

**RETURN TO CORPORATION
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LEGAL SERVICES CORPORATION
BOARD OF DIRECTORS MEETING

May 21, 1990

9:00 a.m.

Hyatt Regency Crystal City
2799 Jefferson Davis Highway
Potomac Rooms III & IV
Arlington, Virginia 22202

BOARD MEMBERS PRESENT:

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

STAFF PRESENT:

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

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P R O C E E D I N G S

9:35 a.m.

1
2
3 CHAIRMAN WITTGRAF: Our regularly scheduled meeting of
4 the Board of Directors of the Legal Services Corporation will
5 come to order.

6 At this time it is the chair's pleasure and privilege
7 to recognize Father James Watkins of St. Ann's Church of
8 Washington, D.C., for the purposes of his sharing an invocation
9 with us.

10 Father Watkins.

11 (The Invocation was given.)

12 CHAIRMAN WITTGRAF: Thank you, Father.

13 At this time we have before use the agenda for today's
14 meeting. The chair is prepared to entertain a motion for the
15 adoption or approval of the agenda.

16 MS. PULLEN: Mr. Chairman?

17 CHAIRMAN WITTGRAF: Ms. Pullen.

M O T I O N

18
19 MS. PULLEN: I have an amendment to the agenda, Mr.
20 Chairman, if I may. I move to insert between items 4 and 5,
21 consideration of a resolution related to the reform legislation
22 pending in the United States Congress.

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1 CHAIRMAN WITTGRAF: There is a motion to amend the
2 agenda as indicated by Ms. Pullen, is there a second?

3 MR. COLLINS: Second.

4 CHAIRMAN WITTGRAF: It's been moved and seconded.
5 Discussion?

6 (No response.)

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

9 (A chorus of ayes.)

10 Opposed nay.

11 (No response.)

12 The ayes appear to have it, the ayes do have it.

13 MR. COLLINS: Mr. Chairman?

14 CHAIRMAN WITTGRAF: Mr. Collins.

15 M O T I O N

16 MR. COLLINS: Mr. Chairman, with your permission I
17 would like also to propose an amendment to the agenda to be
18 added immediately after the motion of Ms. Pullen. I'll read it
19 to you while we're in the process of having copies made.

20 The motion is concerning drug related cases in public
21 housing. Whereas the Board of Directors of the Legal Services
22 Corporation is concerned about reports of LSC recipients

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1 representing persons involved in drug-related eviction
2 proceedings involving publicly funded housing, be it resolved
3 that the staff of the Legal Services report to the board with
4 recommendations concerning such cases.

5 Be it further resolved, that LSC recipients not take
6 any new such cases until this board has taken a position on this
7 matter.

8 CHAIRMAN WITTGRAF: The amendment to the agenda is to
9 add to the agenda an item 4b for the purpose of considering the
10 resolution just read by Mr. Collins, is there a second to the
11 motion to the amendment to the agenda?

12 MS. PULLEN: Second.

13 CHAIRMAN WITTGRAF: There is a second. Is there
14 discussion?

15 MR. ERLENBORN: Mr. Chairman?

16 CHAIRMAN WITTGRAF: Mr. Erlenborn.

17 MR. ERLENBORN: I understand the reason for offering
18 the resolution. I wonder, though, that if it would not be
19 better for the board to have further advance notice of this sort
20 of a resolution coming up so that interested parties may be able
21 to express their opinion to the board, rather than to have it
22 added to the agenda at the last minute.

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1 MR. COLLINS: Mr. Chairman.

2 CHAIRMAN WITTGRAF: Mr. Collins.

3 MR. COLLINS: At the last meeting there was
4 considerable discussion of this, as you recall, including the
5 comments about the position of Congressman Atkins and others
6 objecting to this. I understand also that there is very great
7 interest in this in the Department of Housing and Urban
8 Development.

9 I detected no reticence on the part of any persons
10 involved in any point of view here to express their opinion, and
11 I'm sure they'll have ample opportunity to do it.

12 CHAIRMAN WITTGRAF: Further discussion? Mr. Dana.

13 MR. DANA: Mr. Chairman, I will support this motion
14 because I think any member of the board can and should be able
15 to propose an item for discussion. I, too, am concerned that
16 these resolutions, not this resolution, John, but the prior
17 resolution that is on the agenda, has been the subject of
18 significant foreknowledge of some but not all members of the
19 board.

20 When we get to discussing that, I think that I'll have
21 more to say on that general subject, but I think John's request
22 is a good one and I would think that the likelihood of this

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1 board acting in a consensus, collegial way is enhanced if we can
2 not surprise each other just prior to the agenda.

3 CHAIRMAN WITTGRAF: Further discussion?

4 (No response.)

5 Hearing none, those in favor of the resolution -- the
6 motion to amend the agenda with item 4b, the consideration of
7 the second resolution, the one read to you by Mr. Collins,
8 please signify by saying aye.

9 (A chorus of ayes.)

10 Opposed, nay.

11 (No response.)

12 MR. ERLNBORN: No.

13 CHAIRMAN WITTGRAF: The ayes appear to have it, the
14 ayes do have it. The motion is adopted.

15 Further discussion regarding the agenda?

16 MR. DANA: Mr. Chairman.

17 CHAIRMAN WITTGRAF: Mr. Dana.

18 M O T I O N

19 MR. DANA: Would it be appropriate to move those
20 resolutions to a -- I guess my suggestion would be to move these
21 resolutions down on the agenda so that we can at least deal with
22 the items that we came here prepared to deal with. I think tat

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1 there may be extensive debate and discussion and amendments and
2 resolutions. I certainly have a significant number myself.

3 I think we could spend a whole day on this. I'm
4 prepared to do that and stay into the evening, but I know some
5 people have to leave and I guess my recommendation is to move
6 these down between 8 and 9.

7 CHAIRMAN WITTGRAF: Is tat a motion, Mr. Dana?

8 MR. DANA: It is.

9 CHAIRMAN WITTGRAF: Is there a second?

10 MR. ERLNBORN: Second.

11 CHAIRMAN WITTGRAF: It's been moved and seconded that
12 what the chair has tentatively identified as agenda items 4a and
13 4b be made agenda items 8a ad 8b. Is there discussion?

14 MR. COLLINS: Mr. Chairman.

15 CHAIRMAN WITTGRAF: Mr. Collins.

16 MR. COLLINS: I have no objection whatsoever to moving
17 it down on the agenda. However, it occurs to me that as I look
18 at the agenda, perhaps these two motions may have special
19 relevance to, for example, item number 7. The question comes
20 whether or not input from the board attitude and position on
21 these two should be placed on the table prior to our discussion
22 on item 7 or thereafter.

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1 MR. DANA: It's in part that very fact that I wanted
2 to put it after, because talking about what our responsibility
3 and our staffs responsibility, legal responsibility and lobbying
4 does relate to the first resolution, it may relate to the
5 second. I think it would be helpful to get that education first
6 and then deal with the specific after.

7 MS. PULLEN: Mr. Chairman.

8 CHAIRMAN WITTGRAF: Ms. Pullen.

9 M O T I O N

10 MS. PULLEN: I move to amend the motion to place these
11 items as items 7a and 7b, rather than after item 8.

12 CHAIRMAN WITTGRAF: Is there a second to that motion?

13 MR. COLLINS: The motion was to put it as 7a and 7b?

14 MS. PULLEN: Yes.

15 MR. COLLINS: I second that motion.

16 CHAIRMAN WITTGRAF: It's been moved and seconded that
17 the motion on the floor which is essentially to move the
18 resolutions now at agenda items 4a and 4b be moved to 8a and 8b.
19 The motion to that motion is to move them back to 7a and 7b.

20 That motion to amend the motion has been made and
21 seconded. Is there discussion?

22 (No response.)

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1 Hearing none, those in favor signify by saying aye.

2 (A chorus of ayes.)

3 Opposed, nay.

4 (A Chorus of nays.)

5 The chair is in doubt. Those in favor of amending the
6 motion will indicate aye on the call of the roll.

7 Mr. Collins.

8 MR. COLLINS: Aye.

9 Mr. Dana.

10 MR. DANA: No.

11 Mr. Erlenborn.

12 MR. ERLENBORN: No.

13 Mr. Guinot.

14 MR. GUINOT: Aye.

15 Mr. Hall.

16 MR. HALL: No.

17 Ms. Love.

18 MS. LOVE: Aye.

19 Mr. Molinari.

20 MR. MOLINARI: Aye.

21 Ms. Pullen.

22 MS. PULLEN: Aye.

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1 Mr. Suarez, absent.

2 Mr. Wittgraf, no.

3 Ms. Wolbeck, absent.

4 According to the chairs calculation, there are five
5 ayes and four nays. The motion is adopted. The motion offered
6 by Mr. Dana has been amended to move items 4a and 4b to items 7a
7 and 7b.

8 Is there further discussion on the motion as amended.

9 (No response.)

10 Hearing none, those in favor of the motion as amended,
11 please signify by saying aye.

12 (A chorus of ayes.)

13 Those opposed, nay.

14 (No response.)

15 The ayes appear to have it, the ayes do have it.

16 The chair has one concern here, and that is the
17 chair's at least verbal commitment of three weeks ago, April 30
18 at our last meeting, that we would allow adequate time to
19 discuss the matter of employment verification and accounting.
20 The terrain has changed in the three weeks the chair
21 acknowledges.

22 Even so, unless there is objection the chair asks

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1 unanimous consent to move what is item 8 for consideration
2 between items 4 and 5, or what the chair will call 4a. Is there
3 objection to that?

4 MS. PULLEN: I object, Mr. Chairman. I think that has
5 the effect of doing exactly the opposite of what the amendment
6 to the motion did.

7 CHAIRMAN WITTGRAF: There is objection.

8 MR. MOLINARI: Mr. Chairman.

9 CHAIRMAN WITTGRAF: Mr. Molinari.

10 MR. MOLINARI: I would just want to add that I agree
11 with Ms. Pullen, and I think that we've had two votes and I
12 think it would be well that we accept the majority and try to
13 avoid any confrontation beyond that which we must have. I would
14 think that the net effect of your suggestion, George, would be
15 to overturn the last vote.

16 CHAIRMAN WITTGRAF: That certainly wasn't my intent.
17 My intent clearly is to attempt, for what it's worth, to live
18 with the verbal commitment that I gave to a number of people who
19 are present at this meeting well into the afternoon of Monday,
20 April 30th three weeks ago.

21 Obviously the chair will defer to the board's wishes.
22 In my mind at least, the accurate characterization of my request

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1 for unanimous consent had to do with timely consideration of the
2 EVA matter and not in any way with trying to redo or undo the
3 action of the board.

4 Mr. Hall.

5 MR. HALL: Mr. Chairman, I agree with you. For one
6 thing, and I agree with Mr. Molinari, it does overturn the last
7 vote, but after agenda item number 8 seems to be a bit more
8 important than the resolution in item number 7 to me because
9 there are some folks out there depending on what we're going to
10 do. It has a terrific financial impact on a number of
11 recipients.

12 I just hate to see it down at number 8 and crowded on
13 toward the bottom when some of us have to go. It's going to be
14 one of those things we rush through or we don't get to. That's
15 an important item. It ought to have started up high, in my
16 view.

17 I would support your motion to move it up there,
18 knowing that what it does is really reversing the other motions,
19 just because I think it's more important.

20 MR. COLLINS: Mr. Chairman.

21 CHAIRMAN WITTGRAF: Mr. Collins.

22 MR. COLLINS: There is another way to give adequate

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1 time to it, and that is control the verbosity of our
2 presentations and to make certain, and it's a matter of the
3 chairman handling the gavel to make certain there is adequate
4 time reserved here.

5 M O T I O N

6 MR. HALL: I will make a motion then to move item 8 to
7 4a.

8 CHAIRMAN WITTGRAF: There is a motion to move item 8.

9 MR. DANA: Mr. Chairman, I guess I would, if there is
10 no second that, I would move that we move 8 up to 6, and 6 down
11 to 8, therefore I think both of those are time consuming. The
12 last item might well be done in executive session and it
13 necessary we might even have to put that matter off to another
14 meeting.

15 M O T I O N

16 I'm concerned about not having any time for the matter
17 that has been on our agenda every single meeting to date. So I
18 would move that we, hopefully with everyone's consent, that we
19 move 6 to 8, and 8 to 6.

20 MR. ERLNBORN: I second the motion.

21 CHAIRMAN WITTGRAF: It's been moved and seconded that
22 items 6 and 8 on the agenda be switched in terms of the order of

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1 consideration on the agenda. Is there discussion?

2 (No response.)

3 Hearing none, those in favor signify by saying aye.

4 (A chorus of ayes.)

5 Those opposed nay.

6 (No response.)

7 The ayes appear to have it, the ayes do have it.

8 Pursuant to the motion, items 6 and 8 are switched in their
9 places on the agenda.

10 Further discussion of the agenda?

11 (No response.)

12 Hearing none and hoping that the chair is correct in
13 his recollection that we've had both motions and seconds for the
14 adoption of the agenda as now amended, those in favor of the
15 adoption of the agenda as amended, please signify by saying aye.

16 (A chorus of ayes.)

17 Opposed, nay.

18 (No response.)

19 The ayes appear to have it, the ayes do have it. The
20 agenda as amended is approved. That takes us to consideration
21 of the minutes of the last board meeting.

22 The chair is prepared to entertain a motion for the

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1 approval of the minutes as presented.

2 MR. HALL: So moved.

3 CHAIRMAN WITTGRAF: There has been a motion to approve
4 the minutes as presented, is there a second

5 MR. COLLINS: Second.

6 CHAIRMAN WITTGRAF: It's been moved and seconded, is
7 there discussion?

8 (No response.)

9 Hearing none, those in favor signify by saying aye.

10 (A chorus of ayes.)

11 Opposed, nay.

12 (No response.)

13 The ayes appear to have it, the ayes do have it. The
14 minutes are approved as presented.

15 At this time the chairman has a few matters to bring
16 to the attention of the board. The first has to do with what's
17 cited as item 3a, congressional inquiries. By way of
18 background, the chair would remind all of the members of the
19 board that Mr. Erlenborn and I appeared in March on or about the
20 28th of March before the House Appropriations Subcommittee
21 concerned with the Legal Services Corporation's appropriations.

22 In turn, we appeared before the Senate Appropriations

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1 Subcommittee on or about April 16th regarding the corporation's
2 appropriation. In connection with both of those appearances the
3 corporation, meaning both the board and the officers and staff
4 of the corporation received written inquiries from those
5 committees or from members of those committees; inquiries to
6 which responses have been given in recent days

7 Ken Boehm and Jim Cardle have prepared responses and
8 also have prepared copies of those responses for all of the
9 members of the board. In the interest of both physical exertion
10 and to increase the likelihood of your remembering to review
11 those materials, the materials are here, but Ken and Jim and
12 Maureen Bozell have proposed to send those materials to you
13 tomorrow or soon thereafter.

14 Similarly, as we discussed briefly last month, April
15 30th, the House Judiciary Subcommittee concerned with the
16 reauthorization of the Legal Services Corporation, has
17 undertaken two days of hearings. Two days of hearings took
18 place in 1989, and I believe you've all got copies of the record
19 of those hearings. The first day of such hearings, as you may
20 recall was held on Thursday, May 9th, some 12 days ago.

21 The second hearing by that subcommittee chaired by
22 Congressman Frank of Massachusetts, will be this Wednesday, May

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1 23rd. Mr. Boehm and Mr. Cardle, again, have been good enough to
2 prepare or reproduce for all of the members of the board copies
3 of the statements made by the people who appeared before the
4 subcommittee on May 9th. Unless any of you would like to
5 request of Mr. Cardle or Mr. Boehm or Ms. Bozell your copies
6 today, again, I think that they will plan to send those to you
7 later this week at your residences or offices.

8 The chairman will not be attending the reauthorization
9 hearing this Wednesday. Mr. Erlenborn will be appearing on
10 behalf of the board and on behalf of the corporation.
11 Tentatively I think a request had been made on Mr. Molinari's
12 behalf to appear. Mr. Molinari is not able to take advantage of
13 that opportunity.

14 Certainly if any of you would be here or be inclined
15 to appear at the hearing, which will be 10:00 a.m. this
16 Wednesday, May 23, you're welcome and I'm sure Mr. Erlenborn
17 would appreciate the company.

