

ORIGINAL

LEGAL SERVICES CORPORATION
REAUTHORIZATION COMMITTEE MEETING

**RETURN TO CORPORATION
SECRETARY ARCHIVES FILE**

April 28, 1991
Commences at 5:45 p.m.

The Madison Hotel
15th & M Streets, N.W.
Washington, D.C. 20005

Board Members Present:

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

Staff Present:

David H. Martin, President
Pat Batie, Secretary
Ken Boehm, Counsel to the Board
Alan Severson, Director of Policy Development
Ellen Smead, Director of Office of Field Services

*met 4/29/91 (12:00pm)
Executive Office*

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P R O C E E D I N G S

(5:45 p.m.)

1
2
3 MR. UDDO: I want to note for the record that Mr.
4 Wittgraf, Mr. Dana, and myself, and members of the committee
5 are present. In addition, we have Ms. Love, Ms. Wolbeck, and
6 Mr. Hall joining us tonight. I apologize for the delay in
7 getting started. I guess I was being overly optimistic to
8 think that we could all get in for 5:00 p.m. without all sorts
9 of travel problems, which I experienced, and apparently George
10 must have experienced a few, too.

11 But we do have a few things that we want to do
12 tonight. I don't think it will take us a very long time. But
13 there are a couple of things that we indicated in Chicago we
14 would finish tonight, maybe propose a few changes in some of
15 the things that we did in Chicago, and otherwise get to the
16 point where we're prepared to make our recommendations to the
17 Board at the Board meeting tomorrow.

18 To allow Mr. Wittgraf a few moments to catch up and
19 read over some of the materials that we've handed him -- is
20 David Martin here? I don't want to start without his knowing
21 we started. Let's wait and see if he comes right back in,
22 because I wanted to ask him a couple of questions. The record

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1 should reflect he's been here the whole time, but he just got
2 dragged back in.

3 While George is going over some materials, I was
4 just going to try to get a few questions cleared up. The
5 Board did receive, I assume, your memorandum dated April 25th
6 about what happened at the House Judiciary Subcommittee
7 reauthorization bill mark up.

8 I just wanted, for our purposes of understanding,
9 our role in that process, in any. If we could just get a
10 brief report on who attended, if anyone attended, what
11 interaction we had with the committee, what requests were made
12 of the Corporation, what materials were supplied, that sort of
13 thing.

14 MR. MARTIN: We're going to do that tomorrow with
15 the full Board, but we'd be glad to do it. Alan is prepared
16 to do that now.

17 MR. UDDO: Yes. I'd just like for the committee to
18 be up to speed on that, since some of the things that the
19 subcommittee did, or didn't do, affects what we're doing.
20 We're going to take a few more actions tonight. So I'd just
21 as soon get that now.

22 MR. SEVERSON: Would you like a highlighted version

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1 of the hearing?

2 MR. UDDO: Yes, highlighted meaning just giving me
3 the highlights, or do you mean written out and highlighted?

4 MR. SEVERSON: Well, all of you did receive a
5 memorandum, as you know, dated from David Martin, describing
6 the events in the subcommittee.

7 MR. UDDO: Okay. Let me say this: I'm less
8 concerned about what the subcommittee did, because I think
9 that the memorandum does cover that pretty well, unless any
10 committee or Board members have questions about that. I guess
11 I'm just more interested in some of the mechanics and the
12 background.

13 Were there staff people from LSC in attendance? Did
14 they have any active role? Were any requests made of the
15 Corporation by the subcommittee or any of the members of the
16 subcommittee, just so that we have the whole picture of where
17 we were in connection with what went on at the mark up.

18 MR. SEVERSON: Well, the Corporation, and certainly
19 the congressional affairs people, did attend and monitor fully
20 the hearing, which took about two hours last week. We were
21 aware that Mr. Gekas was going to offer amendments on
22 timekeeping and on competition.

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1 Much of the language, again as noted in the
2 memorandum to you, was taken from the McCollum-Stenholm Bill.
3 Again, these are issues that have been debated before in the
4 subcommittee, and again is outlined to you in your memo.

5 The timekeeping amendment was adopted. The
6 competition was not. We also did provide material to Mr.
7 Gekas relative to the effect of Section 6 of Mr. Frank's Bill
8 regarding MAC, the monitoring and auditing division, our
9 feeling being, again as outlined to this Board, that they were
10 unnecessary and perhaps would have the opposite effect of what
11 they were intended to have as far as being burdensome on the
12 Corporation and on the grantees. Again, as noted to you, that
13 amendment was defeated.

14 So they went through five or six amendments, and I
15 think none of them came out as a surprise to us, nor should
16 they to this Board, again as what we were expecting, what has
17 been debated in previous years. Mr. Frank indicated his
18 desire to move quickly to the full committee on the mark up.

19 Now, there's some question as to whether he may be
20 overly optimistic as to how fast it can move and when it would
21 be scheduled. The best estimate, I would think, would be June
22 for full committee consideration of this bill.

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1 There was also -- certainly we picked this up--
2 there was some question as to whether by not raising some of
3 the more controversial issues at the subcommittee level, were
4 you protecting your ability to bring them up at the full
5 committee level? That is a pretty classic debate in Congress.

6 There are two schools. If you are going to
7 introduce something that's going to be defeated, have you
8 prejudiced it for a later consideration. Or, by not
9 mentioning it, have you, again, precluded yourself somewhat
10 from debating at a later date? So that's always a close
11 question to -- again, that's a strategic decision that members
12 of Congress make. We didn't have any advice or counsel on
13 that, nor would we be likely to.

14 MR. UDDO: Did Mr. Gekas request the information
15 that was supplied to him? I mean, were we responding to
16 requests on timekeeping, and on competition, and on MAC?

17 MR. SEVERSON: He asked for language. He asked for,
18 again, follow-up material. All the Board has received that as
19 well. The timekeeping letter, in fact, Mr. Wittgraf would
20 certainly know this, we were asked for a full delineation on
21 timekeeping at the appropriations hearings that were held
22 earlier this spring, and sent letters accordingly under David

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1 Martin's signature, outlining the use of timekeeping among our
2 grantees.

3 So they did look for that material. We did no
4 drafting whatsoever, nor would we. Again, when receiving a
5 direct request from a member of Congress, we will accommodate
6 it. I hope that that's --

7 MR. UDDO: Oh, no, I understand that. I just wanted
8 to make sure that that's the role that we were playing. You
9 know, I'll just ask David again on the record for the
10 assurance that we're not engaging in promoting any particular
11 legislation or language at this point. Responding to
12 congressional requests is, of course, something I think we
13 have to do. But we're -- let me be frank about it. We're not
14 doing what was going on last year; are we?

15 MR. SEVERSON: No member of my staff, nor am I,
16 engaged in lobbying Congress for or against any proposals that
17 are in the legislative arena. We respond and answer to any
18 questions that any member of Congress might ask us.

19 MR. UDDO: Which raises another question: did any
20 other members request anything from us, or was it just Mr.
21 Gekas?

22 MR. SEVERSON: No.

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1 MR. UDDO: No one else asked?

2 MR. SEVERSON: No.

3 MR. UDDO: Did anyone ask -- I guess it could have
4 been asked at the mark up -- at or before about the status of
5 this committee's work and the Board recommendations?

6 MR. SEVERSON: No.

7 MR. UDDO: They weren't interested?

8 MR. SEVERSON: Not to my knowledge.

9 MR. UDDO: Okay. Any questions from the committee
10 about the mechanics of the mark up?

11 MR. DANA: I had a question on the timekeeping memo.
12 Who is the author of that?

13 MR. SEVERSON: Pardon me; timekeeping memo?

14 MR. DANA: Yes. There's a memo to the Board over
15 David's signature, timekeeping and the legal services
16 community.

17 MR. SEVERSON: Again, the Corporation, working with
18 our OFAS and MAC, came up with some statistics relative to the
19 use of timekeeping.

20 MR. MARTIN: And field services

21 MR. SEVERSON: And field services, right.

22 MR. MARTIN: A combination of three offices.

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1 MR. DANA: Is this the memo that was supplied to Mr.
2 Gekas in another form?

