

LEGAL SERVICES CORPORATION  
Board of Directors  
Reauthorization Committee Meeting

February 17, 1992  
8:48 a.m.

The Westin Canal Place Hotel  
100 Rue Iberville  
The Terrace Room  
New Orleans, Louisiana 70130

Board Members Present:

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

Staff Present:

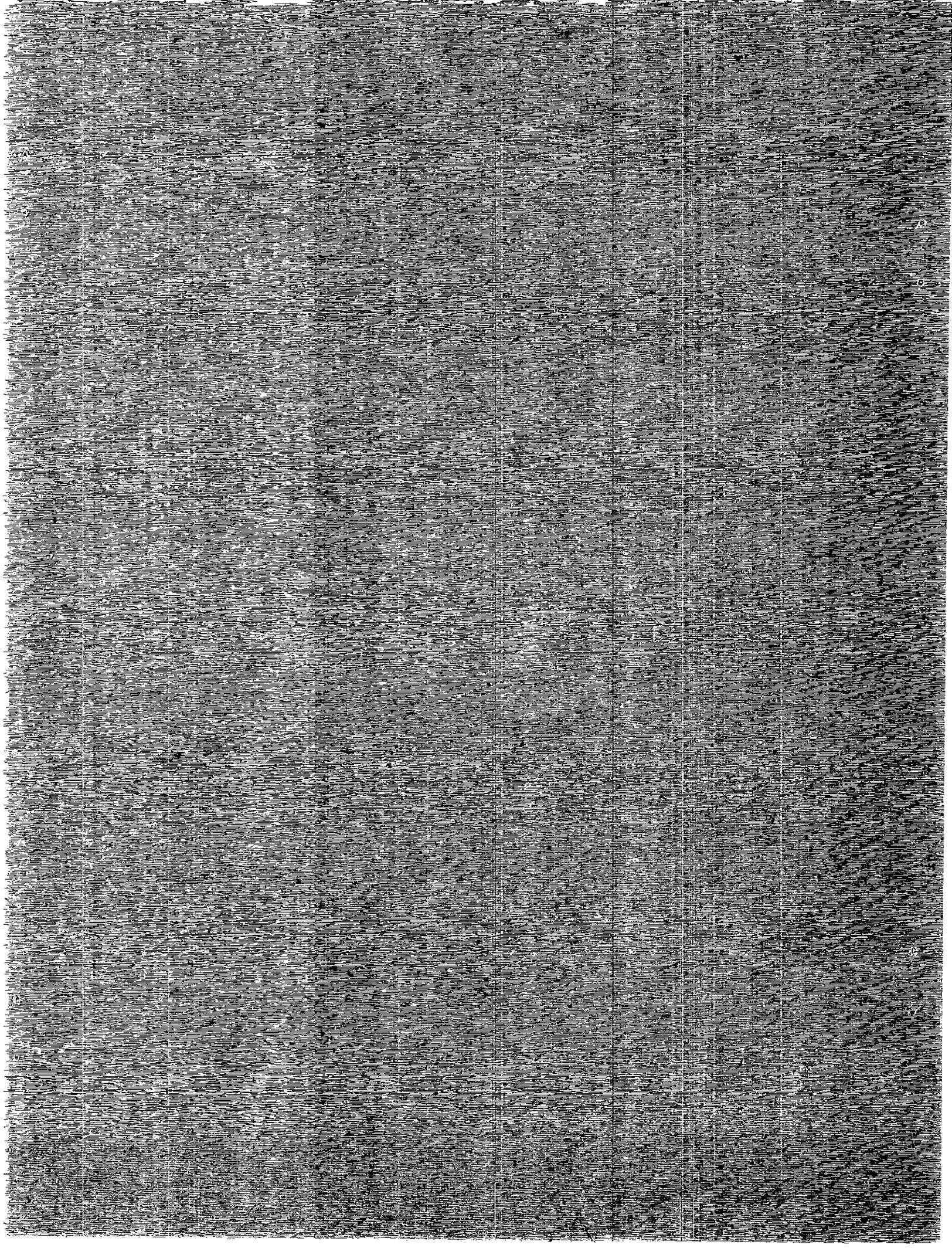
John P. O'Hara, President  
Amelia DiSanto, Vice President  
Patricia Batie, Secretary  
Edouard Quatrevaux, Inspector General  
Kenneth Boehm

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

1  
2 CHAIRMAN UDDO: I'd like to call the meeting of the  
3 Reauthorization Committee to order, if I could, so that we  
4 can kind of try to stay on track here.

5 This is a meeting of the special Reauthorization  
6 Committee of the Board of Directors of the Legal Services  
7 Corporation, and since there have been some changes to the  
8 membership of the committee, I want to just confirm my  
9 understanding of who is on this committee, and if anyone has  
10 a different recollection, now is the time to try to figure  
11 that out.

12 In addition to myself as chairman, Mr. Dana, Mr.  
13 Kirk, Ms. Pullen, and Mr. Shumway. Does anyone think they  
14 are on this committee that I didn't name, or is surprised to  
15 find that they are on this committee?

16 (No response.)

17 CHAIRMAN UDDO: All right, then, that is what we  
18 will work with.

19 The purpose of meeting today was twofold. One was  
20 to get caught up on where we stand with reauthorization, now  
21 that Congress is back in session. And we really never had a  
22 meeting after the House committee did its work last year.

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1 CHAIRMAN UDDO: I have a motion from Mr. Shumway.  
2 Is it seconded?