18 MR. ERLNBORN: Mr. Chairman.

19 CHAIRMAN WITTGRAF: Mr. Erlenborn.

20 MR. ERLNBORN: You and I have not had an opportunity
21 to discuss this since I was out of town last week. I'm not
22 certain as to my availability to testify on Thursday, which may

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1 depend upon the action of the board here today, and I'll explain
2 that later.

3 CHAIRMAN WITTGRAF: Similarly, I prepared a draft of
4 some remarks, and I think I am obligated to release. I believe
5 that I'm obligated to make remarks on behalf of the corporation.
6 I've got a short draft, it's a very general statement.
7 Certainly there could be actions taken by the board today hat
8 would cause me to need to modify my statement. I would be very
9 happy over the course of today or tomorrow.

10 Any and all of you can review the brief and general
11 statement and let me know, please, if you take exception to
12 anything that I have indicated or if you think particularly that
13 another point should be made or that a point should be made in
14 another way, and I'll certainly try to accommodate that.

15 The statement, I think, largely reflects what we have
16 done and attempted to do to date. As I say, I will modify it as
17 necessary to reflect any actions taken by the board today.

18 I guess if neither Mr. Erlenborn nor I are able to
19 appear, than simply our prepared statement will be a part of the
20 record. Being candid with ourselves, I'm not sure that the
21 absence of any one of the 11 of us will necessarily change the
22 course of the reauthorization process in any case.

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1 In somewhat related matter on the Senate side where
2 there is continuing interest in our nomination so that our
3 nominations can proceed to consideration by the Senate, it's my
4 understanding now that nominations probably cannot be made
5 because of some ongoing FBI field checks for some number of us
6 until early July.

7 In an effort to expedite Senate consideration of our
8 nominations, if and when they're made, I think there will be an
9 effort on the part of the appropriate Senate committee, Labor
10 and Human Resources, if at all possible to share its
11 questionnaire, which, as I think most of you understand by now
12 is separate from and also different from form SF-86 and related
13 materials that we've already had to complete for the White House
14 and for the FBI. They will attempt to send us that
15 questionnaire, perhaps even before we are nominated formally so
16 that we can begin to prepare whatever materials are necessary
17 for tat separate and different inquiry.

18 It's my understanding that if we are nominated by
19 early July that it should yet be possible for the Senate to
20 consider our nominations this year. If it gets much passed
21 early July, it's going to become difficult with a August recess
22 and a projected mid-October adjournment. There are other

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1 matters before the Senate that might be considered of greater
2 import ad urgency than our nominations and confirmations.

3 Regarding the presidential search, you will recall
4 that the deadline for the submission of applications or resumes,
5 as posted and advertised was May 15, a week ago tomorrow. We
6 had sent to us on a timely basis at a separate post office box
7 established in the name of the corporation by the board
8 secretary, some 307 resumes. In fact, in logging those resumes
9 it appeared that three were duplicates, so we ad 304
10 applications.

11 All of those materials were forwarded to Mr. Molinari
12 and to Mr. Dana and to me as our Presidential Search Committee
13 members separately, at our offices or residences, and we then
14 reviewed those resumes over the last week or two. We then met
15 yesterday afternoon from approximately 1:00 p.m. until 6:00
16 p.m., compared the notes or the ratings that we had given the
17 applicants, discussed our procedure some in open session and
18 then went into executive session for the purpose of reducing
19 down that number from 304.

20 We did reduce the number down to 20. Those 20 are
21 names that I will share with you specifically when we go into
22 executive session for a little while sometime later today, wi

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1 the caveat, and I hope on the part of all of us, the commitment
2 that these are, as many of the resumes indicate, confidential
3 documents at this time. I don't believe they are subject to
4 Freedom of Information Act disclosure or discovery at this time.

5 Some of the people made it very clear in the
6 materials, they said to us that they believe that the materials
7 needed to be treated as confidential materials for the purpose,
8 I believe, of not jeopardizing their present employment status.
9 So we will go through those names. At that time if any of you
10 have any inquiries about any candidates that you're aware of
11 particularly, we certainly can and will at that point give them
12 further consideration.

13 The 20 are simply the ones that Mr. Molinari and Mr.
14 Dana and I sorted out as the ones that we felt at this time
15 deserved further consideration.

16 Mr. Erlenborn.

17 MR. ERLNBORN: Mr. Chairman, you mentioned the
18 Freedom of Information Act. Just as a sort of parliamentary
19 inquiry, has any research been done on the application of the
20 Freedom of Information Act to the corporation. Being a private
21 corporation it would seem to me very likely that it would not
22 apply, just as the criminal statutes don't apply, they transcend

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1 these statutes.

2 CHAIRMAN WITTGRAF: I think that the Daily Law
3 Reporter, among others, has established the availability of the
4 Freedom of Information Act as a discovery tool. I don't know
5 whether that's been formally challenged, but certain of our
6 records to date have been discovered under the Freedom of
7 Information Act.

8 Perhaps the president or the general counsel would
9 like to speak further, briefly, to that.

10 PRESIDENT WEAR: Mr. Chairman.

11 CHAIRMAN WITTGRAF: Mr. President.

12 PRESIDENT WEAR: Thank you, Mr. Chairman.

13 Under the Legal Services Corporation Act, Mr.
14 Erlenborn, the corporation is subject to that statute.

15 MR. ERLNBORN: Specifically under the act?

16 PRESIDENT WEAR: Yes, sir. We have done some analysis
17 on that in the past, we've faced this question in the past. In
18 general, it's our understanding that the resumes of candidates
19 are not discoverable until such time as a candidate is picked,
20 and then portions of that resume would be, or could be, subject
21 to a request under the Freedom of Information Act made
22 available.

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1 There may be portions of the information contained in
2 the resume that are personal and private, and those portions
3 would not be released.

4 MR. ERLNBORN: Thank you.

5 MR. GUINOT: How do you use the term discoverable, did
6 you misspeak? Discoverable if there is some sort of action?

7 PRESIDENT WEAR: I think, yes. I know that from my
8 prior litigation experiences a lot of people use it to discover
9 information. That was not the purpose of the statute
10 originally, it was to provide interested members of the public
11 with information. So I think that I did speak on that.

12 CHAIRMAN WITTGRAF: Ms. Pullen, did you wish to be
13 heard?

14 MS. PULLEN: I just wanted to mention, Mr. Chairman,
15 that in Mr. Shea's May 18 memo related to duties,
16 responsibilities and rights of members, on page 9 there is
17 reference to the Freedom of Information Act and the fact that
18 the LSC Act makes the corporation subject to it.

19 CHAIRMAN WITTGRAF: Thank you. Back on the matter of
20 the presidential search, with some 20, or if in executive
21 session the board chooses to add one or two or three or four to
22 that number, some 20 or 20 plus resumes or applications are

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1 under further consideration.

2 Our committee yesterday did adopt a questionnaire to
3 be sent this week to that number, so that we can get detailed
4 and consistent information from the individuals regarding, to
5 some extent, their experience, but most particularly their
6 involvement with or views regarding the Legal Services
7 Corporation and the provision of legal services.

8 It is the hope of the three of us that we will, upon
9 receipt of those materials in early June, be able, through a
10 couple of telephone conferences on or about June 4th and June
11 11th, to narrow that list of 20 or 20 plus further to
12 approximately 10 or 12.

13 In turn, the three of us plan to meet on June 16 and
14 17 to interview those 10 or 12 individuals. The next board
15 meeting is set for Monday, June 25th, and it would be our hope
16 and intention then at that time to share with the board our
17 recommended list of some three to six, I'm only approximating,
18 finalists, and also on that occasion and with the approval of
19 those finalists, to share their names with the public.

20 That will then give a month, approximately, for public
21 comment, and also a month for us to pursue background checks or
22 verifications of those three to six individuals. If all goes

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1 well, it is our hope that the board will be able to interview
2 those three to six individuals or such of that number who choose
3 to be interviewed, at its next regular meeting on Monday, July
4 23, and if all goes well to reach a consensus on which of those
5 individuals should be offered a contract as president of the
6 Legal Services Corporation.

7 We will attempt, I believe, as we interview the
8 individuals preliminarily on Jun 16 or 17, to determine when
9 those individuals can be available to assume the
10 responsibilities of president of the Legal Services Corporation,
11 a consideration which may have some bearing on the deliberations
12 of the three of us, and certainly may have some bearing on the
13 deliberations of all 11 of us.

14 It would appear at this time that sometime between
15 August 1st, August 15th, and at the latest September 1st, a new
16 president should be able to assume his or her responsibilities.

17 Before we move to any questions on that that anyone
18 might have, I think it's necessary, and at this time
19 appropriate, to entertain a motion to enable our Presidential
20 Search Committee to go into executive session by telephone at or
21 about 5:00 p.m. eastern standard time on Monday, June 4, and
22 again on Monday, June 11 at the same time, 1990, for the purpose

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1 of reviewing and considering the questionnaires of the 20 or 20
2 plus candidates and to attempt to reduce that number to some 10
3 or 12.

4 The chair is prepared to entertain such a motion.

5 M O T I O N

6 MR. COLLINS: I move.

7 MR. COLLINS: Second.

8 CHAIRMAN WITTGRAF: The motion has been made by Mr.
9 Collins and seconded by Mr. Hall. Discussion?

10 (No response.)

11 Hearing none, those in favor signify by saying aye.

12 (A chorus of ayes.)

13 The ayes appear to have it, the ayes do have it. The
14 motion is adopted.

15 At this time I'll turn first, perhaps, to Mr. Hall,
16 who as an ex officio member of the Presidential Search Committee
17 sat through the entire process yesterday afternoon with us, if
18 there is anything he would like to say and then certainly we'll
19 attempt to respond to any questions or comments anyone else has.

20 Mr. Hall.

21 MR. HALL: Well, I did come yesterday, I thought there
22 might be some others here. I didn't mean to intrude on the

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1 committee. These three gentlemen aren't the type to pat
2 themselves on the back, but apparently they did a tremendous
3 amount of work.

4 As they went through each resume, they knew each
5 candidate and why they picked him or her and why they did not.
6 I was impressed on the work they had done on them. There's
7 many, many good people to choose from, so I'm really encouraged
8 in that regard.

9 CHAIRMAN WITTGRAF: Further questions or comments?

10 MR. GUINOT: Yes, I have a question.

11 CHAIRMAN WITTGRAF: Mr. Guinot.

12 MR. GUINOT: What involvement do you see for the other
13 members of the board on this search? As I gathered from your
14 comments, or the way I understood them, the board members, the
15 rest of us, will be seeing just really six of these folks.

16 CHAIRMAN WITTGRAF: It's something we discussed
17 yesterday, and I failed to mention a moment ago, Mr. Guinot, in
18 addition to mentioning to the board members the names of the
19 individuals and giving them an opportunity to add any name in
20 that one board member or another board member may feel that we
21 did not give adequate consideration to, we will, as soon as
22 logistically possible, have the board secretary and the staff

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1 available to her, reproduce the 20 or 20 plus resumes of the
2 individuals who are still in the mix, and forward them to all of
3 the board members for their consideration.

4 Likewise, when the board secretary receives the
5 questionnaire responses from that 20 or 20 plus number, those
6 will be sent as well to all of the board members. Certainly,
7 just as with Mr. Hall yesterday when we interview on March 16
8 and 17, as with any committee meeting of the board, any member
9 of the board is welcome and is authorized to be a part of those
10 deliberations.

11 I think at this point we're anticipating that the
12 board members with us will be focusing on the 20 or 20 plus
13 remaining candidates. We would like to think, I guess that
14 we're doing the board as a whole a bit of a favor by doing
15 preliminary interviews on Jun 16th and 17th, with the final
16 interviews and selection, obviously, to be made by the board,
17 hopefully on July 23rd.

18 MR. GUINOT: That's fine. I appreciate the fact that
19 you've got a herculean task in front of you, and certainly I
20 don't want to get myself involved in making your work harder,
21 but would it be possible for board members to find out what made
22 this 20 so attractive as opposed to the other 200 and whatever

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1 that did not make it.

2 What were your criteria? Will there be a report, will
3 there be minutes of your meeting?

4 CHAIRMAN WITTGRAF: There is and there will be a
5 transcript of the open portion of our meeting from yesterday.
6 We spent, I suppose, at least half if not more than half in
7 executive or closed session. Realistically it was in executive
8 or closed session where most of the firm decisions were made,
9 although we were, at that point, referring to the individuals
10 just as we were in open session by number rather than by name,
11 for purposes of maintaining the confidentiality of their
12 inquiries and applications.

13 At this time, certainly I and I think Mr. Molinari and
14 Mr. Dana would be happy to briefly share with you our comments
15 as to the kinds of things we were looking at, and we can also
16 get into that a little more specifically in executive session.
17 If Mr. Molinari and Mr. Dana would like to speak to what we were
18 looking for, I would be happy to --

19 MR. GUINOT: I will be satisfied hearing it in
20 executive session, I just really wanted to know what the
21 criteria that you set for the first cut was and what you were
22 looking for.

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1 CHAIRMAN WITTGRAF: There is no reason not to discuss
2 it briefly in open session. Mr. Molinari.

3 MR. MOLINARI: I think each of us originally -- let me
4 go back a bit. Originally what happened was roughly a third of
5 the resumes that we received were sent to each of us on the
6 search committee. Subsequently I had requested that all copies
7 be sent to all of us so that we would have an opportunity and
8 the time to review them; back at home according to our own pace
9 an our own schedule.

10 We all did that, and we made notes. Simply, there was
11 no set criteria that I abided by. I was looking for the
12 experience, the background, there wasn't any litmus test applied
13 to any of the folks. What I was doing, I was rating them, those
14 that I thought were superior, kind of a 1, 2, 3 system. Those
15 that I thought were superior and on the opposite end of the
16 extreme, those I felt certainly didn't -- without any question
17 in my own mind, didn't have the qualifications, and those in
18 between.

19 Then when we sat yesterday we compared notes and we
20 found surprisingly that we agreed on many of the candidates,
21 independently without any conversations or discussions with each
22 other.

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1 I personally felt pretty good that in the evaluation
2 process that in most of the cases, the majority of the cases, we
3 had agreed that some of the candidates seemed to be superior.
4 So what we recall were doing, Luis, was to try to pick those
5 that had superior ratings and seemed to have all the
6 qualifications that the board would want.

7 At the sam time, as George said before, recognizing
8 that some members might question how we selected this person or
9 that person, he process is still open so that if, in fact, a
10 board member feels today that there was an applicant and when
11 you went to executive session you learned the names that you'd
12 like added, I think that those of us on the Search Committee
13 would be willing to listen to those and probably accept them as
14 additions to the list.

15 So I think it was a very fair process, I think it was
16 a good process. I might add a little plug for my colleagues, the
17 two others that were doing an awful lot of work. There were
18 about 1,500 pages that we had to read and assess. It's not an
19 easy task, it's a rather difficult one.

20 I guess it's fair to say that of those that we didn't
21 select, there's probably some good ones there, too. It was very
22 difficult to make a judgment on the basis of the resume and, in

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1 some cases, the accompanying letter which gives you further
2 insight into that person and what's behind them.

3 So I think I feel convinced that we have selected
4 excellent finalists, if you want to call them that, subject to
5 the caveat that we're open to suggestions on adding others to
6 the list.

7 CHAIRMAN WITTGRAF: Mr. Dana.

8 MR. DANA: I really have nothing much to add except
9 that in using the 1, 2, 3 system, we were unanimous in our
10 assessment of approximately 80 percent of the candidates. That
11 made it easy, or easier, to reduce the number as we have. I
12 think other than the formal requirements that were set forth in
13 the advertisement, each of us have probably a different optic as
14 to what we are looking for.

15 I was hoping to find a leader, someone who had
16 demonstrated a capacity to run an institution, someone who was
17 knowledgeable or had some either knowledge or experience about
18 Legal Services and someone who had occasionally at least visited
19 this time and picked up, it could have been on a high school
20 trip, but preferably somewhat more extensive because I think
21 that might be helpful.

22 We also looked for people of high reputation,

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1 integrity and judgment, maturity and all the other things you'd
2 like to find in a president.