3 MR. SEVERSON: The memo to Mr. Gekas -- yes, in
4 another form. It was in a letter form, primarily.

5 MR. MARTIN: Mr. Gekas and one other.

6 MR. SEVERSON: Also, on the Senate side, I believe
7 we also sent it to Mr. Rudman there. I'd have to confirm
8 that.

9 MR. MARTIN: Somebody on the Senate side asked for
10 it, too.

11 MR. DANA: Unless you are so fortunate as to have
12 studied it, you don't really know what a silly memo it is.

13 MR. SEVERSON: You mean you think it's inaccurate or
14 it's --

15 MR. DANA: It's appallingly inaccurate, but
16 apparently we ask -- I mean, it's accurate in the sense that
17 it accurately reports the information on this sheet that
18 apparently we collect at MAC. I'm not suggesting that.

19 MR. SEVERSON: Or field services.

20 MR. DANA: Or field services. But what it does is
21 it takes -- for instance, it says that approximately 80
22 percent of our programs keep track of attorney fee awards, do

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1 timekeeping for attorney fee awards cases, not unexpectedly.
2 Forty-five percent do so in class action cases, sixty percent
3 in legislative advocacy, fifty-four percent in administrative
4 cases, eighty-one percent in private attorney involvement, and
5 twenty-eight percent do so in every case.

6 For reasons that I don't understand, all those
7 percentages were added up and then divided by six, to come up
8 with 57.79 percent of the program's --

9 MR. SEVERSON: I don't have the memo in front of me.
10 Wasn't it phrased to do some form of timekeeping, to try to
11 reach a more generalized conclusion for usage by us and
12 others?

13 MR. DANA: Yes, that's true, but that's what it
14 says. It makes that point with some conviction when, in fact,
15 80 percent of the programs do some timekeeping.

16 MR. SEVERSON: Does that make it misleading and more
17 inaccurate rather than any more vivid adjective? I mean,
18 certainly we can rewrite it.

19 MR. DANA: Silly is the only one I can come up with.
20 I mean, what we've done is we've added -- 80 percent of the
21 people do some timekeeping, according to this, but for reasons
22 not all together clear to me, we add -- and 28 percent

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1 apparently do timekeeping in every case.

2 If we add all those numbers up and divide by six,
3 and you come up with 57.79, if that is intended to convey,
4 through some scientific process, that 59.79 percent of the
5 legal services work in the nation is already subject to
6 timekeeping, that is misleading, and I think misleadingly
7 high.

8 If it is intended to reflect that 57.79 percent of
9 all of the programs do some timekeeping, it's appallingly low.
10 It should be at 80 percent do some timekeeping. So, I just
11 don't understand.

12 MR. SEVERSON: Well, why don't we do this? I mean,
13 sincerely, I think the Corporation is not out to mislead at
14 all. I think we often try to be as objective as possible.
15 Statistics, as you know, is an inexact science sometimes,
16 although it presumes to something more precise. I think the
17 thought is in these and other correspondences with Congress.

18 I hope that the chairman and this committee and the
19 Board generally -- the Corporation's goal is to be expository
20 on a topic rather than advocacy. I think sometimes we can be
21 so careful about that that we may fudge, in other words, and
22 try to be artful in our phrasing to walk that fine line.

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1 Certainly, I'd be delighted -- and of course I had
2 nothing to do with producing these statistics and simply want
3 them packaged. But we want to be accurate. We do not want to
4 reflect poorly on the intellectual and analytical ability of
5 the Corporation. That's something I'd be concerned with. We
6 could sure look at it more closely if you feel strongly. We
7 certainly don't want to mislead you or any member of Congress.

8 MR. DANA: I mean, it's clear from the backup data
9 what you did or what we did, but I think it is -- I mean, we
10 added up apples and oranges and came up with I don't know
11 what.

12 MR. SEVERSON: That can happen.

13 MR. MARTIN: We'll revisit that. I signed it, and
14 I'll take responsibility for signing it. I did not analyze
15 the statistics when I signed it, the backup. I did look at
16 the memo and was satisfied that it made sense in the memo.
17 We'll revisit this backup and if it doesn't, and I'm not
18 satisfied if I think you're accurate that it's silly, you'll
19 get something from me.

20 MR. DANA: Let me say that the first sentence of the
21 third paragraph, which presumably was in the letter to an
22 important congressman, says, "The results of the attached

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1 timekeeping analysis show that approximately 58 percent of all
2 Legal Services Corporation grantees kept timekeeping records
3 for LSC-funded activities during 1990." That's false.

4 MR. MARTIN: You think that's false?

5 MR. DANA: I know that's false because the data
6 indicates that 80 percent of the programs keep some record on
7 timekeeping and, further, that 28 percent keep all of their
8 records on timekeeping.

9 MR. SEVERSON: That, too, was of course pointed out
10 later on, if there was some challenge of the overall figure.
11 This is all here.

12 MR. DANA: Fifty-eight percent, which I think an
13 uncareful reading might -- someone might think that 58 percent
14 of the programs do universal timekeeping, when, in fact, that
15 number is only 28 percent. It's just, I think --

16 MR. SEVERSON: Misleading.

17 MR. DANA: It is misleading at a minimum, and it is
18 adding six numbers and producing an average, which, to this
19 main attorney, makes just no sense.

20 MR. MARTIN: Well, if it helps you at all, I will
21 share with you that I believe, based on Congressman Gekas'
22 questions asked me at the -- let's see, I guess it was the

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1 reauthorization -- whether he got information from us or not,
2 he intended to put his motion in. So I don't think this
3 influenced him at all.

4 MR. DANA: No, I'm sure of that.

5 MR. MARTIN: Other members of the committee didn't
6 have this.

7 MR. DANA: I got it, and I reacted that way. If
8 I've overreacted, I apologize, but that's enough of that.

9 MR. SEVERSON: One thing, if I might add as well, in
10 dealing with members of Congress and people unlike yourself,
11 Mr. Dana, that are so knowledgeable on this topic, there is a
12 tendency to try to simplify it. They might say, you know,
13 "Ellen, you've given me a three-page memorandum. Now, what's
14 the once percent?

15 In striving to accommodate that, we can, again,
16 certainly to someone with as much knowledge as you, appear to
17 be oversimplistic to the point of being totally inaccurate.
18 That is not the intent, but sometimes it's the result.

19 MR. DANA: Fine, thank you.

20 MR. WITTGRAF: Let me just be sure I understand
21 where we're at. If I'm understanding Mr. Dana's point, Alan,
22 if you're looking --

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1 MR. SEVERSON: I have the memorandum to you.

2 MR. WITTGRAF: Okay. It's the statistical page, I
3 guess.

4 MR. SEVERSON: Actually, the second page is the one
5 that Howard was -- the way they did the average.

6 MR. WITTGRAF: I was just trying to understand the
7 statistics aside from the analysis.

8 MR. SEVERSON: Oh, okay.

9 MR. WITTGRAF: I think what Mr. Dana is looking at
10 is line one, category eight, all cases 91. Then, if you go to
11 line 1, category 11, 1990, recipient programs 323, that's
12 where you get the -- apparently the 28 percent who are doing
13 comprehensive timekeeping; is that correct?

14 MR. SEVERSON: Yes, correct.

15 MR. WITTGRAF: Okay. Apparently, 57, almost 58,
16 percent are doing some timekeeping; is that correct?

17 MR. SEVERSON: Yes, in some form. Mr. Dana's point,
18 I think, is that we are comparing apples and oranges and
19 coming off with a composite number that certainly misled Mr.
20 Dana and perhaps others.

21 MR. DANA: If you look on page 4, line 4, you'll see
22 cases in which attorney's fees awards possible. Two hundred

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1 fifty-seven programs are doing timekeeping, column 4.

2 MR. WITTGRAF: Okay. So, if you take the 257
3 against the 323, it would give you the 80 percent.

4 MR. SEVERSON: Okay, right.

5 MR. DANA: What they've done is they've taken class
6 action cases, 146 programs do it; attorney fee award cases,
7 257; legislative advocacies, 193; administrative cases, 173;
8 PIA cases, 260, all cases 91. For some reason, they didn't
9 add the other. Then they added those numbers up and divided
10 by 6, and that's 187, okay, and 187 is the average number of
11 recipient programs maintaining time records.

12 MR. WITTGRAF: If the lowest common denominator is
13 cases in which attorney fee awards are possible, then 257 out
14 of 323 do that, and that would be your 80 percent, okay.