3 MR. DANA: Second.

4 CHAIRMAN UDDO: All right, moved and seconded. Is  
5 there any discussion?

6 (No response.)

7 CHAIRMAN UDDO: All those in favor of the approval  
8 of the agenda, signify by saying aye.

9 (A chorus of aye.)

10 CHAIRMAN UDDO: Opposed?

11 (No response.)

12 CHAIRMAN UDDO: The ayes have it. The agenda is  
13 approved.

14 Second, we do have minutes in the committee book  
15 that was distributed from our last meeting, which was June  
16 24th, 1991. If you have had a chance to look those over, I  
17 would appreciate any corrections or additions or omissions,  
18 and if there are none, I would entertain a motion to approve  
19 the minutes as published.

20 M O T I O N

21 MR. DANA: So moved.

22 CHAIRMAN UDDO: The hesitation obviously is because

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1 most people didn't read the minutes, and they are afraid to  
2 go on the record as approving. Mr. Dana moves the approval  
3 of the minutes.

4 MR. KIRK: I read them. I read them. I will  
5 second.

6 CHAIRMAN UDDO: All right. Mr. Dana has moved the  
7 approval of the minutes, seconded by Mr. Kirk. Any  
8 discussion?

9 (No response.)

10 CHAIRMAN UDDO: All those in favor of approving the  
11 minutes as written, signify by saying aye.

12 (A chorus of aye.)

13 CHAIRMAN UDDO: Opposed?

14 (No response.)

15 CHAIRMAN UDDO: The ayes have it. The minutes are  
16 approved.

17 Our third agenda item is the consideration of  
18 comment of the inspector general regarding proposed  
19 reauthorization legislation for the corporation. Mr.  
20 Quatrevaux has given us a transcript of his written  
21 testimony, what I assume will be his testimony.

22 I understand it was given to the IG Committee

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1 yesterday, so some of you have heard it in detail. What I  
2 have asked him to do this morning is to give us the  
3 highlights, and I would ask the members of the committee who  
4 have not heard his comments to read his written comments -- I  
5 assume these have been made available for the public to  
6 examine -- and at a future meeting, if there is any public  
7 comment or reaction to your thoughts or concerns, we will  
8 take it at that time.

9           And I think, in fact, the committee is not going to  
10 do anything with it today, either, so we will receive it  
11 today and have some time to read it over and think about it  
12 and, at a future meeting, decide whether we want to amend any  
13 of our proposals to Congress to accord with your comments,  
14 which, of course -- as I understand it, you can make these  
15 comments to Congress on your own. They don't have to come  
16 through the board. Mr. Quatrevaux.

17           MR. QUATREVAUX: Thank you, Mr. Chairman. That is  
18 correct. I will satisfy the reporting requirement to  
19 Congress by providing these same views to the committees  
20 having cognizance of IG operations as well as the House  
21 Judiciary Committee and subcommittee from which the  
22 legislation originated.

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1           Let me preface my comments by observing that we  
2 have not, in the five months that I have been at LSC, we have  
3 not audited any grantees, nor have we audited Mac's  
4 operations. Therefore, we can't really speak to specifics,  
5 and the comments I am making are based on principles of the  
6 IG function, and the investigative and audit professions.  
7 Those serve as the basis for my remarks.

8           Also, my comments are limited to the impact on  
9 economy and efficiency and the prevention and detection of  
10 fraud, waste, and abuse. Policy issues are beyond the IG's  
11 authorized areas.

12           In general, the proposed Act, House Resolution  
13 2039, ignores the IG Act in spirit and letter, which is not  
14 surprising, because the IG Act came much later than the  
15 original LSC Act, and I think H.R. 2039 is based primarily on  
16 the original Act.

17           The proposed Act seeks to protect information from  
18 the corporation and from the IG. It establishes detailed  
19 guidelines for the conduct of investigations, and specifies  
20 the manner in which monitoring is to be conducted. It also  
21 perpetuates provisions in the original LSC Act that define  
22 and constrain audit policy.

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1           The IG Act, as you know, authorizes IGs to have  
2 access to all documents, essentially without limitation. The  
3 IG Act also establishes an IG responsibility to provide  
4 policy direction for and to conduct, supervise, and  
5 coordinate audits and investigations, and in doing so, to  
6 comply with standards established by the Comptroller General  
7 of the United States.

8           I won't be providing any substitute language. My  
9 original reason was that the subcommittee report of the  
10 proposed Act is not entirely clear as to what provisions of  
11 the original Act remain unaffected, and it also introduces  
12 the term, "independent evaluations", which could not readily  
13 be explained by subcommittee staff. And finally, I have  
14 really come to believe that substitute language is probably  
15 best developed elsewhere.

16           The foremost area of conflict between the two  
17 pieces of legislation, that is, the IG Act and H.R. 2039, is  
18 in the access to information area. That has three  
19 components: rules of ethics and professional  
20 responsibilities; privacy provisions; and recordkeeping.

21           With regard to rules of ethics and professional  
22 responsibilities, the proposed Act in nine places makes

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1 reference to the rules of ethics and professional  
2 responsibilities that are applicable in the local  
3 jurisdiction.

4 The Comptroller General audit standards state that  
5 the audit organization should be free from impairment, and  
6 goes on to give as an example of an audit impairment denial  
7 of access to sources of information such as books, records,  
8 and supporting documents.

9 From my perspective, the issue is to what degree  
10 can the LSC Inspector General satisfy the statutory  
11 requirements of the IG Act under the conditions that are  
12 likely to result from the proposed Act?

