR. HALL: Well, we can get together on that, though.

22 MR. HOUSEMAN: That's what I'm proposing.

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1 CHAIRMAN WITTGRAF: Thank you. Further comment?

2 (No response.)

3 CHAIRMAN WITTGRAF: At this time, the Chair is ready  
4 to call on Mr. Dana, then, to take us back to the matter of his  
5 motion.

6 M O T I O N

7 MR. DANA: I was fortunate enough to get a tremendous  
8 amount of guidance over lunch -- not in executive session, I'm  
9 happy to report; mostly in the halls from a lot of people,  
10 including the management.

11 We have a motion that I would like to substitute or  
12 move in lieu of the motion that I made earlier. Let me read it.  
13 It is as follows:

14 Before the Corporation imposes any new and non-routine  
15 condition, restriction, obligation or requirement to collect  
16 data upon grantees to the Corporation, or before taking any new  
17 or non-routine position with respect to policy, the president  
18 shall consult with the Chairman, who shall refer the matter to  
19 the Board or to the appropriate committee of the Board for  
20 consideration and action thereon, if the Chairman deems it  
21 necessary.

22 CHAIRMAN WITTGRAF: Is it my understanding, Mr. Dana,

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1 that you're offering that as a substitute for the motion before  
2 the Board?

3 MR. DANA: It is.

4 CHAIRMAN WITTGRAF: Is there objection?

5 (No response.)

6 CHAIRMAN WITTGRAF: Hearing none, it is substituted.  
7 Do you wish to speak to it any further?

8 MR. DANA: I don't, considering the hour.

9 MR. WEAR: Mr. Chairman?

10 CHAIRMAN WITTGRAF: Mr. Wear.

11 MR. WEAR: Mr. Chairman, I had an opportunity to  
12 review this language with Mr. Dana and others. I believe that  
13 the motion is a good one. I do not believe, based on the  
14 wording of the language, that it will interfere with the  
15 declination report, the drug report, the Corporation's  
16 continuing monitoring activities, nor its compliance  
17 investigations and action on those investigations, so I believe  
18 that it is a good motion and I would commend it to the Board for  
19 adoption.

20 CHAIRMAN WITTGRAF: Further discussion?

21 MR. DANA: I think we're in the process of generating  
22 a little legislative history. It's my hope that the motion

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1 speaks for itself, and I have the fullest of confidence that  
2 this Board will not be surprised and everybody is going to work  
3 together and communicate openly and clearly. I want to join the  
4 president and commend this to the full Board.

5 CHAIRMAN WITTGRAF: I believe that the motion was  
6 seconded previously. Is there further discussion?

7 (No response.)

8 CHAIRMAN WITTGRAF: Hearing none, the Chair is  
9 prepared to proceed to a vote. Those in favor of the substitute  
10 Dana motion, the motion presented by Howard Dana, signify by  
11 saying "aye."

12 (A chorus of ayes.)

13 CHAIRMAN WITTGRAF: Opposed, "nay."

14 (No response.)

15 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
16 ayes do have it. The motion is adopted.

17 At this time, I think we've covered most of the items  
18 that are on the agenda. As the Chair indicated at the beginning  
19 of our session, our open session yesterday morning, the Chair  
20 did receive at the end of last week -- and I think copies have  
21 been forwarded to all of the members of the Board of Directors--  
22 - Mr. Wear's letter of resignation as president of the

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1 corporation effective June 30.

2 It seems to me that it is necessary for the Board to  
3 act upon that. The Chair recognizes Mr. Dana in that regard.

4 M O T I O N

5 MR. DANA: Mr. Chairman, I would move that this Board  
6 accept the resignation of Terrance J. Wear as president of the  
7 Legal Services Corporation effective June 30, 1990, pursuant to  
8 paragraph 6-E and 7 of his contract with the Corporation.

9 CHAIRMAN WITTGRAF: Is there a second?

10 MR. ERLNBORN: Second the motion.

11 CHAIRMAN WITTGRAF: The motion has been made and  
12 seconded. Is there discussion? Mr. Dana, would you want to  
13 make some comment briefly about what the nature of the  
14 references are, beyond the acceptance of the resignation itself?