3 MR. GUINOT: Mr. Chairman.

4 CHAIRMAN WITTGRAF: Mr. Guinot.

5 MR. GUINOT: I have just one more question. Perhaps
6 coming to Washington should be a disqualifying element
7 immediately, but I was curious whether or not the number 20 is a
8 magic number. Did it happen to be or did you set out to get it
9 down to 20?

10 CHAIRMAN WITTGRAF: The number 20 is wholly and
11 completely coincidental. I suspect the number 20 will be
12 increased at least slightly by virtue of our closed and
13 executive session later today. The number 20 is purely
14 coincidental.

15 MR. GUINOT: Did you find, Mr. Chairman, and I know
16 that a lot of people will be interested in its, and I assume
17 that you did give importance to the element of minorities,
18 Hispanics, blacks and women, and what kind of a spread was there
19 in the 300 that applied?

20 CHAIRMAN WITTGRAF: I will answer it in general terms
21 yes. I guess in terms of looking at the specifics of the
22 individuals, I'll leave that to the individual board members

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1 when we look at the individuals both today and when you have
2 copies of their resumes.

3 In fact, the answers to some of those questions are
4 not readily available or determinable on the face of either
5 their cover letters or their resumes.

6 MR. GUINOT: Thank you.

7 CHAIRMAN WITTGRAF: Further questions or comments
8 regarding the presidential search?

9 (No response.)

10 The last thing the chairman wishes to bring to the
11 board's attention at this time is the General Accounting Office
12 report. You should all have a memorandum from the president
13 dated May 4, 1990, regarding this matter, and copies of the
14 materials from the General Accounting Office and otherwise that
15 pertain to that.

16 Mr. President, do you want to comment on that?

17 PRESIDENT WEAR: Thank you, Mr. Chairman. I sent out
18 a copy of this report together with the cover memorandum and a
19 copy of a letter and a legal memorandum that was prepared and
20 submitted to the Office of Management and Budget last year.

21 Under the amendments to the Inspector General Act that
22 were adopted in the fall of 1988, the Office of Management and

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1 Budget had the responsibility of designating the head of
2 agencies that are not otherwise designated in that agency's
3 statute. The Legal Services Corporation was one of
4 approximately three, I think. Well, actually there was more
5 than that that they designated the head on.

6 Those designations were made in a announcement in the
7 Federal Register that was printed in approximately October,
8 1989. Under the statute the Office of Management and Budget
9 makes that determination each year. This report takes issue
10 with the designation made by the Office of Management and Budget
11 with regard to the Legal Services Corporation.

12 It's my understanding that the Office of Management
13 and Budget is reviewing this matter along with several others
14 and will make the determination at some point in time.

15 Mr. Chairman, I don't know that I had anything further
16 to say on that.

17 CHAIRMAN WITTGRAF: Mr. Erlenborn.

18 MR. ERLNBORN: Mr. Chairman, this is a matter that
19 came up at an earlier board meeting with the prior board. It
20 was in the context of the inspector general's investigation of a
21 board member that had been instigated by a member of the staff
22 of the Legal Services Corporation. At that time many of those

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1 on the board expressed an opinion that the designation of the
2 president of the corporation as the head of the agency was
3 probably incorrect.

4 It was done, by the way, without the knowledge or
5 action of the prior board. It seems to me that the General
6 Accounting Office report is quite accurate in saying that the
7 operating officer, the president of the corporation, should not
8 be designated the head of the agency, but rather this board or
9 the chairman of the board, because the operating officers,
10 including the president of the corporation, are the very ones
11 that the inspector general should be independent of and feel
12 free to investigate and to make reports to the head of the
13 agency.

14 So I am in thorough agreement of the General
15 Accounting Office evaluation. I think it fits the precedents of
16 some of the other agencies, although the precedents are very few
17 that are very close to this corporation. I think that this
18 board should consider expressing itself to the Office of
19 Management and Budget as being in favor of designating the, I
20 would say chairman, but I think it could be the whole board. I
21 think it probably practically work out better if it were the
22 chairman as the head of the agency to appoint the inspector

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1 general who then would be free of any fear of action in
2 investigating the president of the corporation, whoever that
3 might be.

4 Because the inspector general of an agency like ours
5 is subject to being fired by the head of the agency at any time,
6 it's different than in some of the cabinet level departments.
7 That's why I think the inspector general of the Legal Services
8 Corporation ought to be responsible to the chairman of the
9 board, rather than any of the operating officers.

10 PRESIDENT WEAR: Mr. Chairman.

11 CHAIRMAN WITTGRAF: Mr. President.

12 PRESIDENT WEAR: Thank you, Mr. Chairman.

13 Just a couple of points that I think may help to
14 clarify this. When the initial decision was made to designate,
15 made by the Office of Management and Budget, not by me, to
16 designate the president as the chairman, the issue was analyzed
17 by the staff from the point of view of how are we going to make
18 the Inspector General Act work the way that the Congress
19 appears, at least, to have intended for it to work.

20 There were several points that we considered and those
21 points are covered in the letter and in the memorandum that went
22 to the Office of Management and Budget. When this came up,

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1 there was some discussion at the board level. I conferred very
2 extensively with the then chairman of the corporation about it,
3 not attempt to try to skew this one way or another.

4 The inspector of most executive departments, as far as
5 I know, is responsible to the -- in the case of Agriculture, the
6 Secretary of Agriculture. The situation here is not that
7 different in that regard. The secretary can remove that
8 individual if he or she chooses to do so.

9 As with those offices and this office, if the
10 inspector general is removed, a report has to made to the
11 Congress explaining why that was done. I don't think the
12 inspector general is in jeopardy from this president or any
13 other president. The inspector general gets referrals or gets
14 complaints. He has the judgment and discretion to look into
15 those complaints. Sometimes he makes a report, sometimes he
16 doesn't.

17 I think the existing system works better than any
18 other that we were able to analyze. In the final analysis the
19 Office of Management and Budget will make that call and
20 certainly I will abide by whatever that is.

21 CHAIRMAN WITTGRAF: Further comment?

22 (No response.)

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1 Thank you, gentlemen.

2 It's the chair's intention that at this point only to
3 alert the board to this issue, not to get into further
4 consideration or a reconsideration of the designation at this
5 time. The chair will see that that matter is put on the board's
6 agenda for a later meeting.

7 At this time the chair turns to the president of the
8 corporation for his report.

9 PRESIDENT WEAR: Mr. Chairman, in view of the items
10 that we need to cover today, I'd like to defer that report.
11 I'll follow it up after item 9. That will allow us to move
12 directly on into item 5.

13 CHAIRMAN WITTGRAF: The chair's only concern with
14 that, Mr. President, is it's the chair's understanding from you
15 that the proposed defunding matters involving two grantees are
16 going to be a part of your report; is that correct?

17 PRESIDENT WEAR: I did not necessarily intend to
18 address those. I'll be glad to do it, though, this afternoon if
19 the members want to.

20 CHAIRMAN WITTGRAF: Okay. The chair is a little
21 fearful of putting those after number 9. It was my
22 understanding from you last Monday, a week ago today, that you

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1 were going to address them as part of your report.

2 I don't know what else you had in mind as part of your
3 report, but the chair would ask at this time, realizing that
4 there are a number of people here representing and effected by
5 and who have indicated a desire to be heard by the board in
6 regard to those matters, that you at least take up those two
7 matters at this time and then preserve the rest of your report
8 until later.

9 PRESIDENT WEAR: Mr. Chairman, if we get into that,
10 that may take us to lunch and we won't be through any of these
11 other things.

12 MR. ERLBORN: Mr. Chairman, I think this is a matter
13 of agenda that has already been determined by the board by vote.

14 CHAIRMAN WITTGRAF: Mr. Wear, I don't know what you
15 have in your President's Report, but let's proceed to those two
16 things, please.

17 PRESIDENT'S REPORT

18 PRESIDENT WEAR: Mr. Chairman, as I think the board
19 members know, I sent a letter to the Texas Rural Legal Aid
20 program, indicating that as a result of their activities in the
21 Veteran's Peace Convoy matter, that I was reducing their funding
22 for calendar year 1990.

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1 As board members will remember, we discussed this to
2 some extent at the last board meeting, and there were questions
3 raised by both the chairman and Mr. Erlenborn about whether or
4 not the reduction was appropriate for the offense, if you will.

5 I took those comments to heart, thought about it and
6 decided rather than reducing the funding for that program by
7 9.95 percent, to reduce that amount to approximately \$150,000.
8 That was the amount of the reduction that was put forward in the
9 letter to Texas Rural Legal Aid. The reductions will begin on
10 June 1.

11 The next effect of this operation, Mr. Chairman, is
12 that the program will actually get an increase in funding. The
13 reason for that is that the program has been funded at the
14 levels for 1989. There was some increase in funding for all
15 programs this year along with the letter telling the program
16 that there was going to be a reduction of \$150,000. We also
17 sent a letter to them indicating that their grant was being
18 finalized. Under the new grant provisions the monthly payment
19 to the program will be \$365,700, approximately, in lieu of
20 \$361,570, approximately.

21 Mr. Chairman, I also sent a letter to the California
22 Rural Legal Aid assistance program indicating that the

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1 corporation had concerns about the program's activities in two
2 separate matters involving abortion. I tried to spell out in
3 the letter what those concerns were. The program will have 20
4 days to respond.

5 It's my understanding, Mr. Chairman, that the program
6 has requested that the issue be put on the agenda for discussion
7 at the June board meeting. I think that that is certainly
8 something we can do if the board wishes to do.

9 Mr. Chairman, I don't know that I have any other
10 specific comments about it. I think that my memorandum and the
11 letter itself speaks, I think, for themselves.

12 CHAIRMAN WITTGRAF: Thank you, Mr. Wear.

13 MR. COLLINS: Mr. Chairman, do we understand that
14 we're now going to hear from somebody else, or this is a matter
15 we're going to hear next month or what is going to happen here?
16 What is going to happen here, what's going on now?

17 CHAIRMAN WITTGRAF: As it pertains to Texas Rural
18 Legal Aid, Mr. Collins?

19 MR. COLLINS: Yes, right.

20 CHAIRMAN WITTGRAF: You will recall the discussion --

21 MR. COLLINS: I remember very well the discussion.
22 The magnitude was \$450,000, we reduced it to \$150,000.

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1 CHAIRMAN WITTGRAF: There was some suggestion in
2 discussion that the absence of any representative of Texas Rural
3 Legal Aid at that time indicated or suggested, or some
4 apparently were inferring from that in acquiescence in that,
5 there are two representatives of Texas Rural Legal Aid today.
6 As we also discussed on April 30th, this does not require any
7 board action, but I do think that those individuals who were not
8 here, except by letter, on April 30th do deserve and I am
9 prepared to give them the opportunity to speak briefly.

10 Am I correct in my understanding that all of the
11 members of the board have copies of a letter dated May 18, over
12 the signature of a man named R. James George, Jr., legal counsel
13 retained on behalf of Texas Rural Legal Aid in this matter?

14 MR. DANA: When did we get that?

15 CHAIRMAN WITTGRAF: At this time the chair will
16 recognize the --

17 MR. GUINOT: Mr. Chairman.

18 CHAIRMAN WITTGRAF: Mr. Guinot.

19 MR. GUINOT: In light of the letter that we have
20 received, I received this this morning by telefax, by the way,
21 from an attorney representing Texas Rural Legal Services. The
22 fact that his position, or at least the way I understood it in

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1 this letter, is that he intends to file a lawsuit if they're not
2 given a hearing in accordance with the regulations.

3 I wonder what purpose it serves for us, although I
4 would like to listen and read about the peace convoy, what
5 purpose does it serve having such little time to continue the
6 controversy being aired in this forum?

7 CHAIRMAN WITTGRAF: I guess in my opinion, Mr. Guinot,
8 the purpose being served is one of expressing a willingness to,
9 insofar as practicable and possible, to hear the concerns of
10 both sides in these matters. Obviously the materials that we
11 have received have been from our staff, and that represents one
12 side. We're also into an area over which there is some question
13 as to the ability of our corporation to defund in a punitive as
14 opposed to a reprogramming matter.

15 I think both as a courtesy and as an educational
16 matter, it's appropriate to hear briefly from these
17 representatives.

18 MR. GUINOT: Certainly I agree with you on the
19 courtesy side. I have, however, read some vast material, not
20 only from the board but also from another source on this
21 subject. Now I am faced with a decision made by Texas Legal
22 Services that the issue is a hearing, so there is going to be a

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1 hearing, or at least if there is no hearing there is a lawsuit.
2 We are, again, rehashing the issues. That's the only concern I
3 have.

4 Now if these people have travelled all the way from
5 Texas to be here, certainly at this stage of the game, I think
6 courtesy, if nothing else, should prevail. However, in the
7 future when these things happen we seem to be rehashing them
8 constantly, time and again. Nothing goes away, we never seem to
9 be able to terminate an argument.

10 CHAIRMAN WITTGRAF: I'm not sure that the chair, at
11 least, agrees with you, Mr. Guinot. The issue that we have
12 addressed most frequently, February 12, March 27, April 30, and
13 I assume again today on May 21, is the issue of employment and
14 verification files, EVA files, wherever the A is in there, I'm
15 forgetting.

16 In fact, by that matter having come before the board
17 for three and now four months in a row, I think that we may have
18 been moving, as reflected by the staff's most recent memo to us
19 of last Thursday or Friday, towards some resolution of that
20 obviously delicate, and as you have indicated previously, to you
21 a very important issue.

22 So that I'm not sure that our hearing from both sides,

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1 as it were, on some of these issues, is necessarily a waste of
2 time, at least in the instance of the EVA files has had a
3 positive result. I don't know that there will be a result from
4 this, but I think as you've indicated we owe them the courtesy
5 and I don't think that for 10 minutes or 15 minutes that we're
6 really losing anything, but perhaps enhancing the board's and
7 the corporation's credibility.

8 MR. GUINOT: I don't believe I referred to it as a
9 waste of time, Mr. Chairman.

10 MR. COLLINS: Mr. Chairman, I simply want to say that
11 these are taxpayers' dollars that we're talking about. This is
12 a program with which we have entrusted responsibility. I think
13 the president has reduced this from \$450,000 to \$150,000. I
14 think the offense is far more serious than that. Nevertheless,
15 I am prepared to give them a little time to listen, and I'll
16 listen to them.

17 I do think that we have to establish a modus operandi
18 which permits whoever is running this corporation on a day to
19 day basis to see to it that the monitoring operation is, in
20 fact, carried out and that we don't keep biting this apple
21 indefinitely.

22 MR. GUINOT: Mr. Chairman.

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1 CHAIRMAN WITTGRAF: Mr. Guinot.

2 MR. GUINOT: I also would like, if you would ask our
3 visitors from Texas, to tell us whether or not the lawsuit that
4 they are contemplating, at least the law firm tells us, would be
5 limited to a question of the hearing or is it going to the
6 merits of the whole controversy.

7 CHAIRMAN WITTGRAF: If the two representatives of
8 Texas Rural Legal Aid would be so kind as to come forward to the
9 witness table with the introductory discussion that you've
10 heard, we would be happy to hear brief remarks from the two of
11 you. If you can respond to Mr. Guinot's concern regarding
12 proposed or, if you will, threatened litigation, please address
13 that as well, and perhaps there will be further questions.

14 If you will introduce yourselves both by name and
15 capacity that will be helpful both for us and for the record.

16 MR. HALL: My name is David Hall. I'm the executive
17 director of Texas Rural Legal Aid. This is Karen Peck, who is
18 an associate with Graves, Dougherty, Hearon & Moody, the same
19 law firm that Mr. George is a partner in.

20 MS. PECK: Mr. Chairman and members of the board, we
21 realize your interest in this issue and we, of course, are
22 tremendously concerned about Mr. Wear's decision to cut TRLA's

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1 funding by \$150,000.

2 His allegations have raised questions and we
3 appreciate your concern. Because of the nature of these serious
4 allegations, we firmly believe that it's necessary that they be
5 flushed out in an evidentiary hearing as required by the
6 statute.

7 TRLA serves a vital role in Texas, serving 47
8 counties. Any cut is harmful, despite Mr. Wear's representation
9 that TRLA is actually getting an increase. In fact, throughout
10 this year TRLA has only been funded at the 1989 level. It did
11 not receive the approximately four percent increase that all of
12 the other organizations in this country have received, and this
13 cut would be quite serious.