15 MR. DANA: Yes.

16 MR. WITTGRAF: Across-the-board timekeeping would
17 be, in 91 or all cases, about 28 percent.

18 MR. DANA: That is summarized on the prior page.

19 MR. MARTIN: In the middle.

20 MR. WITTGRAF: Okay. Thank you all.

21 MR. UDDO: As I understand Mr. Dana's concern is
22 that the memorandum both understates the number of programs

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1 that do some timekeeping and may overstate the number, or at
2 least give the impression that a larger percentage of programs
3 do timekeeping across the board than they do.

4 I might not have been quite so pointed in my way of
5 discussing the error, Mr. Dana, but I understand his point. I
6 mean, I think it's both understating and overstating at the
7 same time.

8 MR. SEVERSON: We will clearly revisit this.

9 MR. UDDO: Okay. Any other questions with respect
10 to the mark up and the memorandum from Mr. Martin about the
11 mark up?

12 MR. WITTGRAF: I've got a couple of questions, I
13 guess, and let me start positively by saying I appreciate
14 having gotten so much stuff. That's why I'm still trying to
15 understand exactly what all of this stuff is.

16 Let me ask a couple of questions pertaining to the
17 memorandum dated April 25, 1991, the summary of the mark-up
18 session, that was apparently written yet that day because I
19 got it on Friday. So it would have had to have been shipped
20 yet on Thursday. I commend your effort to get something out
21 right away.

22 I'm assuming, Mr. Severson, that you had a hand in

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1 drafting this. But did I understand correctly that you
2 weren't at the mark up?

3 MR. SEVERSON: I did not attend the mark up.

4 MR. WITTGRAF: Okay. Actually, one of my questions
5 probably requires a or the recollection of someone who was at
6 the mark up. On the second page of this memorandum, under the
7 heading competition amendment, you and Mr. Martin, in the
8 memorandum, share with us the report that "during this debate,
9 Chairman Frank stated that LSC chairman, George Wittgraf, had
10 testified previously before Congress that he was against this
11 idea." Do you recall what was said? I mean, do you know what
12 was said beyond that?

13 MR. SEVERSON: Well, a member of my staff, James
14 Cardle, was at this amendment and also another member of my
15 staff, who had, again, to take copious notes not to miss any
16 point of it to report back to us. I think that that was
17 stated by Chairman Frank. I also think it's a misstatement.

18 On the other hand, at a mark up of this sort, we are
19 not in -- it's not a debate. We felt you should know about
20 it.

21 MR. WITTGRAF: Okay. I'll ask Mr. Cardle what is
22 best recollection is. To the best of my recollection, the

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1 only time I've been asked about competition was in the context
2 of the House Appropriations Subcommittee hearing on April 11,
3 a question, I believe, by Mr. Rogers, the ranking minority
4 member. He asked about it, and I think I indicated my belief
5 that while competition was something we were looking toward
6 and toward experimenting with, that I anticipated that it
7 would be on an experimental or demonstration basis, and
8 probably would be on a basis beyond the present level of
9 funding that exists for grantees, that the 90 or 91 percent of
10 the LSC funds that go out there would be beyond that.

11 So I'm not sure if I was speaking in favor or in
12 opposition of the competition. I wasn't absolutely opposed.
13 I'm not absolutely opposed, but I'm certainly guarded in my
14 support of it, and I think that's what I said. I guess the
15 other Board members who obviously weren't present at the
16 appropriations subcommittee will understand that.

17 In fact, to the best of my recollection also,
18 President Martin said something similar to what I said in
19 further response to Mr. Roger's inquiry.

20 MR. MARTIN: George, let me just -- I am certain
21 that he mischaracterized your statement. I did not want to
22 put that in my memo. However, we just so would report the

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1 facts.

2 MR. WITTGRAF: That's fine. Certainly, I'm not in
3 support of the notion that we begin at once attempting to
4 impose competitive bidding on all grantees. I make no bones
5 about that. On the other hand, I'm not absolutely opposed to
6 it either, but would approach it, much as Professor Cox
7 described a week ago Friday, on a multi-model, if those were
8 more or less his words, approach with capable recipients or
9 grantees.

10 So, not so much for you, Mr. Severson, but I guess
11 for my fellow Board members, that's my recollection of our
12 colloquy that particular Thursday afternoon.

13 On the third page of the memorandum, then, and I
14 guess you've already responded to this a little bit, Mr.
15 Severson, under the last section, passage, the second
16 paragraph indicates that the record shows that the bill was
17 passed out unanimously, which was my understanding, of course.

18 Then you say, you and Mr. Martin, whoever wants to
19 claim authorship, it may be a disappointment in terms of
20 building any type of record when questions arise and the full
21 committee are on the floor. I understand your point about
22 that, much like any legal proceeding, there may or may not be

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1 adequate record made. Perhaps that's disappointing, at least
2 to some.

3 I guess at the same time, one spin I would put on a
4 unanimous vote from a bipartisan subcommittee is that their
5 unanimity suggests to me that reauthorization may be the
6 closest to reality it's been in more than a decade. I find
7 that to be very encouraging news and the opposite of a
8 disappointment.

9 So I understand your point, I guess, regarding
10 making the record, but overall I think the subcommittee,
11 acting in unanimity, is a great, good sign, and I'm sure there
12 will be amendments offered in committee. I think it would be
13 another great good sign for the committee eventually to act in
14 unanimity or as nearly unanimous as it can. That will be
15 speed both consideration on the floor and hopefully some kind
16 of passage by the full House.

17 That's more of a comment than a question. I don't
18 know if there's anything you want to say, Mr. Severson, but
19 that was how that had struck me.

20 MR. SEVERSON: Correct. It was passed on a voice
21 vote.

22 MR. WITTGRAF: Right, right, unanimously by, what,

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1 three Republicans and four or five Democrats. Mr. Mazzoli
2 never attended the --

3 MR. SEVERSON: Oh, yes. He did attend.

4 MR. WITTGRAF: He did, okay. So it was eventually
5 the full subcommittee, five to three, or is it -- how many?

6 MR. SEVERSON: Well, there are five in the majority,
7 including the chairman, and three in the minority, so a total
8 of eight on the subcommittee.

9 MR. WITTGRAF: Right, okay. All eight, then, voted
10 for the bill, good.

11 MR. SEVERSON: Right.

12 MR. WITTGRAF: Thank you.

13 MR. UDDO: Any other questions, Mr. Wittgraf?

14 MR. WITTGRAF: No, thank you.

15 MR. SEVERSON: One comment, if I may, Mr. Chairman.
16 Mr. Wittgraf, if you care to clarify again that position with
17 Mr. Frank, we can certainly do so. Perhaps you may want to
18 correct him on this misinterpretation. It was certainly noted
19 as such among all of us at the Corporation.

20 MR. WITTGRAF: Actually, I think I had visited with
21 Mr. Frank earlier that afternoon, if I'm recalling this
22 correctly, and we hadn't discussed competition too much. Then

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1 the appropriations subcommittee met. Mr. Frank was not
2 present, of course. Apparently, that was a report given to
3 him by someone, and I appreciate that. I think it was only a
4 partially complete report.

5 No, I don't think Mr. Frank necessarily wants to
6 have my comments. I wanted to clarify my position for my
7 fellow Board members particularly. I do appreciate the fact
8 that -- I do believe that Mr. Frank is both very supportive of
9 reauthorization and quite open-minded.

10 I think while still honest men and women can
11 disagree on what's in his draft right now, as amended by the
12 subcommittee, it has taken into account a number of the
13 concerns raised by Congressman Staggers of the subcommittee,
14 as well as by Congressman McCollum of the full committee and
15 certainly by Congressman Stenholm and others.

16 So I do think that while I may not agree with Mr.
17 Frank on every one of these issues, that he's made a
18 substantial effort both to move the legislation and to try to
19 accommodate some of the concerns that have been expressed over
20 the last couple of years. But I don't think that his thinking
21 is going to be changed by my clarifying that point. So I'm
22 not concerned with it.

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1 MR. UDDO: Any further questions, Mr. Wittgraf?

2 MR. WITTGRAF: No, thank you.

3 MR. UDDO: Mr. Dana?

4 MR. DANA: I guess I have some questions of the
5 analysis that was done of our motions.

6 MR. UDDO: That's another item. That's a separate
7 item.

8 MR. DANA: Do you want to do it later?

9 MR. UDDO: Well, I'm going to get to that next. Let
10 me just see if any of the Board members have any questions
11 about the mark-up hearing. Any?

12 (No response.)

13 MR. UDDO: Okay. Then the next thing I'd like to
14 just ask a couple of questions about, we also received, under
15 Mr. Martin's signature, a memo dated April 25th. You must
16 have been very busy on April 25th, Mr. Martin.