15 MR. DANA: If the Chair requests, I'd be happy to.

16 CHAIRMAN WITTGRAF: Please.

17 MR. DANA: As with many corporations, the leadership  
18 of this Corporation, several members have written contracts.  
19 Mr. Wear has a contract, and it provides for certain benefits in  
20 the event of termination, or if the job is terminated in  
21 accordance with certain conditions.

22 The way this motion reads, Mr. Wear will be entitled

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1 to certain post-employment benefits that are spelled-out in his  
2 contract. I think, it seems to me, Mr. Chairman, that if we get  
3 much more explicit, we might want to do that in executive  
4 session.

5 CHAIRMAN WITTGRAF: Right. I think it is fair to say  
6 that Mr. Wear's employment contract and any others that are in  
7 existence are privileged and confidential. Is there further  
8 discussion?

9 (No response.)

10 CHAIRMAN WITTGRAF: Hearing none, the Chair is  
11 prepared to proceed to a vote. Those in favor of Howard Dana's  
12 motion regarding the acceptance and the terms for the acceptance  
13 of Mr. Wear's letter of resignation and his resignation  
14 effective June 30, 1990, please signify by saying "aye."

15 (A chorus of ayes.)

16 CHAIRMAN WITTGRAF: Those opposed, "nay."

17 (No response.)

18 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
19 ayes do have it. The motion is passed.

20 The Chair would like then to put some discussion of  
21 several things together on the heels of Mr. Wear's resignation  
22 and the Board's acceptance of it, dealing with three areas, I

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1 guess.

2 The first is generally the area of committee structure  
3 of the Board. The second is the matter of the presidential  
4 search. The third is the matter of the scheduling of both the  
5 times and dates, as well as the locations, of future Board  
6 meetings.

7 The Chair certainly wants the input of the remaining  
8 Board members in this regard. In fact, the Chair at this point  
9 has to apologize to at least a few Board members who are still  
10 here with whom he was unable to visit prior to last week, or  
11 prior to their receipt last week, I should say, of Mr. Wear's  
12 letter of resignation.

13 This was a subject Mr. Wear and I have discussed. We  
14 had reached some mutual understandings, and I had hoped to be  
15 able to share those with all Board members. It simply was not  
16 possible.

17 I, like I think all of you, have the practical problem  
18 of a lot of professional, familial and community  
19 responsibilities. While I would hope in the abstract to be able  
20 to visit with each of you at least once a week, it's simply not  
21 possible. I'm not sure it's going to be possible in the future,  
22 either. I'm hopeful that we can share our thoughts regarding a

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1 number of things at the conclusion of meetings such as this.  
2 Today, as I have suggested, that means my thoughts and your  
3 thoughts regarding committee structuring, regarding the  
4 presidential search and regarding our future meeting and travel  
5 plans.

6           Regarding the future as far as committee structuring  
7 is concerned, I think that with Ms. Bozell's help you did  
8 receive a short memo indicating that previously the Board has  
9 been subdivided into three committees: an audit and  
10 appropriations committee; an operations and regulations  
11 committee; and a committee for the provision of legal services.

12           The Chair's view is that at the moment, we are all  
13 very much on the front end of the learning curve, as far as the  
14 Legal Services Corporation and the issues that surround it are  
15 concerned. With that thought, the Chair is inclined to believe  
16 that insofar as possible, at least for a while, the Board needs  
17 to move forward together.

18           Either the nature of the structuring of committees or  
19 the assignment of people to committees may be premature.  
20 Whether it's questions pertaining to appropriations,  
21 specifically budgetary, as we've had today and had to some  
22 extent last month; whether it's a matter of operations and

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1 regulations, the substance of which I think it's fair to say  
2 we're all still trying to learn and have a lot yet to learn; or  
3 the so-called committee on the provision of legal services, a  
4 bit of a catch-all committee, perhaps a committee that will be  
5 concerned in the future with the question of so-called  
6 competitive bidding.