14 We feel sure that on a hearing the facts would be
15 developed and would answer all of the board's questions, would
16 answer the allegations made by Mr. Wear, because of the
17 magnitude of the cuts, the injury to the people served by TRLA
18 in Texas, and because a record developed in a hearing is
19 essential to the corporation's review of these allegations and
20 to any decision making by the board. We strongly urge you at
21 this time to direct that a hearing be held as required by this
22 statute.

1 With regard to a lawsuit, any lawsuit we filed would
2 include whatever claims we believe are necessary to protect our
3 client's interests. We certainly believe that a hearing is
4 required.

5 MR. MOLINARI: Mr. Chairman.

6 CHAIRMAN WITTGRAF: Mr. Molinari.

7 MR. MOLINARI: I'd like to ask a couple of questions,
8 just to make sure we understand the grant recipients position.
9 Is it the position of Texas Rural Legal Aid that the provisions
10 of the act were not violated, or is it your position that a
11 violation, in fact, occurred, but you do not believe that the
12 penalty should be imposed?

13 MS. PECK: Texas Rural Legal Aid does not concede that
14 a violation of the act was incurred, to the contrary.

15 MR. MOLINARI: If, in fact, a violation did occur,
16 would you believe that the proposed penalty of \$150,000 would be
17 reasonable under the circumstances?

18 MS. PECK: Without conceding that a violation
19 occurred, no.

20 MR. MOLINARI: Has the Texas Rural Legal Aid conducted
21 and independent investigation of the incident to determine
22 whether, in fact, any violations have occurred?

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1 MR. HALL: Mr. Molinari, yes, we have. It's our
2 determination that no violations have occurred. I think there
3 is a very serious dispute on the facts here. Our concern is
4 that there never has been a fact resolution hearing before an
5 independent hearing officer.

6 We believe that even though the regulation permits the
7 corporation president some discretion up to 10 percent, we
8 believe that regulation conflicts with the plain language of the
9 statute. So what we're asking for is we be given an independent
10 hearing officer to determine and resolve these very serious
11 allegations that have been made.

12 Another problem very disturbing to us is that these
13 allegations keep changing. We responded to a series of
14 allegations back in February. Last Wednesday afternoon we got a
15 whole new series of allegations, we haven't responded to those.
16 We think the proper response is for an independent hearing
17 officer.

18 MR. MOLINARI: All right. Just one or two more
19 questions. If I understood you correctly, I think you said, if
20 I'm wrong please correct me, that you do not believe that the
21 statute does, in fact, provide for a reduction of up to 10
22 percent for alleged violations?

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1 MR. HALL: That's correct.

2 MR. MOLINARI: That's your position?

3 MR. HALL: That's our position.

4 MR. MOLINARI: With respect to the investigation that
5 was conducted by you, is there a written report that you could
6 share with us so that we can, without jeopardizing, I suppose
7 your legal position, so we can have a better insight into your
8 legal position?

9 MR. HALL: We submitted a written report to the
10 corporation in February, based upon the allegations we received
11 in January. We have not done another investigation since last
12 Wednesday afternoon.

13 MR. MOLINARI: Yes, but is the written report that you
14 furnished to LSC the same as the report that you made internally
15 following the investigation?

16 MR. HALL: That's correct.

17 MR. MOLINARI: Thank you very much.

18 MR. COLLINS: Mr. Chairman.

19 CHAIRMAN WITTGRAF: Mr. Collins.

20 MR. COLLINS: I'm not sure I understood the response
21 of one of Congressman Molinari's questions. I wasn't sure
22 whether your question was, was an independent investigation

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1 made. Was that your question?

2 MR. MOLINARI: Yes, it was.

3 MR. COLLINS: Was there an independent investigation
4 made?

5 MR. HALL: You'll have to define independent for me,
6 Mr. Collins.

7 MR. COLLINS: I don't mean the same staff that made
8 the original decision. Is that who made the investigation?

9 MR. HALL: Mr. Collins, I am the person that
10 ultimately has to make that kind of a decision within our
11 structure at the program.

12 MR. COLLINS: Just answer the question about
13 independent. You define independent for me.

14 MR. HALL: I conducted an investigation.

15 MR. COLLINS: All right. The answer to your question
16 is now clear.

17 CHAIRMAN WITTGRAF: Mr. Guinot.

18 MR. GUINOT: Mr. Hall, have you requested a hearing
19 from the Legal Services Corporation?

20 MR. HALL: Yes, sir, we have.

21 MR. GUINOT: You were turned down?

22 MS. PECK: We requested a hearing in the letter of May

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1 18th.

2 MR. GUINOT: The one we just got this morning?

3 MR. COLLINS: Which most of us didn't get because were
4 travelling.

5 MR. GUINOT: That was the first time you requested a
6 hearing?

7 MS. PECK: No, we actually requested -- TRLA requested
8 a hearing in, I believe, its letter of February 9th; is that
9 correct?

10 MR. HALL: That's correct. There was a request in
11 there that this entire issue be resolved by an independent
12 hearing officer.

13 MR. GUINOT: I'm curious why, if you had -- in fact,
14 why were you forced to retain outside counsel and assume cost,
15 which you would be paying from the hard-earned monies, the
16 difficult and low budget that you have if, in fact, you could
17 have done this yourself and requested a hearing?

18 MR. HALL: Fortunately we found some good-hearted
19 lawyers who were willing to do it without fee.

20 MR. GUINOT: I love to hear that.

21 MR. HALL: To answer your question, we think we at
22 every opportunity tried to bring this up with the corporation

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1 that this process needs to be defined by this board of directors
2 so that we have some order and standards that everybody is aware
3 of going into these things.

4 There are procedures, for example, costs out there
5 that could resolve anything like this in fairly short order.
6 Now the problem with Mr. Wear, I suppose, is the sanction that
7 could be impose is the amount that was in controversy, in this
8 case something less than \$10,000.

9 There are procedures that could deal with very modest
10 kinds of offenses, if you will, by programs. There are no
11 procedures out there that contemplate order in a process that
12 could result to our program almost a half million dollars in
13 lost, which translates into seven, eight and nine lawyers. We
14 feel like when you've got that kind of threat out there, that we
15 need to have some sort of procedures.

16 MR. GUINOT: Am I to understand, then, that the
17 services are being rendered pro bono? In other words, they're
18 not going to charge you?

19 MR. HALL: That's correct.

20 MR. GUINOT: I think in your letter it said that you
21 intend to recovering attorneys' fees. In the last paragraph it
22 says, "We would be entitled to recover our attorney's fees."

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1 MS. PECK: Under certain causes of action involving
2 civil rights lawsuits and other lawsuits, recovery of attorney's
3 fees is authorized by law.

4 MR. GUINOT: Counselor, I'm familiar with those. What
5 I'm asking is if it's pro bono, but yet you intend to come
6 after, if you succeed, come after fees?

7 MS. PECK: Of course, if you recover.

8 MR. GUINOT: Just answer yes or no.

9 MS. PECK: We would seek to recover attorney's fees in
10 a lawsuit.

11 MR. GUINOT: Thank you, Mr. Chairman.

12 CHAIRMAN WITTGRAF: Mr. Collins.

13 MR. COLLINS: Go ahead, Mr. Chairman. Are we through
14 here? Is there something else that's going to happen? What's
15 supposed to happen now? We're talking about courtesy, we gave
16 them courtesy. They gave us courtesy by sending us a letter
17 which none of us received.

18 Are we going to go on with this?

19 CHAIRMAN WITTGRAF: In fairness, Mr. Collins, to the
20 fact that we don't have the letter yet. I don't believe that
21 these folks received their \$150,000 letter until Thursday, May
22 17th. They sent out a letter on Friday, May 18th. Some of us

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1 began to travel on the 18th or the 19th, some of us on the 20th,
2 but I don't think it's fair to these folks, aside from the
3 merits or demerits of the allegations to suggest that they did
4 not attempt to communicate with us timely.

5 I believe what Mr. Guinot has, I no longer have a
6 copy, Ms. Bozell took it to reproduce, is a letter dated May
7 18th, which I believe is the day following the receipt of the
8 \$150,000 defunding notice.

9 CHAIRMAN WITTGRAF: Ms. Love.

10 MS. LOVE: I received, Mr. Chairman, my letter on
11 Saturday from Texas.

12 CHAIRMAN WITTGRAF: I think, Mr. Collins, actually
13 they attempted to communicate as expeditiously as they could.
14 Some of us necessarily missed that because of our travel
15 arrangements.

16 MR. GUINOT: I received mine in the telefax this
17 morning, early this morning around 7:00 o'clock.

18 CHAIRMAN WITTGRAF: Mr. Hall.

19 MR. HALL: If I might add, we attempted to obtain fax
20 numbers for the members of the board to attempt to communicate
21 this thing as expeditiously as possible on Friday, but we only
22 had two of them. The corporation staff was not willing to give

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1 us the rest of them. So for that I apologize. We certainly did
2 not intend to ambush you here at the board meeting. We were
3 attempting to give you the most expeditious notice possible.

4 CHAIRMAN WITTGRAF: Thank you, Mr. Hall.

5 Mr. Collins, to go back to your question, I'm not sure
6 that the board is required to do anything at this point, just as
7 we discussed three weeks ago on April 30th. Obviously the
8 terrain has changed some in the three weeks since then, but
9 there is nothing that we're required to do. These folks have
10 asked the opportunity to be heard, and we've afforded them that.

11 We can or cannot do anything further at this point.
12 There are no motions before the board, and I'm not sure that
13 anybody plans to present any. I think it's important that the
14 defunding process which was summarized for us in a memorandum
15 from Mr. Shea prior to our last board meeting, a memorandum that
16 I don't happen to find a copy of right now, but this is
17 obviously an important issue, the defunding and reprogramming
18 issue.

19 The memorandum of April 27th regarding adverse actions
20 and alternatives to program defunding. You'll recall from our
21 executive session on March 27th that this matter is also a
22 matter of litigation now pending against the corporation in

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1 another part of the country.

2 The chairman's concern, at least, is that we all
3 understand what is going on, regardless of whether we take any
4 action.

5 Mr. Dana.

6 MR. DANA: Mr. Chairman, it's my understanding, and
7 I'd like the president or the general counsel to confirm or deny
8 this, that it is the corporation's or their position that an
9 exchange of correspondence is the functional equivalent of a
10 hearing and, therefore, none is required. That seems hard to
11 believe, but is that, in fact, our position?

12 CHAIRMAN WITTGRAF: Mr. President.

13 PRESIDENT WEAR: Thank you, Mr. Chairman.

14 Mr. Dana, in looking at the memorandum from Mr. Shea
15 dated May 18 at page 6, we outline a number of informal
16 procedures. We have both formal and informal adjudicative
17 proceedings contemplated in the act and regulations.

18 The issue here is not whether the program has gotten
19 due process, but how much process is due the program. We've
20 been talking with the program since the summer of 1989, about
21 this and exchanged several letters, several telephone calls, at
22 least one visit, perhaps more than that. I know that there was

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1 a visit in March after we received the response to my January
2 letter that lasted a week.

3 So, I think that there has been ample opportunity,
4 certainly, to flesh out the facts and to give the program an
5 opportunity to respond. Under our formal procedures where you
6 have a hearing, any appeal comes to the president for decisions.
7 This proceeding here does not differ so much in substance as our
8 others.

9 MR. DANA: My question is, is it your position that
10 they are entitled to a hearing and they've had it, or they are
11 not entitled to a hearing?

12 PRESIDENT WEAR: No. I believe our position, Mr.
13 Dana, is that these procedures constitute a hearing, as such.
14 It is not a formal hearing.

15 MR. DANA: So the answer to my question is you believe
16 that the exchange of correspondence constitutes a hearing?

17 PRESIDENT WEAR: I believe that the exchange of
18 correspondence, the exchange of telephone calls and the visits
19 to the program constitutes a hearing.

20 MR. DANA: Do you also agree that they were entitled
21 to that hearing as a matter of due process or the statute or our
22 regulations?

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1 PRESIDENT WEAR: Well, I don't know that I got to that
2 question. I think it's important to give people an opportunity
3 to explain their situation. So I think that, you know -- I
4 don't know that we got to that particular question. We were
5 interested in having the program having an opportunity to
6 explain its actions and we took numerous opportunities and made
7 numerous attempts to do that.

8 I believe we've accomplished that.

9 MR. ERLENBORN: Will the gentleman yield?

10 MR. DANA: Certainly.

11 MR. ERLENBORN: Just for further clarification. I
12 think the question Mr. Dana asked was, does the law require a
13 hearing. You say you didn't get to that. The corporation
14 officers must have an opinion as to what the law requires.
15 Don't you have an opinion as to what the law requires? Have you
16 asked counsel what the law requires?

17 MR. COLLINS: Counsel is right here.

18 MR. ERLENBORN: I know.

19 PRESIDENT WEAR: I believe that under the -- I don't
20 know that it's required under our statute, but there is some
21 requirement for a hearing.

22 MR. ERLENBORN: You're a little vague about that,

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1 maybe we could ask counsel, then, to tell us a good legal
2 opinion as to what the corporation's requirements are under the
3 law.

4 CHAIRMAN WITTGRAF: Mr. Shea.

5 PRESIDENT WEAR: Mr. Shea, can you address that?

6 MR. SHEA: Certainly. The statute for certain severe
7 actions requires what I would call formal hearings, an
8 independent hearing examiner. It's very clear here that this,
9 under our regulations, is not the type of action that warrants
10 and independent hearing examiner, number one.

11 Number two, is some other type of hearing, an informal
12 -- I might add by way of administrative procedure, informal
13 hearings are very well established. It is well established as
14 well that hearings come in various kinds of shapes and forms.

15 Overwhelmingly, I think the direction of
16 administrative law has been to permit informal hearings that
17 meet the demands of the situation. As for these particular
18 actions, it's clearly not under the regulation, and I discussed
19 that in some detail in my April 27 memo.

20 Denials of refunding of less than 10 percent don't
21 require a formal hearing, number one. Number two, insofar as
22 there may be factual disputes, those factual disputes, I

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1 believe, should be aired in an informal, what I would say is a
2 fair, ad hoc hearing, which is an opportunity to be heard and an
3 opportunity to join issue about what facts, if any, are at
4 issue.

5 I might add I don't regard that as a due process
6 issue. From my point of view, as an applicant, I think the
7 Supreme Court has said in Wynn v. Payne (phonetic), that
8 applicants for federal grants don't have any due process rights
9 as applicants. They do have such rights as given under the
10 particular grants, that is applicants for refunding have certain
11 rights, but they don't have any due process rights.

12 Here the applicants were afforded an opportunity to be
13 heard about the facts as well as a show cause notice, both the
14 facts the staff and the president believe to be applicable. They
15 had an opportunity to respond to those, both the facts and the
16 law, and they responded overwhelmingly, to my recollection, to
17 the factual issues. I don't know while they stated some
18 conclusory arguments about their view of the law and entitlement
19 to a hearing, they never addressed the issue in a substantive
20 way about entitlement to a hearing beyond conclusion that they'd
21 like a hearing.

22 So in my estimation they have had a fair, informal

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1 hearing. I don't see any procedure impediment to the action of
2 the president being effectuated, at least in terms--
3 procedurally.

4 Does that answer your question?

5 MR. ERLNBORN: Mr. Chairman.

6 CHAIRMAN WITTGRAF: Mr. Erlenborn.

7 MR. ERLNBORN: The question, Mr. Shea, there is a
8 reference in this letter from Graves, Dougherty, Hearon and
9 Moody, 42 U.S.C. 2996 J as requiring hearing by an independent
10 hearing examiner. I'm not familiar with that quote or that cite
11 of the statute. Is there any requirement for formal hearing in
12 the statute?

13 MR. SHEA: Yes, there is. Their reference is to
14 Section 1011 in the act, which says that, "The corporation shall
15 prescribe procedures to insure that financial assistance under
16 this title shall not be terminated, and application for
17 refunding," and this is the relevant provision, "application for
18 refunding shall not be denied," and I'm skipping, "unless the
19 grantee, contractor, or person, or entity receiving financial
20 assistance under the title has been afforded reasonable notice
21 and an opportunity or a timely, full and fair hearing, and when
22 requested such hearings shall be conducted by an independent

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1 hearing examiner."