13 The current LSC Act denies access to records  
14 subject to attorney-client privilege. The proposed Act  
15 broadens those restrictions to include the rules of ethics or  
16 professional responsibility that apply in the jurisdiction  
17 where such reports are maintained.

18 My understanding is that the primary difference  
19 between the two involves access to client names. The courts  
20 have ruled that client names ordinarily are not considered to  
21 be protected by attorney-client privilege, and that the  
22 privilege itself has been narrowly interpreted because it

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1 obstructs the uncovering and discovery of the truth.

2 I am also told that courts have ruled that the  
3 attorney-client privilege does not extend to checks and other  
4 negotiable instruments, nor to related books, journals, and  
5 records. The proposed legislation, however, brings to bear  
6 Canon 4 of the Code of Professional Responsibility, which  
7 obligates lawyers to preserve confidences and secrets, and  
8 four state bar associations have issued opinions that client  
9 names may not be disclosed because they are, in fact, secrets  
10 without the informed consent of the client.

11 The ABA has ruled that client names may not be  
12 revealed to state and federal auditors, to private research  
13 groups, nor even to the Legal Aid Societies' own local  
14 governing boards for the purpose of determining if the  
15 board's policies are being carried out. The ABA has ruled,  
16 however, that the confidences and secrets may be revealed  
17 when required by law or court order.

18 As a practical matter, the proposed amendment's  
19 specification of local, as opposed to national, rules means  
20 that its interpretation cannot be determined prior to rulings  
21 that have not been sought yet. In addition, the ultimate  
22 effect of a designated federal operation attempting to

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1 provide oversight according to at least 50 different sets of  
2 rules is to increase costs and reduce the effectiveness of  
3 that oversight.

4 Can a grant recipient be audited under the proposed  
5 legislation? The case of Spokane Legal Services provides  
6 insight, and the following information was taken from  
7 corporation correspondence. I have no firsthand knowledge.

8 In advance of a monitoring visit, the corporation  
9 requested and was denied access to 13 types of original  
10 documents. These are fairly routine records that are  
11 routinely audited, checks, canceled checks, checkbooks,  
12 voided checks, et cetera.

13 Spokane Legal Services refused to provide any  
14 documents containing client names except in redacted form,  
15 and based the refusal on the view that client names were  
16 secrets under the Code of Professional Conduct.

17 The corporation began to take action to suspend  
18 funding based on failure to comply with grant assurances to  
19 provide access to such information. Negotiations ensued.  
20 Funding continued, and the monitors returned six months  
21 later. They were given access to coded documents in some  
22 cases, in other cases relied on the auditee's staff reading

1 to them from affected documents.

2 The corporation attempted to recoup the costs  
3 incurred as a result of the original denial, but failed, and  
4 that payment and the determination of the protocol for the  
5 next monitoring visit are still being negotiated today, more  
6 than two years after the original denial.

7 It seems clear to me that the proposed Act will  
8 obligate all grant recipients to deny the corporation and its  
9 IG access to any records containing client names, so no audit  
10 can be conducted in accordance with Comptroller General  
11 standards, because the financial records make no sense  
12 without the tie to the client on which the activity or  
13 transaction is based, and no coding scheme can adequately  
14 substitute, because there would be no assurance of the  
15 integrity of that process.

16 The second subarea of access to information is  
17 privacy protections. The proposed Act incorporates what is  
18 generally referred to as the Privacy Act, and it also  
19 incorporates the privacy protections of state law, and, just  
20 like the rules of ethics and professional responsibilities,  
21 this introduces local variations into a national program,  
22 with a loss of effectiveness and efficiency. Also, state law

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1 is subject to change at any time, and without regard to the  
2 intent of the Congress in this area.

3 The immediate effect of these proposals is to deny  
4 access of the corporation and its IG to routine personnel  
5 data, such as time and attendance records, unless, in the  
6 terms of H.R. 2039, other external evidence indicates that  
7 the records are necessary to an investigation of a likely  
8 pattern of discrimination, non-compliance, or poor  
9 performance.

10 Because of their vulnerability to fraud and abuse,  
11 payroll and travel are traditional areas of significant  
12 auditor attention. The ultimate effect of these restrictions  
13 is to prevent standard audit tests of agreement of personnel  
14 and payroll data and the verification of paychecks and travel  
15 vouchers.

16 The last subarea of access to information is  
17 recordkeeping. The proposed Act eliminates the current  
18 requirement for recipients to account for and report funds  
19 from other sources as separate and distinct from federal  
20 funds. This provision will allow commingling of funds, a  
21 practice normally associated with criminal activity and, I am  
22 told, prohibited by the rules of ethical conduct.

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1           It will facilitate the loss of identity of funds,  
2 prevent audit of those funds, and foster misappropriation,  
3 and it will make irrelevant the proposed Act's laudable  
4 provisions to protect against theft and fraud.

5           The overall impact of the denial of access to  
6 information is that the overwhelming bulk, \$338 out of \$350  
7 million, of '92 appropriations that go to recipients will be  
8 beyond accountability and oversight, and without the ability  
9 to audit recipients there will be little deterrent to fraud.  
10 In any population there are those whose decision in that  
11 regard is governed by their perception of the probability of  
12 detection.

13           Preventing audit coverage by denying access to  
14 financial data will likely increase the incidence of fraud,  
15 reduce funds, and thus Legal Services to the poor.