7 The Chair's inclination is for us to move forward, at  
8 least for the time being, as a committee of the whole.  
9 Certainly if you have other thoughts, I want to hear those.

10 Insofar as the presidential search is concerned, I  
11 guess it's hard for me to overemphasize how important I think  
12 the presidential search is, be it the Legal Services Corporation  
13 Board of Directors, be it the city council, a school board, a  
14 county board of commissioners or supervisors, the selection of  
15 the chief administrative or executive officer is in my judgment  
16 the most important decision that any such board makes.

17 Mr. Wear has had a very important job. He has  
18 fulfilled it to the best of his ability and the best of his  
19 understanding. The Board may move forward with a different  
20 relationship with the president. I guess that remains to be  
21 seen, and something that we as Board members haven't really  
22 talked through very much, but I think we can't underestimate the

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1 significance of the choice.

2 I want, as I've said with committee work generally, or  
3 deliberations generally, to have this Board very much a part of  
4 the whole process. There are some logistical requirements,  
5 though, I think that are probably not practical for all eleven  
6 of us and support staff. I am hopeful that we will be able to  
7 begin at once, if not yet this week by the first of next week,  
8 to announce the fact of a vacancy and the fact that we are  
9 undertaking this search for a new president; that by the middle  
10 of April at the latest, we will be able to advertise.

11 I've got to say, as I did at the beginning yesterday-  
12 - and it's only a handful of you as it is, in part, a handful of  
13 us at the moment, who remain late Tuesday afternoon -- that we  
14 are looking for suggestions -- suggestions of possible  
15 presidential candidates.

16 Unlike a Board, which can kind of be cut-up eleven  
17 different ways and we can represent different groups, different  
18 ideas, different factions, different parts of the country,  
19 that's not possible with one president. It's going to be  
20 difficult.

21 I think it is fair to say, though -- I know I speak  
22 for myself and I think I speak for the rest of the Board members

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1 -- that we have no president in mind. This isn't a process  
2 where I have somebody that I've got waiting in the wings, or  
3 where I believe any other Board member has somebody waiting the  
4 wings. We need your ideas. We need your ideas both at what we  
5 should be looking for in a president, and we need your ideas in  
6 terms of whom we should be looking to for possible president.

7 We may even need your input as far as the structuring  
8 of compensation. My judgment, at least, coming from the  
9 heartland and knowing what I do so far about the compensation  
10 that goes with this position, it strikes me as inadequate. I  
11 may be proved wrong, but that certainly is my initial reaction.  
12 I commend Mr. Wear for his willingness to serve.

13 We do need to hear from you, and we will individually  
14 and collectively, I think, take the occasion over the next few  
15 months to solicit recommendations, nominations, ideas from  
16 anyone who is involved in this sphere with whom we come in  
17 contact.

18 I would hope that by our next Board meeting, which it  
19 appears will be April 30th, that we will have the word out  
20 essentially to anyone and everyone who might be interested. I  
21 hope that we can put a May 15th deadline for the acceptance of  
22 resumes or applications for our consideration.

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1           Our Board tentatively will meet again on May 21st, and  
2 we will be able to have a sense and probably will share with all  
3 of you a sense of how our search is going. For the thirty days  
4 after that, from roughly May 15th to June 15th, I've asked Mr.  
5 Molinari and Mr. Dana to join with me for a couple of days to  
6 sift through applications, resumes, nominations that we've  
7 received. We hope then by the June Board meeting that we will  
8 be able to have distilled the number of resumes or  
9 recommendations or nominations down to a workable number of a  
10 dozen or two to review, in executive session I anticipate, with  
11 the Board as a whole.

12           If, following the June meeting, it is possible for the  
13 Board to reach a consensus regarding a smaller number of people  
14 it hopes to interview, it's our expectation that we will, at the  
15 close of the June meeting, which we're now projecting for June  
16 25th, and with the approval of the individuals involved, let you  
17 know whom we're considering seriously for the position of  
18 president, whom we plan to interview.