17 MR. MARTIN: Busy always.

18 MR. UDDO: The memo went to the Board at large, an
19 analysis of the motions that we reported out of this committee
20 last week in Chicago. I had a couple of questions about some
21 of the analysis, and again, not for any reason other than to
22 try to make sure that the Board perceives what the committee

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1 has done in a way that I think most accurately reflects what
2 the committee has done.

3 I had a couple of questions about some of the
4 analysis here. First, could I ask, is this a joint project,
5 or is there one person who did this?

6 MR. MARTIN: This would be, let's see, three offices
7 involved in this.

8 MR. UDDO: Offices?

9 MR. MARTIN: Three offices.

10 MR. UDDO: Policy field services and --

11 MR. MARTIN: Some MAC and general counsel.

12 MR. UDDO: Okay. Well, for example, on number one,
13 on solicitation, and this may strictly get into the category
14 of spin more than the technical differences, but the analysis
15 says this language, meaning the language that the committee
16 proposed, permits legal services attorneys to solicit in many
17 states.

18 I don't really think that's what we did. I think
19 what we said was that we leave it to the states to make their
20 own judgments about what constitutes prohibited or acceptable
21 solicitation for legal services attorneys. So I would just
22 quibble with the use of the word permits. I don't think that

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1 that was the sense of the motion. I don't think we even
2 debated it in terms of whether or not we should permit it, but
3 only in terms of where the call should be made.

4 MR. DANA: Could we stay with that for a minute?
5 Are you going to move on?

6 MR. UDDO: Well, I was just going to do all mine,
7 and then if you want to do all yours.

8 MR. DANA: All right, go ahead.

9 MR. UDDO: On competition, copayments and
10 timekeeping, I guess I would have one generic comment that we
11 may end up clearing up tonight anyway, because, having read
12 this, I wanted to make sure that there wasn't any
13 misunderstanding about this.

14 On all three of those things, the analysis says
15 that, in effect, the position that the committee took was to
16 authorize studying. In each of those instances, the
17 suggestion seems to be that the committee is not requesting or
18 does not want authorization to implement any of these things.

19 Again, I don't think that's what the committee's
20 action was. I think that with everything, perhaps, except
21 competition, the committee believes -- and probably also with
22 competition -- believes that the Corporation has the authority

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1 to implement timekeeping, copayments, or competition, and that
2 the committee was really only recommending in the
3 reauthorization process, that the initial stage of any of
4 these three things be further studied.

5 In fact, some of these things may not even need to
6 be in the statute. Personally, I don't think timekeeping
7 needs to be in the statute in a reauthorization act. I think
8 that the Board, in its considered judgment, ought to study
9 that and make recommendations.

10 But again, I don't think the analysis is correct if
11 it suggests that the committee was proposing only studying
12 these three things and not that the Corporation be authorized
13 or is authorized to do anything if the studies prove that
14 timekeeping, copayments, or competition are things that should
15 be or could be implemented.

16 So, again, I would suggest that that analysis ought
17 to be modified. As I say, we may take some actions tonight to
18 further clarify the committee's position on those things.

19 On competition specifically, because this one went a
20 little farther, it says the language, again referring to the
21 Board's proposal, rejects current appropriation rider
22 language that permits the Corporation to develop and

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1 implement.

2 Again, that was not my intention in voting for it,
3 and I don't think that's what the committee did. I don't
4 think the committee ever debated that it was rejecting the
5 rider language. I think what we were endorsing was the idea
6 of further studies.

7 So, again, I would --

8 MR. SEVERSON: Reject is probably too strong.

9 MR. UDDO: Yes. I don't think we were rejecting. I
10 don't think that was the issue that the committee was even
11 debating.

12 Then, finally, on 10, class actions, it says in the
13 middle of the analysis, "The Frank Bill would also require
14 that relief sought for class action or the class must
15 primarily benefit eligible clients, as if to suggest that what
16 we're suggesting is different from that.

17 As I understand it, that's the current law; isn't
18 it? I mean, isn't the current law that a class action has to
19 primarily benefit eligible clients, and that the Frank Bill is
20 not really doing anything different than current law. What
21 the committee is recommending is really not anything different
22 from current law. I don't think the Frank Bill is different.

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1 MR. DANA: That's correct.

2 MR. UDDO: That's the only ones that I have.

3 Mr. Dana, do you have something?

4 MR. DANA: Yes. Coming back to solicitation, the
5 analysis here -- well, it says in the first sentence, this
6 language, meaning the Board's language, the Board's motion,
7 permits legal services attorneys to solicit in many states. I
8 think the fact is that legal services attorneys may do what is
9 called solicitation for people who are like myself, who are
10 making money.

11 The idea is that when a private attorney goes up and
12 says to someone, "You know, you've just been run over by
13 somebody, and you really ought to see a lawyer and,
14 incidentally, I'm a good lawyer," that's solicitation. It's
15 providing advice to the person that they ought to see a
16 lawyer, and simultaneously offering themselves as the lawyer
17 in question.

18 Under general solicitation rules, those two things
19 cannot be combined. I think I am correct that in every single
20 state of this nation, a legal services attorney who is not
21 making money, is not making money off of the client, can say,
22 "You know, you need to see a lawyer, and I will represent

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1 you." So, in every case, I think in every state, not just the
2 34, I think it is permitted.

3 Secondly, this says that under current law, legal
4 services attorneys are subject to ABA Cannons of Ethics and
5 the Code of Responsibility, which, when the LSC Act was
6 enacted, did not permit solicitation. Now, I think I am
7 correct that the ABA Cannons, the 1970 version, which is four
8 or five years before the Legal Services Corporation came into
9 existence, provided for this legal services attorney, really,
10 exception to the general solicitation rules.

11 So, I've read variations on this explanation
12 repeatedly in propaganda supporting various stages of the
13 McCollum-Stenholm analysis, and I just think we ought to tie
14 our facts down some on that one issue.

15 MR. MARTIN: You're saying that's inaccurate?

16 MR. DANA: Yes.

17 MR. MARTIN: I will check that out. I didn't think
18 it was.

19 MR. DANA: In section 3, under lobbying, in the
20 analysis it says, on the second page, the Frank Bill would
21 also permit publicity and propaganda on behalf of an eligible
22 client or upon request of a public official. Now, if that

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1 were true, that would be startling. But I don't think it is.

2 If you turn to page 6 of the committee bill,
3 starting at line 21, it says, "but nothing in this paragraph
4 shall be construed to permit an attorney, or an employee of a
5 recipient, or other grantee, or contractor of the Corporation
6 to engage in any publicity or propaganda intended or designed
7 to support or defeat legislation pending before the Congress,
8 or state, or local legislative bodies, or intended or designed
9 to influence any decision by a federal, state, or local agency
10 or to solicit a client in violation of professional
11 responsibilities for the purposes of making possible any
12 activity permitted by this paragraph."

13 I think it is correct that the Frank Bill does not
14 permit publicity and propaganda on behalf of an eligible
15 client or upon request of a public official. So I think that
16 is false.

17 MR. MARTIN: Inaccurate.

18 MR. DANA: Inaccurate. Then, if you turn under
19 paragraph 9, attorneys fees, in the sentence that begins with
20 the last word of the fourth line that says, "The Frank Bill
21 would permit fee-generating cases if client seeks only
22 statutory benefits, and private representation is not

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1 available."

2 That is true, but that is also the current law, I
3 believe. The way this is worded, you might get the impression
4 that this is a change from current law. But I think that is
5 in the rider.

6 MR. SEVERSON: All right. I'll check it out.

7 MR. MARTIN: Well, the first sentence says it, "This
8 language retains current law."

9 MR. DANA: Right, because the Board's resolution is
10 that the Board of Directors favors retention of existing state
11 and federal laws as they apply to recovery of attorney's fees
12 by programs representing indigent clients. All that the Frank
13 Bill does is retains current law. If you read this, it looks
14 like we are --

15 MR. MARTIN: Changing or recommending changing.

16 MR. DANA: Yes. In paragraph 10, under class
17 actions, the analysis reads, "This language retains current
18 law," meaning our proposal, "which requires express approval
19 by project directors in accordance with policies set by the
20 local board for class action suits." Then it goes on to say
21 that "the Frank Bill would also require that relief sought for
22 the class must primarily benefit eligible clients," again,

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1 implying, I think, that the committee was even looser than
2 Frank.