2 Now in this situation the plaintiffs -- the action is
3 a denial of refunding; that is, the application for funding that
4 was submitted by TRLA was denied in part. The issue was surely
5 under our regulations a full-fledged denial would trigger a
6 requirement for the full and fair hearing and, when requested,
7 shall be conducted by an independent hearing examiner. There is
8 no question about that.

9 The issue is does a termination of less than 10
10 percent trigger this full and fair hearing requirement or
11 opportunity for a full and fair hearing, and our regulations say
12 otherwise. The regulations provide that for a denial of
13 refunding of less than 10 percent, actually they mandate a
14 hearing for terminations of 10 percent or more. They do not
15 mandate a hearing for terminations of less than 10 percent.

16 MR. ERLNBORN: Do I understand correctly that you
17 believe that the corporation, by board action, in adopting
18 regulations has the authority to set the percentage level of the
19 amount of defunding, which would require compliance in the form
20 of a formal hearing by 2996 J?

21 Before you answer that, let me just finish the
22 question. If that is the case, would the regulation be able to

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1 set that percentage at any level whatsoever, say 50 or 80
2 percent?

3 MR. SHEA: Well, let me give you an historical
4 perspective on that. First of all, our statute which parallels
5 the statute that applied to OEO when LSC was part of OEO, the
6 OEO regulation as to this -- OEO had a similar regulation and
7 the statutory requirement was that denials of refunding would
8 narrowly require some sort of formal hearing.

9 I can't remember whether it included a requirement for
10 an independent hearing examiner or not, but it did require a
11 hearing. The OEO regulations that implemented that require,
12 though, established a 20 percent threshold. It said basically
13 that unless there was a denial of refunding of more than 20
14 percent, no formal hearing was required.

15 That was sustained in the Second Circuit opinion, as
16 far as I know. The LSC regulations that established the 10
17 percent threshold, first of all, were created, were put in place
18 when the corporation first wrote these regulations. The
19 threshold that mandates a hearing was reduced from 20 percent to
20 10 percent.

21 So, first of all, it has an historical precedent,
22 number one. Number two, the practical situation and the

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1 purview, I think, of the board's authority is in defining what
2 constitutes a denial of refunding. I think there is some
3 scholarly support for this, I might add.

4 The board, in its discretion, determined that small
5 denials of refunding shouldn't trigger the hearing requirement.
6 There is an author that deals with it, probably a preeminent
7 author, that deals with grant and funding, the preeminent author
8 that deals with that is a fellow by the name of, I think,
9 Cappelli. He cites this with approval as a way of, first of
10 all, as a practical way of implementing, although avoiding
11 hearings for very, very, frankly, small actions, number one.

12 Number two, providing a way for a funding organization
13 to make small funding decisions without miring the system down
14 with a formal hearing over every modest action that may come
15 along.

16 So I think there is a fair amount of scholarly support
17 and approval of this proposition, in addition to some judicial
18 support.

19 MR. ERLNBORN: Thank you.

20 MR. GUINOT: Mr. Chairman, I have a question.

21 CHAIRMAN WITTGRAF: Mr. Guinot.

22 MR. GUINOT: Mr. Shea, once it is determined that we

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1 agree or disagree on the threshold amount, who decides whether a
2 hearing will be granted or not, the board, the staff?

3 MR. SHEA: The answer is under -- the rule does not
4 mandate one. The rule decides that if it's more than 10
5 percent, first of all. That is mandated, there's no question
6 about that. If it is less than 10 percent, I suppose the
7 president could mandate, could refer, purely as a matter of
8 discretion, refer a matter to an independent hearing examiner,
9 that could be done as well.

10 MR. GUINOT: The reason for it is, that I think there
11 is only one issue here, and that is whether or not, and I think
12 that's what counsel is trying to tell us, she believes that
13 there should be a hearing and there is a doubt whether there
14 should be or not. Perhaps it already has been informal. So all
15 the other talk, really is extremes of the fact situation.

16 My question is, if the board has nothing to say
17 whether or not the hearing is to be granted, I believe that we
18 - unless they have something else to say, I think we should move
19 on.

20 CHAIRMAN WITTGRAF: Further questions of Mr. Shea?

21 (No response.)

22 Mr. Dana.

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1 MR. DANA: I have just one question. Has the
2 corporation considered establishing any procedures for outlining
3 when ad hoc determination can be made, based upon an ad hoc
4 procedure?

5 MR. SHEA: In this particular procedure context we
6 don't have any internal rules or guidance either from the
7 president or the board that constrains either the procedure or
8 the types of actions that would precipitate, that is, the type
9 of behavior, maybe I should say, that would precipitate this
10 kind of action. Or I suppose the issue of what the appropriate
11 remedy, that is in terms of what amount that would be less than
12 10 percent, what that sum would be. There are none.

13 I might add, that there is nothing, per se, irregular
14 about that, that simply means that it's left to the practical
15 judgment of the president.

16 MR. DANA: Do we ever have any draft policies or any
17 kind of a -- frankly, as a board member we are a legal service
18 corporation and it does seem to me that we are substituting
19 human judgment in an area where there are no rules. I
20 understand that everybody feels that they are being fair, but
21 beauty is clearly and not seen by everyone the same way.

22 I'm concerned that we have a situation where an

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1 administration feels that it can take 3 to 10 percent of money
2 away from one of our grantees, based upon an exchange of
3 correspondence where the ultimate allegations, if I understand
4 them, are different than the original ones.

5 I think that this is not -- it may be legal, but it's
6 sure not service.

7 MR. SHEA: If I may deal with that, first of all in
8 any situation, even for the adjudication type proceedings,
9 whether formal or otherwise, and there are a number of informal
10 that are ordained by current regulations and I discuss those
11 elsewhere, the board, in many respects, has proscribed
12 procedures to deal with those.

13 They've identified who decision makers are, they may
14 address standards as well as to how the matters should be dealt
15 with, whether they are requests for waivers or exemptions and
16 things like that. The board is always free to, and has already
17 and there is certainly no question about it, the board is fully
18 authorized to write rules to govern the decision making of the
19 president and the staff, there is no issue about that.

20 As well, there are many, many proceedings,
21 administrative proceedings where, in agency settings, precedent
22 is established on an ad hoc basis. That is, as you know, it's

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1 very well established.

2 MR. DANA: You helped focus where I think we ought to
3 go.

4 Mr. Chairman, I would request that the staff develop
5 or begin to develop if we haven't done so over the last 15
6 years, a regulation which lays out the rules for these mini-
7 defunding efforts that management seems launched upon, so that
8 the field will know what the rules are, and so we can be a
9 corporation of law rather than of men.

10 MR. MOLINARI: Mr. Chairman.

11 CHAIRMAN WITGRAF: Mr. Molinari.

12 MR. MOLINARI: If I interpret the remarks that we've
13 heard this morning correctly, I think regardless of what rule we
14 would adopt, I think it's the position of Texas Rural Legal Aid
15 that a hearing is still required.

16 So it seems me that perhaps the only we're going to
17 have a resolution of this matter so that we can clearly
18 understand where to go in the future, is if they proceed with
19 their lawsuit and we have a decision of the courts. I think
20 that there seems to be an area of doubt and I guess we could
21 talk about it forever, but from what I heard so far it's a
22 question of our counsel tells us that all of the existing

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1 statutes and regulations have been adhered to in this matter.

2 A reduction of three percent or thereabouts has been
3 ordered by the president. Texas says that it's their legal
4 position that's improper. It doesn't make any difference
5 whether we have rules established by this corporation or not,
6 you'd still be faced with this legal challenge from my
7 understanding.

8 MR. HALL: Mr. Chairman, if I might respond to the
9 members.

10 CHAIRMAN WITTGRAF: Mr. Dana.

11 MR. DANA: Mr. Chairman, I don't disagree with
12 Congressman Molinari that Texas is going to go forward and sue
13 us, and it may be that some court will conclude that an ad hoc
14 sanction administered in an ad hoc way is legal. It may, in
15 fact, be legal. It may not violate any particular regulation.
16 What I'm urging staff to do is to consider, or to draft a
17 regulation which provides for the future, not for this
18 particular case, for the future some more -- provides some kind
19 of a process.

20 There are, throughout your life, you have been
21 imposing process on the rest of us, it seems to me.

22 MR. MOLINARI: I apologize.

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1 MR. DANA: It seems to me that the Legal Services
2 Corporation should have a process, too.

3 MR. MOLINARI: I don't have any problem with that,
4 Howard, whatsoever.

5 MR. COLLINS: Mr. Chairman.

6 MR. MOLINARI: If I could just conclude, simply what
7 I'm saying is that I think it's of interest to this board that
8 we do have a ruling. I don't any problem with your suggestion.
9 That wasn't the reason I raised the question.

10 Again, the thing that concerns me is where are we
11 going in the future and we're going to have lots of these
12 matters, I suspect, in the future where there's violations or
13 alleged violations and we need to know with certainty whether
14 our actions are going to be challenged in the court, and if so,
15 whether they'll be sustained or not.

16 So that even though we may not appreciate or like the
17 idea of a lawsuit, it may be very helpful to us to establish by
18 legal precedent a determination.

19 MR. COLLINS: Mr. Chairman.

20 CHAIRMAN WITTGRAF: Mr. Collins.

21 MR. COLLINS: Mr. Chairman, I just want to say that
22 the I thought the general counsel gave us a lucid explanation

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1 that, in fact, there are regulations, there are rules, that
2 there is no independent hearing required under these
3 circumstances. I don't like the use of the words "of men rather
4 than of law."

5 This is an organization which is functioning under the
6 law. We have an adequate number of rules. I think if anyone
7 should be concerned about the way in which they approach the
8 question of possible penal action by this corporation, it should
9 be the Texas organization which should have considered the
10 rights of its members, its poor and indigent members in applying
11 the rules under which they undertook this inappropriate action.

12 CHAIRMAN WITTGRAF: Mr. Guinot.

13 MR. GUINOT: I'm still trying to get down to the basic
14 issue here. I thought I had it, and that is what they want is a
15 hearing. If they get a hearing, my question is to you, if you
16 get a hearing under the discretionary powers that you said the
17 president may have that element discretion that you mentioned a
18 few minutes ago, will there be a lawsuit?

19 Are you going to be satisfied with the results of the
20 hearing even if it's adverse to you, somebody asked you about
21 the penalty of \$150,000?

22 MR. HALL: I think our position, Mr. Guinot, is that

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1 we would like to see some rules that govern everybody, not just
2 Texas Rural Legal Aid, and some processes out there that are in
3 place that result in a fair and impartial determination of these
4 kinds of issues.

5 We're not interested in suing the corporation in order
6 to clarify the law, that's not our position here. If that's the
7 only recourse we have, then that's what we've got to do. I
8 can't tell you right now yes or no, we would, or we would not
9 sue the corporation if there were an ad hoc hearing given to us.

10 If the ad hoc hearing is before somebody who is not
11 objective and there are no rules governing that process and we
12 don't get adequate notice of what the issues are and what the
13 possible sanctions are, if we have no idea where to appeal from
14 there, if that's the kind of ad hoc procedures that we have to
15 face, then we may have a problem with that ultimately.

16 If the board can, in its deliberate fashion, create
17 rules that apply to everybody so that all of the programs out in
18 the country have notice of what's at stake when one of these
19 inquiries comes down, then I think we've got something we can
20 live with.

21 We don't need to litigate those kinds of issues, this
22 board and the staff don't need to waste their time on these

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1 kinds of things. We need some process, that's all we're asking
2 form.

3 MR. GUINOT: Well there is process, you just disagree
4 with it.

5 MR. COLLINS: That's correct.

6 MR. HALL: Well, I disagree that there is process in
7 this area. There are no rules out there. If one our clients
8 who was faced with a \$300 over charge in an unemployment
9 compensation context were to receive the kind of process that we
10 received over \$150,000 to \$450,000, I bet most lawyers in the
11 country would be in orbit about it.

12 There is procedures out there governing \$300 on those
13 kinds of claims that are certainly a lot tighter and the clients
14 know what the sanctions are, they know what the appellate
15 procedures are. We know what kind of notice has to be given to
16 them, there is nothing on the books with respect to this
17 particular action by the corporation, none.

18 MR. MOLINARI: Mr. Chairman.

19 CHAIRMAN WITTGRAF: Mr. Molinari.

20 MR. MOLINARI: I would, again, like to defer to
21 counsel and ask him whether, in fact, there is procedures here
22 and whether we have followed those procedures. I think that's

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1 what you said before. Now we are a board and we have counsel,
2 and if the counsel's advising us that, in fact, there is a set
3 of procedures and they have been adhered to and we're not
4 violating any statute or rules of the corporation, then I think
5 we should be somewhat more specific about that, Mr. Shea. I
6 think you have been already.

7 MR. SHEA: I think I have been already as well.
8 Surely the action, in my estimation, doesn't violate the act or
9 our regulations, it's fully consistent with that, number one.
10 Number two, TRLA was advised, first of all, with great care
11 about the legal basis for the action. Since it was a very
12 detailed discussion of why the proposed action didn't constitute
13 a refunding and what the provisions of our rules were.
14 Likewise, they were advised on why they were not entitled to any
15 kind of formal hearing.

16 Secondly, they were advised as to what the factual
17 premise for the proposed action was, and they were afforded an
18 opportunity to respond. They had addressed some of the matters
19 both informally earlier as well. So they've had ample
20 opportunity to air, first of all, their factual position as well
21 as their legal position.

22 To my knowledge, other than the conclusion that they

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1 assert that they're entitled to a hearing, they haven't
2 addressed any of the detailed assessment we've made, and that
3 is, they haven't addressed the case law, they haven't addressed
4 the terms or tenor of the rules.

5 I certainly understand their position that they don't
6 like the result and I understand that they preserve all rights.
7 I think that's basically what they've done.

8 CHAIRMAN WITTGRAF: Mr. Guinot.

9 MR. GUINOT: One more, hopefully the last question.
10 Is there anything else required from the staff concerning this
11 issue of the hearing? In other words, does the president have
12 to come out and say, no, we will not grant you a hearing, or has
13 the decision been made already and by silence there isn't no
14 hearing, then they sue us? They're ready, you can see that
15 they're ready to sue.

16 MR. SHEA: The decision as issued, the president has
17 issued a final decision. I have not seen TRLA's correspondence.
18 I suppose they could ask for reconsideration, as anyone could
19 and anything can be reconsidered. So far as I know, they
20 haven't done that. The president's decision, by its terms,
21 would be effectuated sometime fairly soon.

22 CHAIRMAN WITTGRAF: Mr. Hall.

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1 MR. HALL: It was my understanding at our last meeting
2 that David Hall was going to come and respond to some of the
3 things, that's why we had extended the date to effectuate this
4 to June 1st. If we do nothing today, then come June 1 they're
5 going to start having some of their funds cut out, I guess on a
6 monthly basis. Is that how it would be, month by month?

7 PRESIDENT WEAR: Mr. Hall, the letter, actually the
8 second letter that I sent to the program, I think, spells that
9 out. I'm not sure which one it is. On June 1 the amount of
10 money actually going to the program will go up. It doesn't go
11 up as much as they would have gone up but for this action. I
12 guess if we don't make those arrangements, they would continue
13 on at their current level, which is lower than what it would be.

14 I would hope that if TRLA does elect to challenge this
15 action that they will not insist on the \$150,000. The reason
16 for that is this, we have begun to receive requests for
17 emergency assistance from those programs that were affected by
18 the flooding in Arkansas and Texas. It would be my hope that we
19 could use this money, that is the \$150,000, to assist those
20 programs that are suffering from the flooding.

21 If TRLA believes that this question should be decided,
22 I would hope that any action that they file would stick

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1 specifically to the legal issue and not insist on the funds.
2 We've begun to get those requests and I think that this
3 certainly will allow us to fund at least a portion of those
4 requests. I think the proceeding has been fair. I believe that
5 TRLA has ample opportunity to spell out its position on this.

6 I think the general counsel's summary has been very
7 good. I would hope that if you do go forward to try to clarify
8 this point that you believe that you have, that you will not
9 insist on the money, because if that happens I suppose we'll
10 have to escrow the money and we at least won't be able to deal
11 with those requests for emergency assistance in the way that
12 I've outlined.