16           The second area of conflict with the IG Act is in  
17 the area of investigations. The proposed Act specifies  
18 various procedures. It goes on to set time limits, and that  
19 sort of thing, for initiating or rejecting an investigation,  
20 as well as completing it.

21           It appears from the context within the Act that the  
22 procedure of this sort of investigation is intended to apply

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1 to matters of non-compliance, and if that is the focus, then  
2 this problem can be remedied fairly easily by clarifying the  
3 distinction.

4 Most important, this section of the proposed Act as  
5 it talks to investigations should specifically exempt IG  
6 investigations from its provisions, and an additional  
7 enhancement would be for the proposed Act to require both  
8 corporation and recipient employees to report suspected  
9 fraud, waste, or abuse to the Office of the Inspector  
10 General.

11 The proposed Act, in the area of monitoring, is  
12 quite specific. It provides characteristics of standards and  
13 procedures for the performance of monitoring, as well as  
14 criteria by which performance shall be measured. The  
15 requirement to cooperatively develop with grant recipients  
16 and other external groups the performance criteria by which  
17 they will be evaluated is extraordinary, as is the degree of  
18 specificity in the proposed Act.

19 The impact of the general approach in this section  
20 of the proposed Act is likely to be continuous contention  
21 over evaluation criteria, and no criteria at all.

22 As I mentioned earlier, the term "independent

1 evaluations" appears in the section on monitoring, and there  
2 is no definition of the term, and it is important that that  
3 term be defined.

4 With regard to audits, the proposed Act maintains  
5 the current audit requirement for the corporation to have an  
6 annual financial statement audit, availability of corporate  
7 books, and the submission of audit reports to GAO. It  
8 specifies the use of generally accepted audit standards.

9 The proposed Act does not change the current Act,  
10 either, in the requirement that says the corporation shall  
11 conduct or require recipients to arrange for a financial  
12 audit.

13 The IG Act, as said earlier, makes the IG  
14 responsible for audit policy, and these are all elements of  
15 policy. The current LSC Act predates the IG Act by 14 years,  
16 and I think the reauthorization bill presents an opportunity  
17 to align the two statutes in this regard.

18 For your information, the IG plans no change in the  
19 annual financial statements of the corporation, but would  
20 probably like to impose more stringent audit standards than  
21 the ones in effect now. Our office also plans to assess the  
22 economy and effectiveness of the current audits of grant

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1 recipients, and may wish, as a result of that assessment, to  
2 change policy or practice with respect to various aspects.

3           The current Act could be interpreted as limiting  
4 such changes to audit policy, and thus would be in direct  
5 conflict with the IG Act.

6           So, how do we resolve this sort of problem, this  
7 conflict? The proposed Act's amendments to expand the  
8 limitations on access to information, specify standards and  
9 procedures for monitoring, investigating, and evaluating  
10 performance, all appear to have their source in the past.

11           Some grant recipients and their representatives  
12 believe that the monitoring function was abused, that  
13 monitors were not objective, and that the process was  
14 punitive and driven by ideology. Whether the perception is  
15 accurate is irrelevant, in that it underlies the controls in  
16 the proposed legislation.

17           H.R. 2039, intentionally or otherwise, seeks to  
18 minimize this perceived problem by impairing the  
19 corporation's capability to perform monitoring and,  
20 incidentally, audits. There is a better way, in my view, and  
21 it is to rely on the inspector general system. We have the  
22 responsibility to conduct audits of the corporation's

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1 activities, and we intend to audit the monitoring function.

2 We also have the responsibility to provide Congress  
3 with an independent view of the extent to which LSC officials  
4 are faithfully, efficiently, and effectively carrying out  
5 their responsibilities. We have the responsibility to  
6 identify management deficiencies, excessive regulation, and  
7 any abuse of authority.

8 In my view, reliance on the IG system and the  
9 Comptroller General's standards would provide more effective  
10 protection against the perceived abuse than any set of static  
11 controls, and it will do so without compromising the means  
12 for preventing and detecting fraud.

13 Therefore, I would recommend to you and to the  
14 Congress that this legislation be amended to, one, recognize  
15 the oversight role of the IG; two, require recipients to  
16 provide access to all financial records, including client  
17 names, and, failing that, there should be no widening of the  
18 current restrictions on access which are based on attorney  
19 client privilege limitation that is in the current Act;  
20 three, prohibit the commingling of funds from multiple  
21 sources; and, four, specify that audits will be conducted as  
22 determined by the IG in accordance with the Inspector General

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1 Act.

2           There are two competing interests here, and  
3 Congress may decide in favor of the attorney's professional  
4 responsibilities. If that is the case, then so be it, but in  
5 that case, I would recommend that the LSC Reauthorization Act  
6 of 1992 be amended to explicitly state these limitations on  
7 the duties of the LSC Inspector General. Otherwise, one  
8 statute will prevent me from performing the duties required  
9 by another.

10           CHAIRMAN UDDO: Thank you, Ed. Are there any  
11 questions from members of the committee? Mr. Dana? Let me  
12 first say -- I didn't put this on the record -- the committee  
13 members present are Mr. Dana, Mr. Shumway, Mr. Kirk, and  
14 myself, and board members present currently are Ms. Wolbeck  
15 and Mr. Hall, as well as the president, Mr. O'Hara.