3 Now, that is in the current law. That is the
4 current rider, so the Board favors current provisions of the
5 act, and riders on class actions incorporates the Frank
6 language. So the Frank Bill is the same as --

7 MR. SEVERSON: The Frank Bill is, again, restating
8 what is current law in order to clarify current law, putting
9 in statute what may be again practice and usage in the law of
10 the land. The goal, again, on this entire document was to
11 frankly be above board as possible on any value judgments, but
12 to place what the committee did in context of the other
13 proposals that are here.

14 Again, in trying to summarize it in such a brief
15 form, I think some clarifications clearly are necessary any
16 time that the Board passed a resolution that essentially
17 restated, you know, current law. I think the goal was simply
18 to say what does that mean, how does it compare to the Frank
19 Bill, how does it compare to the McCollum-Stenholm proposals.

20 It wasn't, again, meant to reflect, you know, one
21 way or the other, simply to state what was the practical
22 effect of this particular proposal or resolution as passed by

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1 the committee.

2 MR. DANA: I appreciate that. The problem is that
3 the sentence you used, "the Frank Bill would also require that
4 relief sought for the class must primarily benefit eligible
5 clients," appears to distinguish the Frank Bill from what the
6 committee was recommending, the use of the word "also."

7 MR. SEVERSON: Could be. I would think also it may
8 be saying, though, that Mr. Frank felt that he had to be more
9 specific on this particular area of the law than the Board
10 felt it had to be.

11 MR. DANA: You see, the Board talks about favors
12 current provisions in the Act and riders on class actions.
13 The provision that a class action must primarily benefit
14 eligible clients is the current law. So it's not a
15 difference; it's the same. That's my only point.

16 MR. SEVERSON: I understand.

17 MR. DANA: Those are my comments on the comments on
18 our efforts.

19 MR. UDDO: Mr. Wittgraf?

20 MR. WITTGRAF: Just one or two comments. I guess I
21 join in the comment that's been made already that under number
22 7, competition, the use of the word "rejects" I think is

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1 somewhat unfortunate, because I don't think that we were doing
2 that. In fact, the Board passed a resolution at our last
3 Board meeting on March 28th directing the president of the
4 Corporation and the staff, together with the Operations and
5 Regulations Committee of the Board, to begin to see how
6 competition can be implemented.

7 I certainly don't think our committee in any way was
8 rejecting the Board's actions. So we'll hopefully make that
9 clear to everybody here and to everybody tomorrow.

10 My only other question then was under number 12,
11 which I think was a motion or resolution that I had proposed,
12 simply with the thought of trying to expand our and, to the
13 extent possible, Congress' thinking as to greater efficiency
14 in the use of Legal Services funds through alternative means
15 of settling disputes.

16 I'm wondering if any of you, in discussing what it
17 was that we were doing here, came up with a more appropriate
18 and less colloquial term than de-lawyering legal proceedings.

19 (No response.)

20 MR. WITTGRAF: No, all right. We'll keep working on
21 it.

22 MR. SEVERSON: We commented on that particular usage

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1 at the meeting in Chicago.

2 MR. WITTGRAF: Yes, I accepted that it is quite
3 colloquial. Perhaps in that none of these resolutions is
4 going to be cast in stone or anything even much less
5 substantial than that anywhere soon, I guess I'm not too
6 concerned. But perhaps we can eventually come up with a
7 better term than de-lawyering, but I haven't yet either.
8 Thank you, Mr. Chairman.

9 MR. UDDO: Any comments from members of the Board?

10 MR. SEVERSON: Mr. Chairman, can I make one more?

11 MR. UDDO: Sure.

12 MR. SEVERSON: I want to reiterate to this committee
13 and to all the members of the Board here, and if I can speak
14 for my president, this type of document is designed to be
15 helpful, designed to clarify, designed to make it a little
16 clearer in the context of your work. Again, I think we can
17 always be more artful in the choice of words.

18 The goal is not to take a position in any regard,
19 but to clarify your resolutions as they relate to others. I
20 think our desire to be helpful is quite sincere, and I hope
21 you will take it as such. If this type of document perhaps
22 provokes more, I don't know, perhaps we put ourself in a

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1 position to be challenged unnecessarily in our desire to be
2 helpful. So if you can keep it in that context, it is
3 certainly our intent. We hope that we reach it from time to
4 time.

5 MR. UDDO: Now, I accept that, and I understand
6 that, and I do believe that that's what you were trying to do.
7 I think, though, that, unfortunately, we're acting and writing
8 on not an all together clean slate, and there is history.

9 So there is always a concern that things have to be
10 very carefully done so that those kinds of impressions aren't
11 given. I think, as members of the committee, we're
12 particularly sensitive to giving the full Board any impression
13 that we're recommending things or doing things other than we
14 are.

15 So I appreciate that. I do believe that these are
16 just oversights, and I don't think that any of us mean to
17 suggest otherwise.

18 MR. WITTGRAF: I certainly join Mr. Uddo in saying
19 that we accept what you say at face value. My sensitivity, I
20 suppose, is the same as his. There have been seven, I guess
21 six, sometimes seven, sometimes eight, Board members who
22 participated in the process during this last month and who

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1 have heard all of the information we've heard and obviously
2 are in a position to draw whatever conclusions they do. But
3 we've got at least three members who haven't had a chance to
4 participate at all: Mr. Molinari, Mr. Rath, and Mr. Guinot.

5 I wouldn't want to give them the impression that
6 somehow, particularly in the instances where we conceivably
7 might be perceived as rejecting, say, what the Board has
8 already done or perhaps even rejecting what the current law is
9 without actually saying so, or perhaps taking some positions
10 that would seem to be looser even, perhaps, than some of those
11 that are in the Frank Bill. That would be my concern, Mr.
12 Uddo's, and perhaps Mr. Dana's as well.

13 It's just particularly for those three Board members
14 who haven't been with us at all to not give them the wrong
15 impression, hence our sensitivity, or at least my sensitivity.

16 MR. UDDO: Thank you, Mr. Wittgraf. I think that
17 that's in the context of which this committee has tried to
18 function. I mean, we explicitly stated we didn't want to be
19 in the business of endorsing or rejecting particular
20 provisions of either Bill, that we're speaking to what we
21 think is the best course to recommend to Congress conceptually
22 and as a matter of policy.

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1 As the chairman, I've wanted to steer clear of
2 getting in the midst of that highly contentious debate between
3 the Frank Bill and the McCollum-Stenholm Bill. I think as a
4 Board, we've got to try to suggest what we think is the better
5 course of action in a variety of areas and not get put in the
6 position of being pro or con any particular bill.

7 So that's why I think that the particular
8 sensitivity, and I think Mr. Wittgraf is right, that we do
9 have some members of the Board who will be learning for the
10 first time what they are going to know about this process from
11 the materials that are being sent out.

12 Any other comments or questions about this?

13 (No response.)

14 MR. UDDO: We need five minutes. If we could just
15 take a five minute break.

16 (A brief recess was taken.)

17 CHAIRMAN UDDO: We're going to go back on the record
18 and reconvene the committee so as not to keep us here too late
19 tonight if at all possible.

20 Before we get into the other business there are a
21 couple things that I wanted to clear up; one is, if it is at
22 all possible, and I guess I'm directing this to Ken and to

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1 Alan and to David, our comments about the analysis, if there
2 is any way of getting those reworked for tomorrow's meeting so
3 that the board will have a revised version of the analysis,
4 particularly the -- well, if we're going to do it we'll do it
5 for everyone not just the ones that didn't come to the
6 meeting. I think that would be helpful and may save us some
7 time because if they've read those and have taken them the
8 wrong way it may create a great deal of additional discussion
9 and debate and questions that may be alleviated if we can
10 clear that up.

11 So, if we can -- I know that's a lot of pressure
12 because the meeting starts at 9:30 but we do have some time
13 before we get to that part of the meeting. I assume we'll do
14 that last, Mr. Chairman?

15 MR. WITTGRAF: Yes.

16 CHAIRMAN UDDO: So, there is some time. If we could
17 just get those revisions made I think it would be helpful.

18 MR. MARTIN: Well, we'll try to make it accurate and
19 we'll have -- what ever inaccuracies that do exist we'll
20 revisit it and try to have it -- we will have it for you
21 tomorrow by noon.