13 CHAIRMAN WITTGRAF: Mr. Hall.

14 MR. HALL: I was going to finish up by saying I also
15 felt that today we would have some type of motion to, I hate to
16 be so vague, but to do something, for instance, to reduce the
17 penalty. First of all I want to be convinced that there had
18 been a violation or there had been a misuse of the funds.
19 Secondly, if there was, I thought that there would probably be
20 some discussion on getting the penalty more in line.

21 My concern is, and I appreciate Terry's answer there,
22 the money is going to help the poor, that's what we're all here

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1 for. It just makes no sense to fine the poor people \$150,000 or
2 any amount. Then on the other hand, if there's been a violation
3 it hurts to just sit here and let that go by without doing
4 something on it.

5 Frankly, in my mind the whole issue is whether or not
6 this case should have been referred out. It seems to me that I
7 hired no lawyers in the case, and now I've won the same rights
8 that these other people did. The poor that were in the case,
9 they didn't have to hire lawyers. To me that's the thing I want
10 to hear.

11 Once I determine that, \$150,000, that's just too much.
12 Any penalty I would think it would be that this board favors
13 taking more of a say so in the local control over what types of
14 cases and things of that nature, which is opposite from what
15 recipients want the national board to do.

16 Since nobody has made any motions like that and since
17 it looks like they're fixing to be cost a lot of money, whether
18 you support me or whether you don't, I don't care, but I'm going
19 to make a motion that we reduce the -- if they're going to sue
20 us, they're going to sue us over \$25,000, or over \$150,000, or
21 over \$450,000, because it's the principle that's at issue in
22 future cases and not just the money in this one.

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1 MR. HALL: So I'll make a motion that we're going to
2 reduce the amount that they're fined to \$20,000, and that we
3 leave the \$130,000 with the poor.

4 Frankly, if there had been more discussion, I might
5 have been inclined to leave the whole \$150,000 with the poor,
6 but something has to be done. We need to determine that
7 something must be done first and then if we need to do
8 something, I 'm not sure what it is.

9 M O T I O N

10 My motion, again, is that we reduce the \$150,000 to
11 \$20,000.

12 MR. GUINOT: Mr. Chairman.

13 CHAIRMAN WITTGRAF: There's a motion, is there a
14 second?

15 MR. DANA: Second.

16 CHAIRMAN WITTGRAF: Mr. Guinot, discussion.

17 MR. GUINOT: Yes. I would like to say that I thought
18 that this was not a question of money that we're talking about
19 here, because if it were -- I thought it was a question of the
20 principle on the hearing. That's why I keep on going back to
21 what is the issue.

22 Are we going to grant them a hearing or not, do the

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1 regs have that?

2 CHAIRMAN WITTGRAF: I think both of those issues are
3 before the board, potentially, Mr. Guinot.

4 MR. GUINOT: Well, what I'm saying is that then it's a
5 question of working down to see if \$25,000 is too much, is
6 \$15.75 all right. Where are we? We're back in square one. I
7 think couching the motion on emotional statements concerning the
8 poor or whatever, which we all feel for, maybe just obviating
9 the issue a little further.

10 MR. COLLINS: Mr. Chairman.

11 CHAIRMAN WITTGRAF: Mr. Collins.

12 MR. COLLINS: This has been reduced from \$450,000 to
13 \$150,000. Now there's a motion on the table to reduce it to
14 \$20,000. We're not only trivializing this, but we are, in my
15 judgment, waffling almost totally in our obligation to protect
16 the taxpayers' funds and to see to it that, in fact, that this
17 money does go to the poor.

18 It was not the poor who made the decision to send this
19 down to the Sandistas, it was some elitist lawyers who made it.
20 It is their responsibility for having entertained recipients who
21 were not eligible for our service. I think this is terrible and
22 I think we have an obligation to balance this.

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1 If somebody, and I don't care who the future president
2 is, somebody must carry out the mandate of the law to some
3 extent rein in those who would seek to do that which is
4 inappropriate at the local level. We cannot treat everyone who
5 comes here asking for the third or fourth hearing as though they
6 were the only people with white hats in the whole scenario.

7 CHAIRMAN WITTFGRAF: Mr. Hall.

8 MR. HALL: John, I agree with the principle of what
9 you say there, I just don't think that the way to do it is to--
10 I know that it always sounds good to say, you know, taking
11 money from the poor and everything, but basically that's what
12 you're doing here. That is what you're doing here whether I'm
13 saying that to sound good or to tell it like it is, you're
14 taking money from the poor.

15 The penalty and the remedy should be that this board
16 should become more inclined to go along with some of the
17 improvements that some people call reform. Possibly it would
18 take -- be a little more active in local control, perhaps look
19 at some of these regulations that have to do with the
20 requirement that cases are referred out and, perhaps, put a
21 penalty clause of some form or fashion in there that when
22 someone doesn't refer a case out that should be, then they

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1 know what their penalty is going to be.

2 I think there are some pretty effective ways to get
3 people's attention. I'll just say to Mr. Hall that when people
4 start arguing for reform and you ask, for example, why you need
5 reform, I have to say look at this case, for instance. It
6 wasn't a lot of money and they do so much good down there, but
7 this was just a little bit and this is the type of thing that we
8 want to clean up. It does happen.

9 Again, I'm going to say that I haven't heard from Mr.
10 Hall, so I don't know that it did happen. Were I to hear from
11 him and if he didn't convince me it didn't, those would be my
12 positions. I think the penalty may change the thinking of some
13 people, and not the pocketbook.

14 CHAIRMAN WITTFGRAF: Mr. Dana.

15 MR. DANA: I would just like to emphasize because
16 there has been no process, John and Lou, to my way of thinking,
17 the people who have been cut either \$450,000 or \$150,000 don't
18 feel that they have had a fair shake. They're coming here. I
19 support this because I don't think they've had one, either.

20 I think they we ought to have a process where they
21 would get that, where they would get that process. So I hope
22 your comments and that of Lou would be seen as supportive of my

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1 suggestion that we get staff to come up with some rules to deal
2 with this situation other than the Constitution of the United
3 States.

4 CHAIRMAN WITTGRAF: Mr. Molinari.

5 MR. MOLINARI: Mr. Chairman and members of the board,
6 I think we're getting to a critical issue here, and that is what
7 is the position of the board going to be to violations of the
8 statute and violations of our rules. We've heard from our
9 counsel that, in fact, this is a violation and, in fact, that
10 every opportunity has been accorded to Texas Rural Legal Aid.

11 If every time we have a so-called penalty imposed, in
12 our benevolence we're going to cut that figure down to almost
13 zero, the message that's going out from this board, I think, is
14 the message that you can do almost anything you want. If there
15 is a violation, you're going to be slapped on the wrist and
16 maybe fined \$10. The question, and I'm not -- I have a great
17 deal of respect for Mr. Hall and the others who have addressed
18 the issue -- the question of taking money away from the poor
19 obviously is something that is sensitive to all of us.

20 The fact remains that if there is a fine or penalty
21 imposed for misdoing on somebody's part, that money is not
22 forfeited, it's recycled, it's given to other poor. I mean,

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1 that's the mission of the legal services. So if we take a
2 position today. That going from \$450,000 and going down to
3 \$150,000, now we're going to bring it down to \$20,000, I would
4 guess there is somebody that might want to reduce it even
5 further, we're going to be in for an awful lot of problems in
6 the future.

7 I think we're going in the wrong direction. I think
8 the board is going to have to send a signal out there to grant
9 recipients that we expect a certain criteria to be established.
10 Whether you want to go forward and recodify the rules and
11 further detail is another question.

12 For heavens sake, if we're going to do this today on
13 top of the actions we've taken in the past, it's a free for all
14 out there as far as I'm concerned and we can expect loads and
15 loads of these problems in the future. I don't know when we're
16 going to have the time to deal with it.

17 CHAIRMAN WITTGRAF: Mr. Erlenborn.

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

19 I must say that I agree with my colleague, Mr.
20 Molinari. I think we have to have some finality. I don't
21 believe that this board can put itself in the position of always
22 being available as a final appellant review of every decision

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1 made by the officers of the corporation.

2 We choose the officers of the corporation, we give
3 them a job to do and we have confidence in them to put them in
4 that position and keep them in that position. We should then
5 allow them to act without us second guessing them on every
6 situation.

7 Having said that, however, I must admit that I
8 personally don't have a great deal of confidence in our present
9 president. He is a lame duck president. He first came up with
10 the \$450,000 defunding, after board action he cut that back to
11 \$150,000. I'm going to support that position hoping that maybe
12 when we have a new president that would be reviewed. If in the
13 opinion of the new president this action was properly taken,
14 some adjustment might be made.

15 CHAIRMAN WITTGRAF: Mr. Guinot.

16 MR. GUINOT: I would suggest to Mr. Hall that he
17 withdraw his motion, because lowering the amount of the penalty
18 is going to have the opposite effect of what he and Mr. Dana
19 want, which is, at least Mr. Dana, a restating or a visitation
20 of the regulations concerning penalties of this nature.

21 If you lower it enough, perhaps it won't be a
22 challenge and we'll never get to the bottom of this, and I thin

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1 that we should at this point.

2 CHAIRMAN WITTGRAF: Mr. Hall.

3 MR. HALL: Mr. Hall, your law firm will sue us whether
4 it's \$25,000 or \$150,000, was my understanding. I don't mean to
5 drop the amount down because of a threat to sue, because our
6 general counsel has told us time and time again that we'll win.
7 Perhaps it could be that the holding back of the funds could be
8 extended to July 1. I'm not advocating that, I'm just kind of
9 thinking out loud. I don't know what will happen in those 30
10 days, but it's probably nothing.

11 MR. COLLINS: Question, Mr. Chairman. Mr. Chairman, I
12 call for the question.

13 CHAIRMAN WITTGRAF: Thank you, Mr. Collins.

14 MR. HALL: I was going to say also, like I say, I
15 thought that there was going to be some more information
16 presented today. I thought that we would know where that money
17 was going to go. I know that Guy mentioned it's not going to be
18 put in our pockets, it's going to be given to other poor. Those
19 types of things influenced my decision.

20 I've asked Regina Rogoff from Texas, I think at our
21 last meeting, what her area covers, is there somebody that would
22 fill in and be a provider, that type of thing. So that does

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1 make a difference to me. It does make a difference.

2 Terry, today I have not heard the suggestion and do
3 not know about any relief requests, if it goes out. I just know
4 that those things make a difference me. Anyway, if you all want
5 to defeat me, I'm ready to be defeated on behalf of the poor.

6 CHAIRMAN WITTGRAF: The question has been called. The
7 chair is prepared to move to vote on the question.

8 Those in favor of the motion to reduce the fine as
9 assessed from \$150,000 to \$20,000, please signify by saying aye.

10 (A chorus of ayes.)

11 Those opposed, nay.

12 (A chorus of nays.)

13 The nays appear to have it, the nays do have it. The
14 motion is defeated.

15 Further discussion regarding this matter?

16 (No response.)

17 In fairness to the lady and gentleman, we weren't sure
18 how we were going to proceed. We've actually proceeded to the
19 point of consideration of a specific motion. You obviously have
20 heard the discussion. I'm not sure that there really is
21 anything to add at this point.

22 I did not call on you to say anything. Do either of

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1 you in 30 to 60 seconds have anything you want to add at this
2 point?

3 MS. PECK: I'm not sure that in 30 to 60 seconds I
4 could respond to Mr. Shea's explanation of his interpretation of
5 the hearing requirements. We obviously take issue with those.

6 CHAIRMAN WITTGRAF: Certainly. At this point it seems
7 to me the board's decision is to stand by counsel's counsel.

8 Mr. Hall.

9 MR. HALL: I want to finish up and say that nothing
10 that I've said today should be taken that I believe that due
11 process wasn't given or that we haven't acted according to the
12 law. When this first came up I carefully read Mr. Shea's memo
13 and studied the law, and I think that the president does have the
14 right to do what he has done. I think the corporation is acting
15 within the law.

16 If I've said anything earlier to the contrary, it
17 should not be construed that I think it should be reduced or
18 withdrawn on any basis that would have no right to do it. I
19 think we're within our perfect right.

20 MR. MOLINARI: Mr. Chairman.

21 CHAIRMAN WITTGRAF: Mr. Molinari.

22 MR. MOLINARI: I think that, if you will, because you

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1 don't have time to respond in detail to what Mr. Shea has said,
2 I think it might be a good idea, if the board so feels, for you
3 to prepare such a rebuttal and to furnish it to us. I certainly
4 would be interested in reviewing your points of law as opposed
5 to the record that has been established here in order to make a
6 further judgment, if that would possible.

7 MS. PECK: Well, of course, one problem is that the
8 reduction in funding is set to begin June 1st.

9 MR. MOLINARI: This has no impact on that, as was
10 indicated before there is a possibility, and I think it was Mr.
11 Erlenborn that said, there will be a new president and this
12 could be reviewed and those funds could be reinstated,
13 theoretically. I'm not saying that's going to happen, but you
14 seem to indicate that if time permitted you'd like to respond,
15 but it would take some time to respond.

16 My suggestion is, if you might, it's up to you, I
17 would suggest that you put such a response in terms and submit
18 to us and in our leisure we have an opportunity to look at that
19 and review it as opposed to what Mr. Shea said. We'll probably
20 furnish it to him and ask him to look at your response and
21 respond to that.

22 MR. SHEA: Mr. Chairman, may I be heard very briefly?

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1 CHAIRMAN WITTGRAF: Mr. Shea.

2 MR. SHEA: As a procedural artifice, for what it's
3 worth, I would suggest that that be cast in the form of a
4 request for reconsideration, which may not of itself interrupt
5 the effectuation of the action, but it would permit that.

6 CHAIRMAN WITTGRAF: You have that suggestion.

7 Mr. Hall.

8 MR. HALL: Mr. Chairman, we certainly would be willing
9 to do that if the board would prefer that sort of process. It
10 does underscore for me, however, that there is no process out
11 here. There is no provision for motions for reconsideration in
12 anybody's rules. We will be happy to do that and we will
13 furnish the board a legal memorandum on what we believe the law
14 requires.

15 Our concern throughout this thing has been we don't
16 know what our next step is supposed to be under these ad hoc
17 procedures.

18 MS. PECK: I guess in addition, in any motion for
19 reconsideration we would send, we would ask that the \$150,000
20 reduction be postponed pending consideration of our motion for
21 reconsideration.

22 MR. MOLINARI: I'm not proposed to that, Mr. Chairman.

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1 We've just been through that drill to a great extent, and to go
2 into this again is just --

3 CHAIRMAN WITTGRAF: It's the chair's impression at
4 this point that the matter has been dealt with today. Mr. Shea,
5 I guess, was proposing, as he indicated, a procedural
6 alternative which you have to weigh. At this point the chair
7 thanks you both for being in attendance with us today.

8 MR. HALL: We appreciate the board's indulgence.
9 Thank you.

10 CHAIRMAN WITTGRAF: Before we move to the matter of
11 California Rural Legal Assistance, the chair was advised
12 yesterday afternoon that Bud Albright, Deputy General Counsel
13 for the Department of Housing and Urban Development, on behalf
14 of his department and the secretary, had requested an
15 opportunity to visit with the board today.

16 That was the first the chair was aware of that
17 request. Additionally the agenda has been changed, of course,
18 or supplemented this morning. Mr. Albright is here and has
19 been here since approximately 11:00 a.m. The chair is prepared
20 to call on him if there is no objection at this time, but on
21 there other hand the chair wants to defer to the consensus of
22 the board. We do certainly have a full agenda.

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1 If there is no objection, I'll ask Mr. Allbright to
2 come forward.

3 MR. COLLINS: For a brief statement.

4 CHAIRMAN WITTGRAF: For a brief statement. Is there a
5 written, Mr. Allbright, or this solely an oral statement?

6 MR. ALLBRIGHT: It's solely oral.

7 CHAIRMAN WITTGRAF: Thank you. You've heard my
8 comments and we very much appreciate your being here. We also
9 very much will appreciate the relative brevity of any remarks
10 that you're prepared to make.