16           Mr. Wittgraf has been in and out, but currently he  
17 is not in the room with us. Mr. Dana?

18           MR. DANA: Thank you, Mr. Chairman. It would be  
19 very, very helpful to me in really understanding the points  
20 you made to have the version of what you think to be the  
21 committee bill 2039 in hand, because you make reference to  
22 page references. I have a version of the bill that is -- it

1 is the only one I have, and it doesn't help. It doesn't  
2 read. And so --

3 MR. QUATREVAUX: Okay. I'm not surprised.

4 MR. DANA: Is it possible what you have is the  
5 subcommittee bill with amendments attached to it?

6 MR. QUATREVAUX: That's quite possible. My source  
7 of information, my source of these documents is Mr. Boehm,  
8 who performs the legislative liaison.

9 CHAIRMAN UDDO: Mr. Boehm could probably answer the  
10 question.

11 MR. BOEHM: Yes, if I can address that, there is at  
12 the present time no fully printed version of the committee-  
13 passed bill. What happened in committee was, they took the  
14 subcommittee bill, voted on a series of amendments -- I  
15 believe it was 18 -- and has not yet printed it. One of the  
16 reasons they haven't printed it is, they haven't done their  
17 committee report that will be issued probably in mid-March.  
18 The committee is working on that now.

19 And so, most of the versions you will see -- and I  
20 think, Howard, the one you have, I think, has a July 16th  
21 date on it. I think that is the subcommittee bill, but that  
22 is substantially what came out of committee. The committee

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1 did not change a lot that came out of subcommittee.

2 A better way to cite it might be by section, and in  
3 the comparison that you have that we handed out this morning,  
4 the 31-page comparison, it compares four different points of  
5 reference. It takes the original Act --

6 MR. DANA: I am not interested in that at this  
7 time. I am interested in understanding the IG's comments,  
8 which relate to a version of the document, and I need the  
9 version of the document to understand his comments. That is  
10 all I am saying.

11 MR. QUATREVAUX: I will provide you and the other  
12 committee members and board members with the version from  
13 which I was working, and as soon as the committee report  
14 comes out I will be in a position to cite that.

15 CHAIRMAN UDDO: Any other questions from members of  
16 the committee? Board members?

17 (No response.)

18 CHAIRMAN UDDO: Ed, let me ask you a question. Do  
19 you think that this committee ought to play a role in this,  
20 or do you think this is something that you should, as you  
21 will, send your comments directly to Congress? And I'd like  
22 the committee's thoughts on this. Or is this something that

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1 we should take into consideration in our role as the  
2 Reauthorization Committee?

3 MR. QUATREVAUX: I think there are two paths here.  
4 One is from my office directly to the Congress, with  
5 information, of course, to the board. And the second is to  
6 you, and I think you should take these comments as providing  
7 strategic direction to the corporation, you take them into  
8 consideration, and you accept, modify, or reject them as you  
9 see fit in an overall sense.

10 CHAIRMAN UDDO: Okay. Any other comments or  
11 questions?

12 (No response.)

13 CHAIRMAN UDDO: Thank you, Ed.

14 MR. SHUMWAY: Mr. Chairman, do we have to pass on  
15 his proposed amendments, then, to the authorization?

16 CHAIRMAN UDDO: No, I think that what we should do  
17 is, since we just got the written comments, have occasion to  
18 read over them, and at a future meeting, if any member of the  
19 committee feels that we should endorse or not endorse or do  
20 anything with his recommendations, I think we should do it as  
21 a committee at that time, because I frankly -- I wasn't at  
22 the meeting yesterday, and this is the first chance I've had

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1 to see it, and I think it would be premature to try to do  
2 anything now.

3 Plus, Ed is going to supply us with the version of  
4 the bill that he worked from so that we can line things up  
5 properly.

6 Mr. Dana, did you have a --

7 MR. DANA: No, I think that's -- my understanding  
8 of this process is that the House may pass a bill this spring  
9 some time, and then the process starts all over in the  
10 Senate. It may be that the most efficient use of the IG's  
11 time and our time would be to try and deal with problems in  
12 the Senate version and then get them ironed out in  
13 conference, and I think that we will have an opportunity, I  
14 trust, to do that.

15 When we understand what it is he is saying, I think  
16 we ought to do as he indicated, first, understand, and then  
17 reject or accept, and I do think that, for the record, the  
18 attorney client privilege is the client's privilege, not the  
19 attorney's. I think there may be some misperceptions.

20 CHAIRMAN UDDO: Well, then, I think that's the way  
21 we will proceed. Mr. Shumway, you are our expert on the  
22 legislative process. Do you agree with Mr. Dana that

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1 probably the best impact would be as the Senate gets involved  
2 in this?

3 MR. SHUMWAY: I'm not sure the impact is better  
4 there or in the House, but I think, given the time frame we  
5 are operating under, that is a good procedure, the way he  
6 outlined it and detailed it.

7 CHAIRMAN UDDO: All right. Well, then, we will  
8 proceed along those lines, and we will expect that Mr.  
9 Quatrevaux will send us the version of the bill that he  
10 worked from, so that we'll have some time between now and the  
11 next meeting, and it may be the meeting after that when we  
12 finally convene this committee again to make some decisions.  
13 We'll just have to see how things go.

14 Mr. Boehm, do you want to come to the table? The  
15 next agenda item is -- and I am looking in the wrong book  
16 -- is a report from Mr. Boehm with respect to the proposed  
17 reauthorization legislation. What I asked Ken to do -- and  
18 he did an excellent job in the handout that he distributed to  
19 you this morning.