22 CHAIRMAN UDDO: The other thing I wanted to say

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1 is -- and I was spending some time trying to find this, and to
2 some extent this does relate to one of Howard's comments about
3 the analyses where he was mentioning the Frank Bill with
4 respect to publicity and propaganda.

5 MR. DANA: Page 6 or 7.

6 CHAIRMAN UDDO: Page 6 or 7 of what? I'm on page
7 34.

8 MR. DANA: Okay.

9 CHAIRMAN UDDO: On page 34 of the -- this is the one
10 that came out of subcommittee, this is the most recent
11 version?

12 MR. DANA: Yes.

13 CHAIRMAN UDDO: Well, page 34 and 35 of what I think
14 is the subcommittee bill there is this prohibition of
15 publicity of propaganda but Congressman Frank's Bill, when he
16 cross references activities prohibited by section 1006 (B7),
17 section 1007 (A10) paragraphs 2, 3, 4, 6, 7 and 9, it omits 5
18 and I think 8. Now, I know 5 is abortion.

19 So, in effect the Frank Bill would allow publicity
20 and propaganda in the abortion area. So, I want to make sure
21 that we're clear with that on the record. I mean, that is a
22 difference in the Frank Bill. His general prohibition of

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1 publicity and propaganda does not apply to abortion activities
2 by that omission of paragraph 5; and I don't recall what 8 is.

3 MR. DANA: The sections in question --

4 CHAIRMAN UDDO: These are all the ones where he
5 eliminates publicity and propaganda but he doesn't list 5,
6 which is abortion -- or is 5 lobbying -- no, 5 is abortion, I
7 think -- and then paragraph 8, and I don't recall what 8 is.
8 It's 1007 (A) -- it's in the current Act.

9 MR. DANA: I have done this so I know what the
10 committee bill refers to. The sections 1006 (B7) relates to
11 strikes, boycotts, et cetera, 1007 (A5) is lobbying, (A10) is
12 incitement of litigation, (B2) is criminal representation, (3)
13 is criminal acts, (4) is political activity, (6) is training,
14 (7) is organized associations, (9) is redistricting, 1007 (i)
15 is aliens and 1007 (K) is certain eviction.

16 That's what the current bill -- the section that
17 you're referring to restricts private funds not public funds
18 and doesn't speak to LSC funds. That's done in these various
19 sections.

20 So, what this is is a -- in this case this relates
21 to private funds with respect to those matters. And you're
22 correct, it does not deal with abortion --

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1 CHAIRMAN UDDO: And there is something else. What's
2 subparagraph 8?

3 MR. BOEHM: Actually 8 was abortion, 5 is firms that
4 deal with issues.

5 MR. DANA: They changed all the numbers around.

6 CHAIRMAN UDDO: Paragraph 8, which is not included
7 in the Frank version is abortion.

8 MR. DANA: Five is, "To make grants or enter into
9 contracts with any private law firm which expends 50 percent
10 or more of its resources and time litigating issues in the
11 broad interest of the majority of the public."

12 CHAIRMAN UDDO: That's a new one on me. I don't know
13 what that means and I didn't know that was in there. But
14 technically 5 and 8 are not covered by Frank, therefore, I
15 just wanted to clarify on the record Howard's comments are
16 accurate about the Frank Bill prohibiting publicity and
17 propaganda with certain funds but he explicitly excludes
18 paragraph 8, which would mean that the Frank Bill would allow
19 publicity and propaganda with certain funds -- I guess with
20 all funds if he excludes it from there; presumably with all
21 funds.

22 And in a sense it's not important because we're just

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1 talking about the analysis. I'm just pointing out that when
2 we redo that analysis the abortion involvement is not excluded
3 from publicity and propaganda in the Frank Bill. In deference
4 to whoever does that analysis it would continue to be accurate
5 to say that at least on that point the Frank Bill is
6 different.

7 That's the only two things I had. Now, other
8 business. We have, I think, some what you might call clean up
9 motions or motions to further clarify some of the motions
10 passed at the last meeting and a couple of new ones. So, the
11 floor is open for motions relating to the motions adopted at
12 the last meeting or new motions.

13 MR. DANA: Mr. Chairman.

14 CHAIRMAN UDDO: Mr. Dana.

15 MR. DANA: I would like to add some language to our
16 fourth resolution dealing with timekeeping as follows.

17 CHAIRMAN UDDO: Who do we get to get this down
18 because it's going to need to be incorporated by tomorrow and
19 we don't have it in typed form. This is Howard's -- I just
20 wanted to make sure somebody gets it so that when they retype
21 these for the presentation to the board it will be in there.
22 We won't have a transcript by tomorrow.

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MOTION

1
2 MR. DANA: The motion is to add between the word
3 timekeeping and the period at the end the following: "to
4 determine whether the benefits of same outweigh the costs. If
5 they do, the board would favor the implementation of such a
6 requirement, consistent with its findings, and founded in the
7 principles of local control and local flexibility."

8 CHAIRMAN UDDO: Is there a second to Mr. Dana's
9 motion?

10 MR. WITTGRAF: Second.

11 CHAIRMAN UDDO: The motion has been made and
12 seconded, any discussion? Mr. Wittgraf, any discussion? You
13 don't have to, I'm just asking.

14 MR. WITTGRAF: No, I think it clarifies the point
15 that you made earlier in response to what was something of an
16 analytical misunderstanding. I think it further elaborates
17 the committee's position and I think that's good.

18 CHAIRMAN UDDO: Any further discussion? Any
19 comments from board members? Hearing no further discussion
20 we'll call the question. All those in favor of the motion
21 signify by saying aye.

22 (Chorus of ayes.)

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1 CHAIRMAN UDDO: Opposed, nay?

2 (No response.)

3 CHAIRMAN UDDO: The ayes have it, the motion
4 carries, three ayes, no nays.

5 MR. WITTGRAF: Mr. Chairman, if we're going in
6 numerical order perhaps item number six the third paragraph
7 thereof, the second line in the middle of that has the word
8 from which I believe more properly and accurately should be
9 for. That's both accurate and also consistent with the style.

10 CHAIRMAN UDDO: Third paragraph?

11 MR. WITTGRAF: Yes, second line.

12 CHAIRMAN UDDO: My third paragraph doesn't have a
13 second line. Oh, second line not second sentence, okay; LSC,
14 IOLTA other public funds or private funds from the provision?

15 MR. WITTGRAF: For, yes. I just think that's a
16 stylistic thing, largely. And I probably dictated it wrong
17 last week.

18 CHAIRMAN UDDO: Well, that might just be
19 typographical. We can just correct that without a motion, I
20 don't think that's necessary.

21 MR. WITTGRAF: Fine.

22 CHAIRMAN UDDO: Any other motions?

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MOTION

1
2 MR. DANA: Yes, on resolution seven after the word
3 competition insert the following: ,in the awarding of grants
4 and between legal service providers. And then after
5 appropriate make the period a semicolon and then insert the
6 following: and favors where study and demonstration projects
7 indicate competition is appropriate, authorization from
8 Congress to employ it.

9 CHAIRMAN UDDO: Why don't you read the whole thing
10 to us?

11 MR. DANA: It would read as follows: The Board of
12 Directors of the Legal Services Corporations favors the study
13 of the circumstances under which the use of competition, in
14 the awarding of grants and between legal service providers may
15 be appropriate; and favors where study and demonstration
16 projects indicate competition is appropriate, authorization
17 from Congress to employ it.

18 MR. WITTGRAF: A comma before the where and a comma
19 after the appropriate to set off that clause.

20 CHAIRMAN UDDO: I think a comma before the where.

21 MR. DANA: And favors, where study and demonstration
22 projects indicate competition is appropriate, authorization

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1 from Congress to employ it.

2 CHAIRMAN UDDO: We need a committee on style. The
3 motion has been made, is there a second?

4 MR. WITTGRAF: Second.

5 CHAIRMAN UDDO: Made and seconded, any discussion?
6 Hearing no discussion we shall call the question. Were you
7 going to have one of your delayed reactions and let me move on
8 and then tell me you wanted to discuss it?

9 MR. WITTGRAF: No.

10 CHAIRMAN UDDO: All those in favor of the motion as
11 made signify by saying aye.

12 (Chorus of ayes.)

13 CHAIRMAN UDDO: Opposed.

14 (No response.)