11 If you want to introduce yourself further, beyond the
12 introduction I've given you, please do.

13 MR. ALLBRIGHT: I am Mr. Bud Allbright. I'm Deputy
14 General Counsel at HUD. Just very briefly on my background, I
15 served six years as an Assistant U.S. Attorney in the Eastern
16 District of Virginia, and for about a year as Deputy Associate
17 Attorney General with both Mr. Meese and Mr. Thornburgh.

18 So I do have some familiarity with criminal issues, as
19 well as civil issues. Since coming to HUD about a year ago, I
20 have gained some insight into problems that we face, not just at
21 HUD headquarters, but across the country in public housing.

22 I had planned, and I will be brief, I had planned to

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1 read to you an article that I found about six months ago that
2 discusses the horrors that a 12 year old boy and his 9 year old
3 brother go through on a regular basis in a housing project in
4 Chicago because of drug-related gang warfare.

5 Children of that age watching other children 12 and 15
6 dying after shootouts of gangs, rushing home from school and
7 having to duck because gunfire is erupting as they walk home
8 from school. I won't take your time with it, but just to tell
9 you that not only are there articles like this depiction the
10 horrors that children and other innocent people face in public
11 housing because of drug warfare, but these are real-life
12 stories.

13 As I have been around the country and talked to
14 residents of public housing, when I have asked a number of
15 times, "What's the one thing that we can do to help the drug
16 problem? What's the number one thing?" The residents
17 themselves repeatedly say the one thing that you can for us is
18 help us evict people from public housing in a reasonable manner,
19 with reasonable speed. That's the best thing that you can do so
20 that we can rear our children in a drug-free environment.

21 When I have asked them what the problems are,
22 invariably they come back to Legal Services attorneys who cause

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1 what I feel are, in many, many cases unreasonable procedural
2 delays.

3 I'm here today to ask the board to help us, to help
4 Jack Kemp, and to help the residents of public housing, and I
5 guess most importantly to help the residents of public housing
6 to try to conduct their lives in a drug-free environment by
7 getting Legal Services grantees out of the business of
8 representing people for evictions where there's drug-related
9 criminal activity involved.

10 I don't think that there's any question that we're in
11 a crisis in public housing. I don't think there's any question
12 among the residents and among the PHAs, public housing
13 authorities, that this would be the strongest step that could be
14 taken to help.

15 I want to give you just a few numbers and I don't
16 think, first of all, this is something that we can just look at
17 numbers on you have to talk to residents and understand what's
18 going on. I think you have to talk to the residents and
19 understand what's going on on a personal basis before you can
20 really appreciate the problems that public housing residents
21 face.

22 HUD contributes approximately \$1,100 per unit to

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1 public housing, and an additional \$1,550 is contributed by the
2 public housing administrations, either through rent or
3 investments or some other type of subsidy. This is an average,
4 of course. There are over 1.3 million public housing units in
5 America and somewhere around 4 to 5 million residents.

6 To take one example, the Macon Housing Authority in
7 Macon, Georgia. Macon is not a major metropolitan area, it's
8 probably, though, somewhat typical demographically to many
9 communities around the country. Macon estimates that it spends
10 between \$5,000 and \$7,000 on each drug-related eviction. So
11 they're spending almost twice on an eviction what we spend in
12 rent for a year.

13 Macon tells us, as do others I've got a list of over
14 30 housing authorities that say this is the main problem, they
15 tell us that simple cases take four or five hours in
16 depositions; four or five people full time. There is one
17 instance of a seven-hour deposition that they were involved in.

18 Another example where drug eviction included cocaine
19 found in the unit, several undercover drug buys, evidence found
20 in a police raid, a one-month phone bill to various coastal
21 cities in Florida of over \$500, and the Georgia Legal Services
22 opposed this eviction. It cost Macon over \$6,000 to evict. The

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1 case went on for over a year. It took a jury four minutes to
2 determine that an eviction was proper.

3 Now what goes on when you have this type of situation
4 in public housing, is that these drug dealers allowed to stay
5 for a year, sometimes much longer, continue not only to deal
6 drugs, but they intimidate residents. They threaten them if
7 they testify, if they intend to testify they threatened them.
8 Often the threats are not simple threats, they are carried out.

9 Sometimes it's slamming someone against the wall,
10 sometimes people get beat up. Very seldom do they report this
11 to the police, but when you talk to residents you know what goes
12 on.

13 I could go on and on. I could read you example after
14 example, after example of requests pleading from public housing
15 authorities to please help, to please do something about this
16 problem, pleadings from residents as well. At least one,
17 Broward County, Illinois. At least one housing authority
18 reports that they do not take drug-related activities cases for
19 evictions.

20 We commend that and would like to see more of it. I
21 don't see that coming without some action either by the board or
22 by Congress.

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1 CHAIRMAN WITTGRAF: Mr. Allbright, would you make that
2 reference again, please? The entity or the grantee?

3 MR. ALLBRIGHT: Broward County, Illinois.

4 CHAIRMAN WITTGRAF: How are you spelling that?

5 MR. ALLBRIGHT: B-r-o-w-a-r-d.

6 CHAIRMAN WITTGRAF: You don't mean Broward County,
7 Florida?

8 MR. ALLBRIGHT: I'm told it's Illinois and not
9 Florida.

10 CHAIRMAN WITTGRAF: I don't think there is a Broward
11 County in Illinois. We have two native Illini here.

12 MR. ALLBRIGHT: Well I know it's not Broward County,
13 Florida, because I know they're in the business. I will double-
14 check that if Broward is incorrect. I am told there is a PHA in
15 Illinois I had of Broward.

16 Well, if the information is incorrect, that makes it
17 at least one LSC grantee worse.

18 CHAIRMAN WITTGRAF: Well, I was curious and tried to
19 clarify that simply if that was correct, and presumably it is
20 correct, perhaps with a different entity to which you are
21 referring. I think most of the members of the board would be
22 interested in knowing a little bit more about that particular

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1 grantee and the actions that it has taken. If you're able to
2 advise us of that specifically, please do.

3 MR. ALLBRIGHT: I'll be glad to.

4 CHAIRMAN WITTGRAF: Go ahead, I interrupted you.

5 MR. ALLBRIGHT: Well I'm just about through here,
6 which brings me really to my closing point, is that you as a
7 board have taken action to limit the types of cases that your
8 grantees are involved in. Certainly Congress has taken action
9 to limit the kinds of cases, and this is a matter of choosing
10 priorities, setting priorities.

11 I would simply state that in today's environment with
12 drugs being the pressing and crushing problem that they are in
13 public housing, that you take some action to relieve the vast
14 majority of law-abiding and decent people who have nowhere to go
15 in public housing. They can't pick up as many of the rest of us
16 can and say this environment is unacceptable to me, I'll move
17 out. They're trapped there many of them, although we don't want
18 to think of public housing as the housing of last resort.

19 Unfortunately, many people cannot afford to go
20 anywhere else. They're forced to live with drug dealers and
21 they're forced to live there far too long because of the actions
22 of LSC grantees. So I would ask that you take whatever action

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1 you can to help us and to help the nation as a whole to be
2 relieved of this problem.

3 I'll be glad to answer any questions.

4 MR. DANA: Mr. Chairman.

5 CHAIRMAN WITTGRAF: Mr. Dana.

6 MR. DANA: Thank you for that presentation. In Macon,
7 Georgia or in any of the other housing projects where this
8 litigation you are concerned about occurs, are there provisions
9 in the local law or in the leases that authorize eviction of all
10 occupants of a unit where drugs are found?

11 MR. ALLBRIGHT: The lease requires a number of things,
12 one that units be used only as a dwelling place. Frequently we
13 can take action and show that the unit has been used for
14 something other than a dwelling place. There are other clauses
15 that require adherence to state, federal and local law, if that
16 answers your question.

17 MR. DANA: Not quite. It seems to me that what you
18 are, and we are running into this a lot the last six months, we
19 have a problem in this society and certain people have rights
20 that Congress or state legislators have given them. Advocates
21 for change are proposing that we deny them counsel rather than
22 change the rights.

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1 It would seem to me that an appropriate way of dealing
2 with this would be to have the ultimate sanction, which is
3 everybody gets out of an apartment where drugs are found, rather
4 than to say you have rights to remain, but we're not going to
5 give you a lawyer to protect those rights.

6 What you're advocating is that we tell all of our
7 programs to deny representation to people who you have described
8 as having nowhere else to go because they happen to be living in
9 a place where drugs are found.

10 Now I am not a card-carrying member of the American
11 Civil Liberties Union, but it does seem to me that yanking
12 lawyers as a solution for a societal problem, rather than
13 dealing with the law front and center, is the wrong way to go
14 about it and is, at borderline, un-American as way of dealing
15 with society's problem.

16 If we want to suspend the Constitution and we want to
17 suspend due process in order to win this war on drugs, maybe we
18 should do that. It seems to me that we ought to do it up front,
19 in Congress or in state legislatures, rather than come to this
20 corporation to say, "Tell your people not to provide legal
21 services to anybody that the government wants to throw out of
22 public housing."

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1 MR. ALLBRIGHT: I'm certainly not advocating the
2 abolition of constitutional rights. I'm not advocating that due
3 process be forgotten or thrown out of the window at all.

4 MR. DANA: You are advocating that we make sure or we
5 encourage our programs not to provide service when their
6 residency rights in your public housing are being challenged
7 because of a drug-related matter; is that correct?

8 MR. ALLBRIGHT: If we could get to the factual issue,
9 which is whether or not drugs are used, whether or not drugs are
10 found and whether the people there were associated tied to those
11 drugs, if we could get to that factual issue and get to it
12 quickly in a court of law, I wouldn't be here today.

13 The delays we face are merely procedural delays, and I
14 would submit that, as an example I read in Macon, Legal Services
15 counsel, grantees, delay action for over a year, it takes a jury
16 four minutes to determine that an eviction is proper, something
17 is wrong.

18 MR. DANA: Fine. If the law in Macon, Georgia is that
19 if drugs are found in an apartment, everybody has got to get
20 out, how can you -- there is no due process required. The drugs
21 are found, you've got to get out.

22 MR. ALLBRIGHT: I think the question is how, not

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1 whether or not these people are entitled to an attorney. I'm
2 not suggesting that they not be allowed counsel, I am suggesting
3 that the public fisc is best not spent in this representing this
4 element.

5 MR. COLLINS: Mr. Chairman.

6 CHAIRMAN WITTFGRAF: Mr. Molinari.

7 MR. MOLINARI: I'd like to share with you quickly
8 something that occurred about two years ago in my congressional
9 district. With all of the adverse publicity surrounding HUD,
10 one of their shiningest hours, I think, was a very ambitious
11 project they undertook in my district as a test pilot project
12 where they went into public housing that was federally
13 subsidized.

14 I must tell you they are the poorest of the poor, 100
15 percent minorities live in those units. They went in with a
16 massive program of housing inspection violations, repairs and
17 part of it was, with the cooperation of, and I have to check the
18 role of Legal Services and the recipients, they instituted
19 eviction proceedings. There were alleged to be 22 drug dealers
20 in this particular large housing facility conducting business.

21 They were successful in evicting 17 of the 22. With
22 all the other things that were done in terms of repairing the

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1 heating units that weren't working in the cold, cold weather,
2 and a whole host of other things, the things that tenants and
3 tenants association came back and said was wonderful, was the
4 fact that we were able to get rid of many of the drug dealers
5 dealing in death.

6 I don't think any of us sitting here, unless you live
7 in those areas, if you live in an urban area and you mix in with
8 people there, can really understand how bad it is, and how, over
9 the last 20 years or so, the drug dealers have taken over those
10 areas and control them totally and are corrupt. What you said
11 is correct, the young people live in terror, absolute terror.

12 I guess, Howard, the question you raised which I
13 really didn't want to get into, if, in fact, Legal Services
14 lawyers were to initiate eviction proceedings against alleged
15 drug dealers, I don't think Legal Services lawyers could
16 represent those being evicted.

17 I think that they couldn't be on both sides of the
18 issue. It's a very, very serious issue in the country. I would
19 like to see Legal Service lawyers play a greater role, because I
20 know what happened in my district. I tell you I'm going to try
21 to get further documentation as to the precise details of that
22 and share it with the members of the board. It's a wonderful

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1 thing and it's a wonderful goal.

2 CHAIRMAN WITTGRAF: Mr. Collins.

3 MR. COLLINS: Just one brief comment. As one who has
4 looked closely and lived closely with people who live in those
5 projects, I completely concur with Congressman Molinari. The
6 Constitution and the right to freedom and personal liberty
7 applies to all the people who live there. It is the drug
8 pushers who have the rest in fear and in captivity.

9 The difficulty here really is that drug dealers should
10 not qualify as indigent. They are not indigent. Why is the
11 Legal Services Corporation defending these people when so many
12 poor people need our help and support. I completely concur on
13 what you're saying. What you are really doing is taking the 10
14 percent or 5 percent of drug dealers and drug pushers out of
15 there and permitting the 90 percent decent people to have some
16 measure of peace in their lives.

17 MR. ALLBRIGHT: I appreciate that and certainly concur
18 with it. I would ask if you have any question of how bad this
19 problem is, go to a public housing community, any community.
20 I'll be glad to if you call me and give me a state or give me a
21 city, and I'll give you the name of one, but just go knock on a
22 few doors and ask the people what it's like.

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1 The last resident association meeting I went to, there
2 were about 300 people there. A gentleman stood up and said when
3 I asked what can we do for you, he stood up and said, "Help us
4 evict people faster who are dealing drugs and poisoning our
5 children." That was the only standing ovation of the three days
6 of the meetings that we had, and it went on for about five
7 minutes.

8 These people are living in absolute terror. In
9 Chicago where Vince Lane is doing a magnificent job of cleaning
10 up the public housing there, he has gone through and done a
11 clean sweep program where he goes from the top to the bottom of
12 a building and knocks on every door to see who is there. If
13 they don't live there, they are thrown out. If there are
14 problems in the apartment, if windows need to be replaced,
15 faucets are leaking, everything is fixed at the end of a week or
16 two weeks. Everything is fixed, the halls are painted, lights
17 are back in, guards are at the desk. Everyone has an I.D. to
18 come and go.

19 A lot of people thought that this I.D. problem, this
20 is a terrible thing. You're trampling on people's rights.
21 Interestingly enough, in one of the cases where over 500 people
22 lived in this one building, the ACLU filed a suit, helped one

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1 family to file a suit the day that this action began. They
2 never could get another family to join in their class action
3 suit and eventually dismissed the suit because the people just
4 aren't interested in that approach.

5 I would just say to finish up, when we went up to
6 visit this one project and ran into a lady walking across the
7 lobby and said, "Ma'am, there's a lot of talk that the Chicago
8 Housing Authority has somehow lessened your rights by making you
9 show an I.D. to come and go." She said, she looked up at us,
10 and you really can't forget it and said, "Before this I had to
11 pay a quarter to walk across this lobby to keep from either beat
12 up or have my groceries stolen. I had to pay another quarter to
13 get in the elevator. I had to pay another quarter to walk down
14 the hall, and the same thing happened in reverse." Then she
15 looked at me and she said, "Before this happened I didn't have
16 any rights."

17 That's what's happening to the 90 to 95 percent of
18 law-abiding, decent, hardworking people in public housing. They
19 are prisoners to the few drugs dealers who live there and who
20 are terrorizing them.

21 CHAIRMAN WITTGRAF: Mr. Hall has nothing further.
22 Anybody else, any questions or comments for Mr. Allbright.

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1 Thank you very much, Mr. Allbright, I appreciate it. It was not
2 the time that you had been advised. We appreciate your
3 patience.

4 MR. ALLBRIGHT: I appreciate an opportunity to be
5 heard. Thank you very much.

6 CHAIRMAN WITTGRAF: Thank you.

7 At this time we have before us the matter of the
8 proposed reduction in funding for calender year 1990, for
9 California Rural Legal Assistance. We do have a representative
10 of California Rural Legal Assistance, the present legal counsel
11 for the grantee who was with us and appeared briefly before us
12 three weeks ago on April 30th.

13 President Wear, would you like to say anything in
14 regard to this situation?

15 PRESIDENT WEAR: Mr. Chairman, previously in my report
16 I talked about the letter that was sent to California Rural
17 Legal Assistance, dated May 17, 1990. In that letter, Mr.
18 Chairman, I raised several questions about two matters handled
19 by the program. One case Liknes, et al v. Kaiser, and the
20 Committee to Defend Reproductive Rights v. Kaiser.