20 I got this yesterday, and I think it's a very  
21 helpful side-by-side of the various topics of the  
22 reauthorization bill, with a comparison of the current LSC

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1 Act, and appropriations riders, the bill as passed, the Frank  
2 bill, the McCullom-Stenholm proposal that the committee  
3 considered in its deliberations, and then the final column is  
4 the board resolutions that were adopted in July of 1991.

5 Again, I think we're in a situation where we're not  
6 going to be able to do much with this today, because it's  
7 going to take some time for the committee members to read  
8 through it and get up to date on where the House bill is  
9 compared to what the board resolutions were, and other  
10 comparisons that they might want to make.

11 So, I think at a future meeting we will consider  
12 whether we want to do anything more as the bill goes through  
13 the House, or whether we want to wait until it begins to  
14 aborn in the Senate.

15 But I thought that aside from the substance of the  
16 bill, as he has presented in writing here, Ken could kind of  
17 give us an update on the process to this point, where we  
18 stand, and what he hears about the future of the bill in the  
19 near and far range.

20 Mr. Boehm?

21 MR. BOEHM: Thank you very much, Mr. Uddo.

22 The best guess, and at this point that's all it is,

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1 for when the bill will be considered at the full House floor,  
2 having passed the Judiciary full committee last summer, is  
3 late March at the earliest.

4 Now, part of the reasoning in that is, there has  
5 not been a committee report yet, as we were just discussing.  
6 That's where the committee puts together some additional  
7 views, and the subcommittees contributing to that. And that  
8 comes from the folks on the committee staff. I have talked  
9 with Mr. Paul Drolet, who is counsel for the subcommittee.  
10 He works directly with Mr. Barney Frank on that, and it is  
11 his task to help put together that report.

12 So, his expectation is mid-March for a committee  
13 report, end of March at the earliest for full House  
14 consideration. It could easily go past that. I mean,  
15 following events on the Hill, there are a lot of fiscal and  
16 other budgetary legislative actions that could come over the  
17 next month or two, and that could very easily be put off, but  
18 at the earliest, it is expected the end of March, and that's  
19 the feeling around the Hill throughout. There has been no  
20 scheduling out of the Speaker's office, and that is the  
21 expectation.

22 In terms of what is going to happen, the feeling

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1 is, just to quickly recap, because it has been a little while  
2 since this has been addressed, there is a subcommittee bill,  
3 and that is the H.R. 2039. That went up to full committee.  
4 The full committee passed it with some amendments, but most  
5 of the amendments that were covered at the full committee  
6 were rejected, so there were relatively minimal changes at  
7 that level.

8           They have not yet produced a final version of the  
9 bill. Part of the confusion with respect to the bill is,  
10 everyone is working from a subcommittee version, and then  
11 trying to incorporate into that the amendments themselves,  
12 and that -- each amendment refers to specific sections, and  
13 it's a very cumbersome process. That will come out when the  
14 committee report comes out.

15           The expectation is, since there was very little  
16 change at the committee level, when you get to the floor  
17 there won't be an open rule. An open rule is when the Rules  
18 Committee says a piece of legislation goes on the floor, and  
19 it is very open for amendments. Anybody can come in and  
20 propose any sort of amendment. But it will be close to it in  
21 the sense that the leadership proposed or promised last year  
22 to Mr. Stenholm that there would be ample opportunity to

1 amend.

2 Part of the reasoning is this. Legal Services  
3 Corporation originally as an Act was enacted in 1974. Three  
4 years later it was reauthorized for the first and only time,  
5 and that was good until September of 1980. Since September  
6 of 1980, we have been an unauthorized agency. We have not  
7 had any authorizing legislation.

8 That is not a record, but it's close to it, and  
9 because it has been so long since the full House has really  
10 had a chance to define the central document that defines our  
11 corporation, the normal procedure in the House would be to  
12 allow a lot of input from the floor.

13 How much input right now is conjectural. The  
14 expectation was 8 to 12 amendments may be allowed from the  
15 floor, and that is based, in part, on what happened at the  
16 subcommittee and the committee level, but that is not to say  
17 that you are going to have the same amendments.

18 There is talk about a number of other amendments,  
19 and some of the factors that come into this actually play off  
20 the statement of Administration policy, which -- you should  
21 have received a copy in the mail about a week ago. That was  
22 the document issued June 25th of last year by the

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1 Administration, a two-page document which discussed H.R.  
2 2039, the LSC Act.

3 And in that, they said that there were three or  
4 four concerns of the President, and that this may result in a  
5 veto, and the way that it is done is, the President's senior  
6 advisors would recommend a veto if some of these proposed  
7 changes would not take place, and they went through the  
8 different areas in which they had disagreement with 2039, and  
9 you may want to take a look at that if you have it in your  
10 file.

11 One of them was on the abortion language. And this  
12 is one thing where there may be several amendments coming  
13 from different directions from the House floor. The  
14 objection that the Administration has to H.R. 2039, the  
15 committee-passed bill, is that -- two real objections. One  
16 is, it changes the Act. In the Act, you could not use  
17 private funds for abortion, because private funds had similar  
18 restrictions to the federal funds, and that would be struck  
19 out if the committee-passed version became law.

20 The second objection noted in the statement of  
21 Administration policy is that the various appropriations  
22 riders which have come to be almost boilerplate in the last

1 five or six years include fairly thorough restrictions  
2 against abortion-related activity.

3 The various loopholes, if you will, got tightened  
4 up in the early eighties. Senator Gordon Humphrey had  
5 originally proposed it, and the net result was that abortion-  
6 related activities with federal funds were precluded.