15 CHAIRMAN UDDO: Motion carries, three ayes, no nays.
16 Any other motions?

17 MOTION

18 MR. WITTGRAF: Yes, Mr. Chairman. I think it would
19 be a new resolution, I guess number 14, I'm not sure that
20 there is any great logic to the sequence to which we're
21 presenting the legislation. In any case, new number 14: I
22 move that the committee adopt the following resolution, "The

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1 Board of Directors of the Legal Services Corporation favors
2 evaluating recipients to determine whether they are providing
3 economic and effective legal assistance of high quality and
4 promulgating criteria for such evaluation and further, favors
5 standards for the process of monitoring and evaluation as well
6 as for complaint investigation and finally, reiterates its
7 belief that the Corporation should have discretion to
8 determine how best to conduct monitoring and evaluation visits
9 and to respond to complaints. End of resolution.

10 CHAIRMAN UDDO: The motion has been made. Is there
11 a second?

12 MR. DANA: Yes.

13 CHAIRMAN UDDO: Made and seconded, discussion?

14 MR. WITTGRAF: Mr. Chairman, we had discussed at the
15 end of our meeting on Saturday, April 20, our desire to make
16 some comment about monitoring and evaluation particularly in
17 light of the fact that there is a very long section, I believe
18 section six of the now subcommittee bill dealing with that
19 subject. On the one hand the subcommittee bill retains that
20 language, on the other hand an effort was made by Mr. Gekas
21 simply to strike that section and all of that language.

22 My intuition is that some such language will be

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1 retained and I think its perhaps even more important today
2 then it was a week ago yesterday for the board to indicate of
3 course that it does favor evaluation, that it favors standards
4 for that evaluation and that it also sees the need for some
5 discretion in the Corporations being able to determine how to
6 conduct monitoring and evaluation visits and to investigate
7 complaints that are brought to the Corporation.

8 Obviously this is a general statement, a statement
9 of principle or principles. I hope that with the committee's
10 and then in turn the board's adoption of it though it can be
11 some basis for the Corporation, working not only with Mr.
12 Gekas and the minority staff but hopefully with Mr. Frank and
13 the majority staff of the subcommittee and the committee to
14 make what changes may be necessary in the present working in
15 section six of the bill approved by the subcommittee.

16 We do have the memorandum prepared by members of our
17 staff over President Martin's signature, the memorandum dated
18 April 25, 1991, the three page memorandum expressing concerns.
19 The memorandum, I believe, takes the approach essentially that
20 we don't need section six. I don't think that's realistic but
21 I do think it's important for us to indicate that we're
22 certainly in sync with the thinking of the committee but that

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1 we want to stress the need for some flexibility for the staff.

2 Thank you, Mr. Chairman.

3 CHAIRMAN UDDO: Any other discussion?

4 MR. DANA: I seconded this suggestion and support
5 it. I think that the section six of the Frank Bill needs -- I
6 think would cause real problems for the Corporation. I think
7 that in particular I'm concerned about the language dealing
8 with the Corporation's requirement to respond very quickly or
9 dismiss a complaint within 30 days.

10 I think that often complaints are received by the
11 Corporation which are allegations of criminal conduct on the
12 part of grantees often -- I don't know how often but I know
13 that they have occurred. And I think that it would be
14 inappropriate under those circumstances to respond within 30
15 days.

16 So, I think that this language says that we would
17 like to fine tune that language and I think that's an
18 appropriate approach.

19 CHAIRMAN UDDO: Thank you, Mr. Dana. I have nothing
20 to add to either Mr. Dana or Mr. Wittgraf's comments. I
21 support the motion also. So, without any further
22 discussion -- any questions or comments from members of the

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1 board?

2 MR. DANA: One of the things we asked staff to do
3 was to come up with some language of their own that would help
4 us with the resolution and I don't know whether they have done
5 that.

6 MR. MARTIN: We have not done that yet. We will do
7 it.

8 MR. DANA: Well, this may be sufficient. It may be
9 -- hopefully this will be sufficient to give us the
10 flexibility to deal with the problem.

11 CHAIRMAN UDDO: Any further discussion? Hearing
12 none we'll call the question. All those in favor of the
13 motion as made and seconded signify by saying aye.

14 (Chorus of ayes.)

15 CHAIRMAN UDDO: Opposed?

16 (No response.)

17 CHAIRMAN UDDO: The motion carries three ayes, no
18 nays. Any other?

19 MOTION

20 MR. DANA: Yes, Mr. Chairman. I have endeavored to
21 make -- I am concerned with an area and I made a suggested
22 motion that neither of the committee members who are here

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1 understand on first reading. So, it's obvious that it is not
2 clear but let me explain the problem that I see. I think this
3 board member would like to explore the possibility of using
4 LSC funds to promote non-LSC funding of legal services
5 activities.

6 We do that now with 12.5 percent private attorney
7 involvement grants, subgrants, at the grantee level but the
8 Corporation could, I think, appropriately promote additional
9 funding. The difficulty with doing that is it is like handing
10 to -- and in particular the primary source of funding out in
11 the nation at large are IOLTA programs and private and bar
12 associations or state bars or foundations. To hand them money
13 from the Corporation is like Eve handing the apple to Adam
14 because with LSC funds at the present time come all of the
15 restrictions that Congress from time to time imposed on those
16 funds.

17 What I would like to do is create a -- what I'd like
18 to see Congress do is permit us to make grants for this one
19 specific function, namely to promote the development and
20 implementation of non-federal funding sources which would not
21 have the effect of infecting the organizations who accept that
22 money with all of the restrictions currently in to be added by

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1 Congress.

2 Now, that's what I was trying to do and this is what
3 I said: "The Board of Directors of the Legal Services
4 Corporation favors making clear that LSC grants designed to
5 promote the development and implementation of non-federal
6 funding sources do not restrict the types of legal
7 representation that can be performed with a grantees other
8 funds."

9 And the rationale that I added to this suggestion
10 was: "Because the Corporation should promote the development
11 and implementation at the state and local level of non-federal
12 funding sources for the provision of legal services to the
13 poor, including grants or contracts to state bars or
14 foundations to foster the development, implementation or
15 improvement of attorney participation in IOLTA or to encourage
16 the establishment of private and public funding sources; and
17 because of the tendency of Congress to impose restrictions on
18 recipients of LSC funds that limit what they may do with their
19 non-LSC funds; and because the legal profession is ethically
20 required to provide legal services to the poor that Congress,
21 from time to time, may not approve of."

22 MR. WITTGRAF: What is Congress not approving of?

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1 MR. DANA: In other words, these bars and
2 foundations that have all of this private -- that have these
3 private funds, that some members of Congress, and indeed some
4 members of this board, wish to restrict -- and so when they
5 give the money to an LSC grantee Congress restricts it or if
6 this board resolution were to become law that money would be
7 restricted as well in the hands of an LSC grantee.

8 But that does not deal with the reverse situation
9 which is what I'm trying to describe which is the situation of
10 LSC giving money to a bar association or a bar foundation or
11 an IOLTA program to promote what they do. What I don't want
12 to do is -- they won't -- nobody in their right mind would
13 take LSC money currently because they would become, as they
14 say, infected with all these regulations and then they
15 couldn't do what lawyers are ethically required to do in a
16 variety of cases like provide legal representation to aliens
17 and some of the other classes of people who are not favored
18 with LSC funds.

19 CHAIRMAN UDDO: Try this, Howard. The Board of
20 Directors of the Legal Services Corporation supports the
21 awarding of grants designed to promote the development and
22 implementation of non-federal funding sources for LSC

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1 grantees. However, the board opposes the application of LSC
2 restrictions and regulations to any grantee whose sole LSC
3 grant is one awarded for this purpose.

4 MR. DANA: Thank you. I second that motion.

5 CHAIRMAN UDDO: It's your motion.

6 MR. WITTGRAF: That's fine. I'm just wondering,
7 where are we with something like a law school clinic which
8 isn't in either of these categories. Say Drake University in
9 Des Moines wants to get a law school clinic grant but there is
10 something else that Drake does lets say with Planned
11 Parenthood of Iowa, we would be preventing Drake University
12 from getting Legal Services funds if it provides abortion
13 related services of one kind or another through some project
14 with Planned Parenthood of Iowa.

15 I'm comfortable with your revised motion because I
16 think it's geared simply to -- if I understand it, to the
17 development and implementation of non-federal funding sources
18 consistent with the private attorney involvement requirement
19 that's in the law now. But as Howard was going through his
20 rationale it occurs to me that there are other potential
21 problems out there beyond simply the monies that go to the
22 Iowa State Bar Association or the Iowa State Bar Foundation or

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1 the Iowa State Bar Volunteers Lawyer Project such as the
2 example I mentioned.