19           If all goes according to this very hopeful -- I hope  
20 not naively hopeful -- plan, that when we convene in July, which  
21 now we're looking tentatively toward July 23rd as our Board  
22 meeting, that we will be able to interview the applicants in

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1 whom we're interested on that occasion; and, if we're very  
2 fortunate, to actually offer the position of president to an  
3 applicant following those interviews.

4 We do hope, I think it's fair to say, to move as  
5 quickly as possible. We realize -- I think most of us did  
6 before yesterday -- it was certainly underscored many times for  
7 us yesterday -- at least from a Board standpoint, the lack of  
8 direction that has existed for a few years and the turmoil that  
9 has existed, obviously, for more than a few years -- probably  
10 for a decade.

11 We do plan, as best we can, with the limitations of  
12 our abilities and the limitations of our schedules, to move  
13 forward. We think that moving forward with a new president as  
14 quickly as possible is essential. That's the goal to which  
15 we'll be working, or the end to which we'll be working.

16 I have mentioned, for example, an April 15th to May  
17 15th application period. Don't take me too literally. I think  
18 we realize -- I realize, I think we all realize -- that there  
19 may be some people who don't get the word, or some people who  
20 aren't thought of until later than May 15th. It's probably fair  
21 to say that at least up until our June Board meeting on June  
22 25th, that we're still going to be looking at even late-arriving

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1 applicants or nominees or resumes.

2 I do hope it's a process that won't be drawn out too  
3 long. I don't think it's in any of our interests for that to be  
4 the case.

5 We also were told many times over yesterday of the  
6 need for us to be in the field and to visit programs with which  
7 there are a wide variety, particularly among the 324 principle  
8 grantees, and I think we want to try to do that. Realistically,  
9 we have to combine our presidential search effort and our other  
10 efforts with those outings. Necessarily the search effort is  
11 going to keep us in Washington, at least part of the time, but  
12 we do hope to get into the field, I think, yet this year.

13 Finally, there is the matter of our being nominated and  
14 confirmed, which as I suggested yesterday is something we know  
15 little more about than any of the rest of you in the room. As  
16 that process unfolds, it may have some impact on the scheduling  
17 of our meetings, the locations of our meetings and perhaps even  
18 the presidential search process. We will chart a course, but it  
19 may be a course that won't proceed as neatly as I've suggested  
20 here these last few moments.

21 With those comments, I'd be delighted to hear the  
22 thoughts of any of the Board members. Mr. Molinari?

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1 MR. MOLINARI: I just have a little comment that I'd  
2 like to make about Mr. Wear. I think, Mr. Chairman, that as a  
3 new member of the Board, I'm very grateful for the service that  
4 he has provided, the tremendous amounts of information that he  
5 has given to me and to other members of the Board, for the  
6 assistance that he has given, I think he has done a very good  
7 job.

8 I know that the nature of the position is one that is  
9 controversial. I know that he showed courage in facing up to  
10 some of those problems and taking some heat at times, but I  
11 think, certainly from my perspective as a member of the Board,  
12 he performed the services and performed them well. I am very  
13 appreciative of the cooperation that I received from him.

14 I would say one further thing. I know that I took the  
15 tour -- I guess most of you did, not all of you -- going through  
16 the corporate headquarters and seeing the interaction between  
17 Mr. Wear and the many employees that are there. The morale is  
18 very high. I'm impressed by the people that we have working  
19 with us and for us.

20 I wish you well, Terry, and I hope that we can get a  
21 good replacement and get on with the work. I know that you'll  
22 be around to help break-in that new president and impart some of

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1 the wisdom that you've gained over the last couple of years.

2 Thank you, Mr. Chairman.

3 M O T I O N

4 MR. DANA: Mr. Chairman, I don't know whether it would  
5 be appropriate, but I'll move it anyway. I would move that the  
6 Chairman of the Board be authorized to appoint standing and ad  
7 hoc committees of the Board, and to designate the chairmen of  
8 said committees.