7 The Administration supports taking that language  
8 that is passed routinely on the appropriations bill and  
9 incorporating it into the new Legal Services Corporation Act.  
10 That is not currently in the committee version, so that is  
11 one possible veto threat that would hang over the  
12 legislation.

13 According to the debate at the committee level, or  
14 I should say the subcommittee level, there is also a school  
15 of thought in the House that says there should be no  
16 restrictions whatsoever with respect to abortion on federal  
17 funds, private funds, any funds, and I believe Mr. Don  
18 Edwards of California, who is a member of the subcommittee,  
19 has suggested at that point that there may be an amendment  
20 from the floor saying that all those restrictions should be  
21 removed.

22 So, there is a possibility of several abortion-

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1 related amendments going on the House floor with respect to  
2 our legislation and, as I say, one of the considerations that  
3 is being weighed by people in the House is the veto threat.

4           Having been so long in bringing Legal Services even  
5 to this stage of the reauthorization process, if there is a  
6 veto threat, there are some that maybe want to determine a  
7 way to avoid that, and there has been some talk of a  
8 consensus position which would take the current status quo  
9 situation with respect to abortion-related activities and  
10 enact that into law, and that is still a possibility, but no  
11 specific proposal.

12           In terms of when the amendments are to be expected,  
13 it is my understanding that they are working on them now. It  
14 is not too hard to determine what they might be, because we  
15 have the history of the amendments that were given at  
16 subcommittee and the history of the amendments given at full  
17 committee. They are substantially the same.

18           In the analysis that you have, the side-by-side  
19 analysis, since everything has been evolving on this, Frank's  
20 proposals have evolved quite a bit from 1990, when he had  
21 taken one position, to 1991, where in a number of different  
22 issues, use of federal waste, fraud, and abuse statutes, and

1 so forth, he has moved towards some restrictions that he  
2 didn't previously favor.

3 At the same time, Mr. McCollum has developed his  
4 position, and to give you an example, he had dropped a bill  
5 in early 1991 called McCollum-Stenholm, a bill that captured  
6 all of his views, and then since changed that, and when his  
7 amendments were offered at subcommittee and committee, they  
8 were a little different.

9 The version you have before you in the side-by-side  
10 are based on the amendments offered at subcommittee and  
11 committee level, because they are more recent, and everybody  
12 is rethinking, and all of the principals involved are trying  
13 to come up with something that will pass. It's almost a  
14 useless exercise if something doesn't pass and become law.

15 So, if you will, at the risk of oversimplifying it,  
16 the game, or the strategy is for the various respective  
17 points of view to come up with something that they feel will  
18 capture the center ground politically, will pass, will not be  
19 subject to veto, will become the law that will then guide  
20 Legal Services probably into the next century, if the last 10  
21 years are any indication as to how fast we can get a  
22 reauthorization through.

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1           So, that is what is happening at the House level.  
2           The Senate, as was pointed out, has done nothing yet. There  
3           have been no bills introduced, either last year or this year.  
4           The committee that handles it, Senator Kennedy's committee,  
5           which is the same committee that has oversight and looks into  
6           confirmation and so forth, has not scheduled any hearings,  
7           and in conversations with the staff at the Senate, it is  
8           openly said that they are waiting to see what the House does.

9           The expectation is that the House will  
10          substantially change at the floor level, which is the next  
11          level coming up, what has happened in committee, but nobody  
12          is going to venture a guess as to how.

13          But when you have a relatively open opportunity to  
14          amend, with people coming in from all sides to amend a  
15          program that hasn't been really considered by the full House  
16          since 1977, the expectation is, there will be amendments from  
17          every which way, and the Senate is not going to second guess  
18          what is going to happen. They are going to wait and see what  
19          happens in the House, and then they will take it up.

20          Here is one other thing to keep in mind that could  
21          have a bearing on what happens. The reason it can be  
22          considered by the House this year, and was passed by the full

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1 committee last year, is that we are in the same Congress. We  
2 are in the second session of the same Congress.

3 Come the end of this year, if the bill has not  
4 passed the Senate and gone on to the President, it expires,  
5 and the process has to begin anew with considerations at the  
6 subcommittee level, at the House, and so forth. Legislation,  
7 generally speaking, is easier to stop in the Senate than the  
8 House, for a variety of reasons. You have the filibuster,  
9 for example, and there are other ways. It is easier to stop  
10 something than to get something through.

11 If a piece of legislation is too unacceptable, for  
12 lack of a better phrase, to one camp or another, just to put  
13 it in the most general terms, then it may be subject to delay  
14 or stoppage in the Senate, and only something that is more of  
15 an acceptable compromise is going to be able to clear all  
16 those hurdles and get to the President's desk this year.

17 That is further complicated by the fact that you  
18 have an election year, and not just that that raises the  
19 specter of politics, and there are a number of controversial  
20 issues involved in Legal Services, but it also has some play  
21 in the sense that you have a schedule you are dealing with,  
22 and in election year, traditionally elected members of the

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1 House and Senate want to get back and campaign and meet the  
2 constituents, and so forth.

3 So, that means we may have less time to consider  
4 it, and the fact that you've got these various controversial  
5 amendments is not something guaranteed to speed it on its  
6 way, to maybe understate it.