3 CHAIRMAN UDDO: Yours is, I think, a completely
4 different question because it's not dealing with a grant
5 solely for developing non-federal sources. I don't know what
6 the situation is with law school clinics. I don't know that
7 they buy the whole bag of regulations or not when they take
8 the money. We don't have a resident expert on that.

9 MS. SMEAD: The restrictions go to the money only.
10 And the project that we're funding, the clinical project that
11 we're funding.

12 CHAIRMAN UDDO: That's what I thought. Why is that?

13 MR. WITTGRAF: Grant restriction?

14 MS. SMEAD: It's in the grant documents it applies
15 just to the clinical project except that it doesn't apply to
16 any other clinical project so they could have, for example, a
17 criminal law project which we don't fund and none of our
18 restrictions would apply to that criminal law project.

19 MR. DANA: The question is, and maybe the Act gives
20 us this discretion so maybe I'm solving a problem that doesn't
21 exist.

22 CHAIRMAN UDDO: Or, maybe you're going to get a

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1 bunch of law schools indicted real soon. That's a good
2 question, I never thought of it.

3 MS. SMEAD: I'd have to go back and look at the
4 analysis that was done up.

5 MR. MARTIN: That's a good question.

6 MS. SMEAD: I know it hasn't been looked at. I can
7 look at it more.

8 MR. MARTIN: If I may, Mr. Chairman, let me and my
9 general counsel look at that question. It's unique to me.

10 MR. WITTGRAF: It's an amazing liberal position. I
11 find it inconsistent with almost everything else we've tried
12 to do.

13 CHAIRMAN UDDO: I don't know the answer to it but I
14 do know that we've been awarding grants to law school clinics.
15 It was my understanding that the restrictions only applied to
16 those funds but I've never stopped to consider why that is.

17 This is the motion then?

18 MR. DANA: Yes.

19 MR. WITTGRAF: As amended by Mr. Uddo.

20 CHAIRMAN UDDO: Actually, this is Mr. Dana's motion.
21 Do you want to second it?

22 MR. WITTGRAF: I second it.

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1 CHAIRMAN UDDO: This is Mr. Dana's motion. Any
2 discussion? I think we've already discussed it and everyone
3 understands it. Any other discussion? Then we'll call the
4 question.

5 All those in favor signify by saying aye.

6 (Chorus of ayes.)

7 CHAIRMAN UDDO: Opposed?

8 (No response.)

9 CHAIRMAN UDDO: Three ayes, no nays.

10 Any other motions? Then I think what we have
11 remaining is the proposed committee rationale for these
12 various motions which at the last meeting we indicated we
13 would revise what Mr. Dana had included in his original
14 proposals and perhaps adopt as a committee rationale for the
15 various motions. This is the committee rationale, just to
16 give some explanation as to why the committee favored a
17 particular position.

18 The rationale will not be proposed to the board as a
19 part of the motion. Only the substantive part of the motion
20 will be proposed to the board. They will know the rationale
21 and it will be given to them but we are not adopting the
22 rationale as a part of the motion.

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1 MR. DANA: Fleetingly.

2 CHAIRMAN UDDO: Then as soon as we get those three
3 out we'll treat these all together.

4 For motion number 12 -- what is 12?

5 MR. DANA: It is the Board of Directors favors the
6 study of the circumstances under which the use of alternative
7 dispute resolution models de-lawyering of legal proceedings
8 and self-help models may be appreciated.

9 CHAIRMAN UDDO: All right, the rationale that's been
10 provided by Mr. Wittgraf: Because a continual effort must be
11 made to simplify legal proceedings for the poor, to enable the
12 poor to assist themselves in such proceedings and to allow for
13 the best use of limited legal services resources.

14 Any comment? Number 13, which is number 13.

15 MR. WITTGRAF: It's fraud and abuse.

16 CHAIRMAN UDDO: Because it is necessary that the
17 availability of criminal sanctions for misuse of Legal
18 Services Corporation funds be made clear to the custodians of
19 all such funds.

20 Number 14 -- what is 14?

21 MR. WITTGRAF: Fourteen is monitoring and
22 evaluation.

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1 CHAIRMAN UDDO: Because evaluation of the provision
2 of legal services must be undertaken in as professional and
3 objective a manner as possible while assuring accountability
4 for the expenditure of federal funds and while allowing the
5 Corporation staff appropriate flexibility in its task and
6 because of the need for prompt yet appropriate disposition of
7 complaints.

8 We have no dissent on those three, therefore, I will
9 call for a vote on the package of rationales that have been
10 proposed collectively by Mr. Dana and Mr. Wittgraf.

11 All those in favor say aye.

12 MR. DANA: This is the committee's rationale?

13 CHAIRMAN UDDO: This will be the committee's
14 rationale but it will not be made a part of the motion. It
15 will be presented to the board as the rationale for the
16 committee's action but the board is only going to be asked to
17 vote on -- what we will present to them as a motion for their
18 vote will be the individual motions, 15 individual motions.

19 Is that your understanding, Mr. Wittgraf?

20 MR. WITTGRAF: Yes, Mr. Chairman.

21 CHAIRMAN UDDO: All those in favor signify by saying
22 aye.

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1 (Chorus of ayes.)

2 CHAIRMAN UDDO: Opposed?

3 (No response.)

4 CHAIRMAN UDDO: The motion to adopt the rationale as
5 the committee rationale carries, three ayes, no nays.

6 Any other business for this committee.

7 MR. DANA: Can I have a moment to confer?

8 CHAIRMAN UDDO: Sure. You're going to do it anyway.

9 CHAIRMAN UDDO: The Board of Directors of the Legal
10 Services Corporations supports Congressional leadership
11 proposing the application of various federal laws on waste,
12 fraud and abuse to LSC-funded recipients in the Corporation
13 itself.

14 (A brief recess.)

15 CHAIRMAN UDDO: It now reads: The Board of
16 Directors of the Legal Services Corporation supports the
17 application of various federal laws on waste, fraud and abuse
18 to LSC-funded recipients and the Corporation itself.

19 MR. WITTGRAF: Is this it. This is 13, so we have
20 the language.

21 CHAIRMAN UDDO: We've just changed the language, it
22 was a little awkward before.

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1 Any other discussion? Any other questions,
2 comments?

3 MR. WITTGRAF: Mr. Chairman, number 12 --

4 CHAIRMAN UDDO: Number 12.

5 MR. WITTGRAF: I suggest that we eliminate the words
6 de-lawyering of and substitute, therefore non-lawyer and then
7 after the words legal proceedings insert the words models.

8 CHAIRMAN UDDO: So, it would read non-lawyer legal
9 proceeding models?

10 MR. WITTGRAF: Proceedings models, right.

11 CHAIRMAN UDDO: You want the of out too?

12 MR. WITTGRAF: Yes.

13 CHAIRMAN UDDO: What was wrong with de-lawyering.

14 MR. DANA: He didn't want to be accused of being the
15 William Shakespeare of the Corporation.

16 MR. MARTIN: Would you read it again, George?

17 MR. WITTGRAF: Yes, I was just asking for unanimous
18 consent to strike the words de-lawyering of -- to substitute
19 therefore, the word non-lawyer and to insert after the word
20 proceedings the word models and then the comma.

21 CHAIRMAN UDDO: Any other comments or questions, Mr.
22 Wittgraf?

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1 MR. WITTGRAF: No.

2 CHAIRMAN UDDO: Mr. Dana?

3 MR. DANA: No.

4 CHAIRMAN UDDO: We are giving unanimous consent to
5 Mr. Wittgraf's proposed change of number 12. We're not going
6 to waste time on that.

7 That pretty much completes the work of the committee
8 at this time. I expect that this committee will continue to
9 have a life of its own as the reauthorization process
10 continues and we'll be the committee, I hope, that will be in
11 dialogue with the various Congressional committees as this
12 process continues.

13 So, we expect that we will continue to be active but
14 for now, at least I think in the short run our work is done
15 and I think that the staff and members of the committee have
16 done an excellent job in moving this process forward. And we
17 will have some substantial and well thought out proposals for
18 the board tomorrow.

19 With that I invite a motion to adjourn.

20 MR. DANA: So moved.

21 CHAIRMAN UDDO: Second?

22 MR. WITTGRAF: Second.

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