9 CHAIRMAN WITTGRAF: Is there a second?

10 MR. ERLNBORN: I'll second the motion.

11 CHAIRMAN WITTGRAF: Mr. Wear, perhaps you or Ms.  
12 Bozell can enlighten us further. It's been unclear to me, and  
13 I'm not yet a student, as Mr. Houseman is, of the regulations of  
14 this organization, whether the Chairman automatically had  
15 appointment authority, or whether that necessarily must be  
16 granted to the Chairman by the Board upon vote.

17 MR. WEAR: Mr. Chairman, the Corporation's bylaws  
18 provide that the Board can make appointments to committees and  
19 subcommittees, as well as name the chair of those committees; or  
20 the Board can delegate that responsibility to the Chairman. As  
21 I interpret the motion, the responsibility would be delegated to  
22 the Chairman. I would say in passing that at least it's my

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1 recollection that that is how it has been done during my tenure  
2 under two earlier chairmen.

3 CHAIRMAN WITTGRAF: Thank you, Mr. President.  
4 Discussion?

5 (No response.)

6 CHAIRMAN WITTGRAF: Those in favor of the motion  
7 presented by Mr. Dana authorizing the Chairman to appoint  
8 members of committees and the chairs thereof, please signify by  
9 saying "aye."

10 (A chorus of ayes.)

11 CHAIRMAN WITTGRAF: Opposed, "nay?"

12 (No response.)

13 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
14 ayes do have it.

15 I am sincerely interested in hearing from the Board  
16 members regarding their thoughts on our travel plans, if any.

17 (No response.)

18 CHAIRMAN WITTGRAF: If you want to leave yourselves in  
19 my hands, it's hard to say where we may go, but I'd feel better  
20 if I had some guidance.

21 MR. MOLINARI: Mr. Chairman, having just left the  
22 halls of congress not long ago, please don't pick Hawaii or one

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1 of those exotic spots.

2 (Laughter.)

3 MR. MOLINARI: You can come to the world's largest  
4 landfill in my district, if you'd like. I'd be happy to sponsor  
5 a field hearing there.

6 MR. HALL: We'd like to have you in Dallas, but you'd  
7 have quite a ride from the airport. You'll enjoy it, once you  
8 get there.

9 MR. MOLINARI: Not in August.

10 MR. HALL: Not in August.

11 MR. DANA: Mr. Chairman, it's a sacrifice that I am  
12 really reluctant to make every time I'm required to leave the  
13 state of Maine in the summertime. I hope that it would be  
14 possible in the next few months for this Board to see what I  
15 mean.

16 (Laughter.)

17 CHAIRMAN WITTGRAF: I think at least the seven of us  
18 here as Board members might be interested in the thoughts of Mr.  
19 Wear or anyone else from the staff regarding what travel has  
20 been done in the last year or two, and ostensibly to what end,  
21 and any thoughts that any of you have regarding the need for  
22 further travel or future travel.

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1 MR. WEAR: Mr. Chairman, in the past the Board has met  
2 in a variety of locations. In general, we have tried to pick  
3 what is euphemistically called hub cities in which to meet, to  
4 minimize transportation difficulty. Sometimes that works for  
5 people, sometimes it doesn't. I do know there are some places  
6 in this country that you just can't get to from here, or from  
7 there to here, and vice versa.

8 We've tried to do that. My recollection is we've met  
9 in San Diego, I think in Denver, in Atlanta. I don't remember  
10 Chicago -- yes, that's right, we did meet in Chicago. I think  
11 those are the ones that stick out in my mind.

12 CHAIRMAN WITTGRAF: Usually, to what end? Why meet--

13  
14 MR. WEAR: We have in the past attempted to meet in  
15 the regions. We did meet, I think, in all the regions except  
16 one, the northwest, for purposes of allowing client members in  
17 those regions or in those localities to come in and express  
18 their concerns and interests. That was one of the reasons that  
19 we began to get outside of Washington.

20 Also, my recollection is that the prior Board also  
21 tried to meet in the home cities or locations of various Board  
22 members. I think between the two, that accounts for 95 percent

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1 of the travel.