7 So, that is the quick overview of what is happening  
8 on the Hill, and in terms of, as I say, in terms of overall  
9 scheduling, we can look at the end of March, probably at the  
10 earliest, and more likely, and this is based on the views of  
11 the same staffers over in the House, more likely it would  
12 slip into April at the earliest, just because the schedule is  
13 quite busy.

14 And that's it.

15 CHAIRMAN UDDO: Thank you, Mr. Boehm. That was  
16 very informative, in fact, your usual thorough presentation,  
17 and done, as they said, without a net. You didn't even look  
18 at notes. Does any member of the committee have questions  
19 for Mr. Boehm?

20 (No response.)

21 CHAIRMAN UDDO: Any members of the board? Mr.  
22 Shumway?

1 MR. SHUMWAY: One challenge I see of a bill like  
2 this is the scheduling of floor time. If, indeed, the bill  
3 is going to come before the House on an open rule, I would  
4 anticipate, instead of 10 or 12 amendments, there are going  
5 to be 50 or 60, with a bill like this.

6 MR. BOEHM: There are rumblings, yes.

7 MR. SHUMWAY: They may not all be offered, but  
8 nevertheless, members will poise and threaten to offer that  
9 many amendments, and that poses a problem to the Speaker in  
10 terms of scheduling the business of the House, because  
11 obviously, to accommodate that many amendments, it would  
12 require more than one day for consideration, and there are  
13 bills that have higher priority, appropriations bills and  
14 things of that sort that must clear.

15 And I would just think, therefore, that one of the  
16 big challenges we face in the House would be actually finding  
17 floor time to consider this bill. If it were to be done  
18 under closed rule or a semi-closed rule, where there were not  
19 any and all amendments to be any offered, then I think that  
20 emotions could range so high that that kind of rule could be  
21 defeated, and that would be a waste of time as well.

22 So, those are possibilities that have to be

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1 considered.

2 MR. BOEHM: Yes, the best guess is that it wouldn't  
3 be a totally open rule, but it will be semi-open, semi-  
4 closed. The promise, if you will, that was given from the  
5 leadership to Mr. Stenholm, who is one of the key proponents  
6 of the McCollum-Stenholm legislation, was that given the fact  
7 it has been so long a period of time since it was considered,  
8 there would be ample opportunity.

9 And ample opportunity is defined roughly as maybe 8  
10 to 12 amendments, but even so, as you know, that could easily  
11 take a full day or more, and there are people out there that  
12 didn't participate at the committee level that have  
13 legislative interests.

14 There are all sorts of other -- you've got the drug  
15 issue, you've got -- this being an election year, there  
16 aren't as many opportunities for many Congressmen to maybe  
17 grab national attention and get a piece of legislation  
18 considered, and if they can get something passed with respect  
19 to Legal Services because they have an opportunity to step  
20 forward and offer something, that is a very enticing  
21 opportunity.

22 CHAIRMAN UDDO: Do Congressmen do things like that?

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1 MR. SHUMWAY: No, no, no.

2 MR. BOEHM: It has been known to happen. It has  
3 been known to happen, and, as I say, the drug issue is one.  
4 There are other -- I mean, Legal Services is blessed, or  
5 cursed, or whatever, as being a big basket that has lots of  
6 different issues in it, and not just -- I mean, we are  
7 considering the IG legislation and so forth. There is no end  
8 of other issues that can come up in terms of restricting  
9 subject area. There are lots of things.

10 CHAIRMAN UDDO: It seems pretty clear that if we  
11 are going to have reauthorization, it is going to take an  
12 extraordinary amount of cooperation among a wide variety of  
13 groups who have been interested in Legal Services over the  
14 years, and maybe that is too hopeful and optimistic, but  
15 maybe there are things that have happened with this board  
16 that will set the stage for that kind of cooperation, which I  
17 would hope and like to see happen. I think we need a  
18 Reauthorization Act. So, we hope for the best.

19 Any other comments or questions?

20 (No response.)

21 CHAIRMAN UDDO: Are there any comments or questions  
22 or observations from the public? Does anyone have anything

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1 they want to present us with on reauthorization?

2 (No response.)

3 CHAIRMAN UDDO: Well, in that case, thank you, Ken.  
4 You really did an outstanding job. That was a tremendous  
5 amount of work in a relatively short period of time, and I  
6 appreciate it, and we will put it all to good use.

7 Before I entertain a motion to adjourn, let me just  
8 ask the members of the committee, if they would, and I don't  
9 know if we'll have a meeting the next meeting or the meeting  
10 after, but soon I'd like to have another meeting of the  
11 committee for the purposes of addressing the two things that  
12 came before us today.

13 So, if you would, please familiarize yourself with  
14 Mr. Quatrevaux's comments and with the analysis that Mr.  
15 Boehm did, so that when we meet again, if there are things  
16 that we feel we need to do, we will be well versed enough to  
17 do that.

18 Any other comments from members of the committee?  
19 The board?

20 (No response.)

21 CHAIRMAN UDDO: Then I will entertain a motion to  
22 adjourn.

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## M O T I O N

1  
2 MR. SHUMWAY: So moved.

3 CHAIRMAN UDDO: Seconded? Does anyone second it?

4 MR. DANA: I will.

5 CHAIRMAN UDDO: All those in favor of adjourning,  
6 please signify by saying aye.

7 (A chorus of aye.)

8 CHAIRMAN UDDO: Opposed?

9 (No response.)

10 CHAIRMAN UDDO: We stand adjourned. Thank you.

11 (Whereupon, the committee was adjourned.)

12 \* \* \* \* \*

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