2 CHAIRMAN WITTGRAF: In other words, Mr. Dana is right  
3 on mark, wanting us in Portland.

4 MR. WEAR: Yes, if we can get there from here. We'll  
5 check the flight schedules and see how that works out.

6 CHAIRMAN WITTGRAF: I extended an invitation to those  
7 who were assembled on February 12th to come and solicit my  
8 thoughts and concerns and to ply me with theirs in Cherokee,  
9 Iowa, and no one has made it yet. I'm a bit disappointed, but I  
10 assume some day someone will.

11 MR. ERLNBORN: Mr. Chairman, I first want to say I  
12 appreciate the Board meeting here in my hometown the last couple  
13 of times and welcome you back again. By the way, if we do, I  
14 would commend this hotel. I think the facilities here are  
15 better than I've seen in the past.

16 Secondly, I would suggest that we also be receptive to  
17 any suggestions from the unions, the organizations representing  
18 the programs and so forth, as to areas of the country where  
19 there might be particular problems or particularly good programs  
20 that we ought to see, or people who would like to and should  
21 have an opportunity to meet and commune with the Board without  
22 having to make long-distance travel.

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1           CHAIRMAN WITTGRAF: We certainly are receptive to any  
2 such suggestions, yes. Ms. Love?

3           MS. LOVE: Well, I'd like to welcome you to  
4 Mississippi, but it's just like Iowa. It will take you a long  
5 time to get there.

6           CHAIRMAN WITTGRAF: But it would be well worth the  
7 trip?

8           MS. LOVE: You can always go into Jackson. I'll meet  
9 you there.

10          MR. DANA: I will second that. I have actually  
11 attended a meeting with a few of the people in this room in  
12 Jackson, Mississippi, and it was very memorable.

13          MR. ERLNBORN: What do you mean by that?

14                 (Laughter.)

15          MR. MOLINARI: How old were you when you went there?  
16 Were you married?

17          MR. DANA: I was 42, and it was a very -- it was a  
18 Legal Services meeting, and it was good. We learned a lot about  
19 the program, and we were received very well, I thought, by the  
20 clients and by the Legal Services attorneys, and particularly by  
21 the Bar. It's nice to go to a place where you can facilitate  
22 dialogue, and I think at the time that was starting. It has

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1 come a long way since. I second Jo's nomination, but if at all  
2 possible, not in the summer.

3 MS. LOVE: Oh, no, the fall. When you have snow, we  
4 still have spring.

5 CHAIRMAN WITTGRAF: If we're still on the Board come  
6 this fall and next winter.

7 MS. WOLBECK: I would suggest Minneapolis for  
8 summertime. It's a little cold there in the winter time. I  
9 don't think you want to come then.

10 CHAIRMAN WITTGRAF: Further suggestions, comments,  
11 concerns?

12 MR. MOLINARI: I would just add, Mr. Chairman, I think  
13 it would be wise if we went to places as John suggested, keeping  
14 in mind maybe where members live -- I think that's nice -- but  
15 more importantly, some place where we can allow ourselves some  
16 extra time, if we have it, so we can visit the local facilities  
17 and have a dialogue with the clients in that area.

18 I would like to do that, and I think it would help us  
19 have a better comprehension of the problems out there in the  
20 field, and enable us to be better at the job.

21 CHAIRMAN WITTGRAF: Mr. Hall?

22 MR. HALL: The schedule of the Legal Service lawyers

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1 permitting, it would be nice to have them attend our hearing in  
2 their city, unless they're in court.

3 CHAIRMAN WITTGRAF: The Chair is prepared to entertain  
4 a motion to adjourn.

5 M O T I O N

6 MR. MOLINARI: I move.

7 CHAIRMAN WITTGRAF: We have one from Mr. Molinari.

8 MR. ERLENBORN: Second.

9 CHAIRMAN WITTGRAF: Seconded by Mr. Erlenborn. Those  
10 in favor signify by saying "aye."

11 (A chorus of ayes.)

12 CHAIRMAN WITTGRAF: Opposed, "nay."

13 (No response.)

14 CHAIRMAN WITTGRAF: The ayes appear to have it; they  
15 do have it. Thank you all very much.

16 (Whereupon, at 5:50 p.m. the meeting was adjourned.)  
17  
18  
19

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