21 I think the letter which each of the board members, I
22 am hopeful anyway, have received, speaks for itself. I assume

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1 that the representative from California Rural Legal Aid will
2 have also some comments on the letter.

3 CHAIRMAN WITTGRAF: Which letter are you referring to
4 now?

5 PRESIDENT WEAR: The letter of May 17, 1990.

6 MR. COLLINS: This letter suggests, if I understand it
7 correctly, Mr. Chairman, that you are notifying them of some
8 action you are going to take, they have 20 days in which to
9 respond?

10 PRESIDENT WEAR: Yes, sir. It's similar to the letter
11 that went to Texas Rural Legal Aid back in January.

12 CHAIRMAN WITTGRAF: Before I call on counsel, let me
13 be sure that my understanding is the same as the president's
14 regarding this matter and that the board has the same
15 understanding.

16 California Rural Legal Assistance has 20 days from and
17 after May 17 to respond, that will be approximately June 7th or
18 8th. One way or another, be it directly from California or be
19 it from corporation staff, we will receive that response. We as
20 a board will not be meeting again, should we choose to hear
21 anything regarding the merits or the demerits of this matter
22 until June 25th. A defunding decision could occur between, say,

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1 June 7th and 8th and June 25th.

2 If I am correct in my understanding that time table,
3 then the chair's inquiry of the president is, do you
4 contemplate, Mr. Wear, any final decision regarding defunding
5 before June 25th, or would it be after June 25th so that the
6 board will have the opportunity to hear substantively both in
7 writing and orally from representatives of California Rural
8 Legal Assistance.

9 Mr. Wear.

10 PRESIDENT WEAR: Thank you, Mr. Chairman. Mr.
11 Chairman, I assume that I will receive a written response from
12 California Rural Legal Assistance, and when I get that response
13 I'll certainly send it to each of the board members.

14 If it is the board's desire to put this matter on the
15 agenda for the June meeting, I will not make the decision on it
16 until after that time. I think that's the chair's belief as to
17 the most equitable and just way to proceed. I don't know if any
18 of the board members feel otherwise. The chair is comfortable,
19 certainly, with that representation from the president.

20 MR. ABASCAL: That's satisfactory to us.

21 CHAIRMAN WITTGRAF: Is there anything further that you
22 would really like to say today, or are you willing to defer until

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1 June 25th, if it's necessary for you to be heard on that
2 occasion?

3 MR. ABASCAL: I was only going to ask for the
4 opportunity to appear at that time or prior to the final
5 decision of any sanctions in response to our response that the
6 corporation feels that the imposition of sanctions is
7 appropriate.

8 Let me just add, though --

9 CHAIRMAN WITTGRAF: Let me interrupt you just a
10 second. Forgive me. Let me ask a question of the president so,
11 again, hopefully we're all understanding the situation in the
12 same way.

13 Would you contemplate, Mr. President, that you would
14 have reached a tentative conclusion regarding punitive defunding
15 by June 25th?

16 PRESIDENT WEAR: Mr. Chairman, if the board wants a
17 tentative decision by June 25th, I'll try to develop one.

18 CHAIRMAN WITTGRAF: We get into a little bit of a
19 awkwardness here in terms of the transition in the presidency.
20 I think it would be appropriate because, certainly you have
21 monitored this decision. Any new president, I don't believe,
22 will be familiar with the background of this. It would be the

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1 chair's thinking that a tentative but unmailed, unpublished
2 decision would be helpful to the board.

3 Is the board comfortable with that? It could be a
4 decision, conceivably, of no punishment, or some punishment
5 ranging in a monetary amount between 0 and 10 percent is what I
6 anticipate would be the president's decision.

7 Are you comfortable with that?

8 MR. ABASCAL: Yes.

9 CHAIRMAN WITTGRAF: So, then, we will be looking both
10 to a factual consideration and a consideration -- potentially a
11 factual consideration, and potentially a consideration of the
12 recommendation of the president regarding the actin that he
13 believes is appropriate.

14 MR. ABASCAL: Let me just add to the previous
15 discussion that you had with respect to TRLA. We would not be
16 here, I suspect, and I suspect that TRLA would be here making
17 these requests to the board had the regulation not been changed
18 in 1984. The regulation that Mr. Shea referred to earlier, the
19 threshold which triggers the availability of a formal hearing
20 had, until 1984, been \$20,000 or 10 percent. In 1984, it was
21 changed to eliminate the \$20,000 threshold.

22 MR. HALL: Whichever was less?

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1 MR. ABASCAL: Whichever was less, yes. So I don't
2 know if there was any resolution. There were some suggestions
3 made. To my knowledge that lesser sanction was never imposed,
4 even though the threshold was changed. So I think that the
5 board never had to address the absence of some procedures,
6 perhaps lesser in scope than the procedures applicable to a
7 sanction above that threshold, because from 1984, to the
8 present, just the past few months, there had been no impositions
9 of sanctions below the threshold the corporation never developed
10 any procedures for that.

11 So I think that that's why, at this time, because
12 sanctions are being proposed at the lower threshold, we would
13 welcome, I think, all the programs throughout the country would
14 welcome the evolution and the development of concrete procedures
15 so that we know what particular procedures are applicable in
16 this particular context.

17 Every other enforcement procedure that the corporation
18 has is expressed in formal regulations. This is the only
19 enforcement procedure for which there is no known procedures.

20 CHAIRMAN WITTGRAF: Thank you. Unless anybody has any
21 questions or comments for counsel, we'll proceed on that
22 understanding that California Rural Legal Assistance will be

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1 responding with the required 20 days, and that on June 25th,
2 California Rural Legal Assistance will be afforded an
3 opportunity to be heard. Also, the president will bring his
4 tentative conclusion or recommendation regarding this matter to
5 the board at that time.

6 Mr. Dana.

7 MR. DANA: Is it understood that the CLRA will have
8 had an opportunity to review that tentative conclusion so that
9 it can respond to it or not, I'm sure that if we don't insist on
10 it, they won't have it.

11 CHAIRMAN WITTGRAF: A good question. What are you
12 thoughts about the timetable, Mr. President?

13 PRESIDENT WEAR: Mr. Chairman, I don't know that there
14 will be time to get all that done.

15 CHAIRMAN WITTGRAF: They may not is the answer, and
16 the board will have to consider that as one of the
17 considerations regarding how to deal with the proposed defunding
18 of California Rural Legal Assistance.

19 PRESIDENT WEAR: Mr. Chairman, maybe I'm confused
20 about what the proceeding is. You wanted a draft decision, but
21 yet you wanted it circulated. The decision, I would think,
22 would be circulated when it's final and given to the program.

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1 I can issue a decision prior to the board meeting and
2 we can have the debate that we had this morning, or I can hold
3 off issuing a decision until after the board meeting. It's
4 whatever your preference is.

5 CHAIRMAN WITTGRAF: Perhaps what would be most
6 appropriate in the chair's mind is if you would prepare it
7 simply to present and oral recommendation, conclusion, the
8 response then can be made at that time by California Rural Legal
9 Assistance. With it being oral, both sides, so to speak, would
10 be on the same footing. There would be nothing that either had
11 not had the opportunity to review before hand.

12 Can you just be prepared to make an oral
13 recommendation, conclusion or recommendation?

14 PRESIDENT WEAR: Certainly.

15 CHAIRMAN WITTGRAF: At this time the chair declares
16 the board to be in recess for the purpose of lunch. We've lost
17 a couple of our members, apparently to other luncheon
18 commitments.

19 The hotel has advised us that it strictly adheres to a
20 1:00 o'clock checkout time, so that if anybody is needing to
21 checkout, he or she should do so at this time.

22 We will attempt to reconvene at 1:15 p.m.

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

(1:55 p.m.)

1
2
3 CHAIRMAN WITTGRAF: The meeting will come to order.
4 At this time we have before us agenda item number 5, review by
5 general counsel of statutory and regulatory responsibilities or
6 directors, president, other officers and grantees.

7 In preparation for today's meeting, our counsel, Mr.
8 Shea, has prepared and forwarded to us through our president,
9 Mr. Wear, a memorandum dated May 18, 1990, on that very subject.
10 In fact, the memorandum I believe to which Ms. Pullen referred
11 this morning when we were discussing Freedom of Information Act
12 requests.

13 I'll ask Mr. Shea to make brief comments and then if
14 there are any specific questions or concerns that any board
15 members have, that they then can bring those before Mr. Shea.

16 Tim.

17 MR. SHEA: Thank you, Mr. Chairman. Let me introduce
18 my colleague. Appearing with me is John Penzinger. John is a
19 senior litigation counsel in the Office of General Counsel. He
20 is a seasoned litigator, having been in private practice and
21 personal injury practice for six or eight years. He is steeped
22 in accounting matters, which I find valuable.

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1 Finally, and the reason why he is here, is that he has
2 an L.L.M. in corporate affairs and he wrote his thesis on the
3 liabilities of corporation directors. So he has a large measure
4 of expertise in this area. I can tell you if you ask me
5 difficult questions on corporate organization, I may well defer
6 to him. On matters such as administrative procedure I will
7 probably deal with those questions on my own.

8 I will just offer, if I may, a brief summary of my
9 memorandum. To begin with the duties of the board are setting
10 policy and insuring that the policy of the corporation is
11 carried out. There are a number of preeminent ways in which
12 that's accomplished is through matters such as legislative
13 initiatives, adopting regulations and guiding top management, as
14 well as adopting things like a budget for recommendation to
15 Congress.

16 The principal duties of the board are set out in the
17 LSC Act and in the D.C. Nonprofit Corporation Act. I might add
18 that the Legal Services Corporation Act says that to the extent
19 consistent with the provisions of the Legal Services Corporation
20 Act, "The corporation shall exercise the powers conferred upon a
21 nonprofit corporation by the District of Columbia Nonprofit
22 Corporation Act."

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1 Consistent with that, then, of course, there is a
2 board of directors. "The board of directors, pursuant to the
3 D.C. Nonprofit Corporation Act, shall manage the affairs of the
4 corporation." The way that is done, and this board is familiar
5 with that, would be through matters such as either resolution,
6 passing of rules, considering or, perhaps, reconsidering actions
7 of the executive or the staff.

8 The Legal Services Corporation Act has a number of
9 limitation of it's own that bind the board equally. As I set
10 out in my memorandum, there are a number of limitations
11 nonpolitical activities by the corporation, and that includes
12 the board of directors as well as the staff. The fundamental
13 duties of the board are to observe the two primary duties, the
14 duty of care and the duty of loyalty. Both, I think it's fair
15 to say, require the decisions of the board be informed and be
16 otherwise consistent with the rules and the statute that applies
17 to the corporation.

18 As for board meetings, ordinarily the board acts as a
19 body. That ordinarily takes place. Of course, in a meeting of
20 the full board or, perhaps, as the case may be the meeting of a
21 committee of the board, board members should be aware that under
22 the open meeting, the Sunshine Act provisions of the statute,

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1 that if a quorum of the board is meeting on a particular issue,
2 it should be noticed in advance.

3 Absent that, that is if more than six board members
4 were to get together to confer on a specific proposal for a
5 business decision, it could potentially run afoul of the open
6 meeting requirement.

7 I labor long and hard in my memo to explain the
8 respective responsibilities of the board and the staff with
9 respect to rule making and adjudication. With respect to rule
10 making, it is the board that issues the proposed rules,
11 deliberates on rules and adopts them. The staff can issue
12 certain kinds of grant conditions and instructions, but
13 generally it's up to the board to issue rules.

14 As you're aware, this matter has come up from time to
15 time already with this board. There are some constraints under
16 the existing appropriation act on the kinds of rules and the
17 time -- the effectiveness of any rules that may be adopted by
18 this board.

19 I think really that is all I proposed to offer. Very
20 briefly, of course, the statute establishes officers and they
21 are the duties of the officers are set out in the LSC bylaws,
22 which appear at part 1601 of our rules. Finally, I have a brief

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1 discussion of the responsibilities of the recipients. Keep in
2 mind the recipients are governed by boards of directors,
3 autonomous boards of directors of their own.

4 They are governed by state law with respect to how
5 they proceed organizationally their various duties and
6 obligations as well. There is a general requirement that
7 grantee boards be composed of 60 percent attorneys and 33
8 percent eligible clients. There are a large number of other
9 fiscal obligations and various kinds of notice and procedural
10 obligations that are imposed on grantee boards.

11 That is a very, admittedly, brief explanation of my
12 memo. John and I would be pleased to entertain questions as the
13 board feels fit.

14 CHAIRMAN WITTGRAF: Thank you, Mr. Shea. Obviously
15 the materials you covered here are contained in other materials
16 which we have been provided over the last few months. I think
17 it's helpful for us to have a summary of these things.

18 Anybody have any questions, comments or concerns in
19 regard to the 10 or 11 pages of information here?

20 (No response.)

21 I guess not at this time. We'll wait until some
22 specific question or problem presents itself.

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1 MR. SHEA: I'm pleased I seem to have answered every
2 single question. Thank you.

3 CHAIRMAN WITTGRAF: The chair is prepared now to move
4 to agenda item 6, which previously had been agenda item 8, prior
5 to the amendment to the agenda this morning and its adoption,
6 that is the report on access by the Legal Services Corporation
7 to recipients employment verification and accounting or EVA
8 files.

9 Again, as I indicated this morning, the terrain has
10 shifted somewhat on this subject or this issue since we were
11 together three weeks ago at the Old Colony Inn. I called the
12 board's attention particularly to the president's memorandum of
13 May 17, 1990, to us.

14 It's my understanding that Mr. Houseman, in addition
15 to providing some materials to us earlier, also today has
16 provided to us in response to this memorandum of last Thursday,
17 together with De Miller, another memorandum, that dated today's
18 date, May 21, 1990, in response specifically to the May 17
19 memorandum over President Wear's signature.

20 If Mr. Miller and Mr. Houseman wish to come forward to
21 the witness table, are there some others who you think wish to
22 come forward with you at this time who have specific concerns?

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1 Mr. Loines has general concerns, Mr. Summer has specific
2 concerns. Anybody else with specific concerns?

3 (No response.)

4 Before proceed to hearing from any of the gentlemen
5 from the witness table, I'll ask the president, Mr. Wear, to
6 summarize for us his memorandum of May 17.

7 Mr. President.

8 PRESIDENT WEAR: Thank you, Mr. Chairman. In a number
9 of the discussions that have been held between members of staff
10 in the monitoring department, the general counsel and Mr.
11 Houseman, Mr. Loines and others, it appeared that the objections
12 on the part of the three programs raising objections, and I
13 should back up and say that all of the other programs, 324
14 total, have not had a problem with these employment and
15 verification files.

16 With regard to the problems of these three programs,
17 it appeared that their objection centered around the issues of
18 the supplying of employees resumes, the performance evaluations
19 or program employees, grievances made against those employees or
20 made by those employees, documents showing reprimands or
21 suspensions or other disciplinary actions taken against the
22 employee, and the employee's letter of resignation, if any, in

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1 the file.

2 So, Mr. Chairman, last week the staff proposed to me
3 and I agreed to pull those five types of documents out of the
4 employment verification file, and to deal with access to those
5 documents on a case-by-case basis on a visit-by-visit basis.

6 This, Mr. Chairman, returns us to where we were before
7 we set up the file with regard to these five types of materials.
8 As you know, from your earlier memoranda, the EVA file contains
9 approximately 34 different types of information. It will be an
10 improvement to get that information all into one file, even
11 though take these five items out of the file.

12 I'm hopeful that this will resolve the problems of
13 these three programs and this union. I think that it certainly
14 should. I'll await further comment.

15 CHAIRMAN WITTGRAF: Thank you, Mr. President.

16 Mr. Houseman.

17 MR. MILLER: Mr. Chairman and board members, my name
18 is De Miller, and I'm speaking with Alan on behalf of the Legal
19 Services community.

20 Mr. Wear's presentation is correct that we have made
21 substantial progress since the last meeting, the terrain has
22 changed. They remain, though, as we tried to point out in the

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1 very short memorandum that we distributed to you this morning,
2 some significant issues which require, in our judgment, board
3 involvement to help resolve them.

4 Specifically, while the most objectionable items in
5 privacy terms have been removed at the front end from being
6 required to be in the EVA files, there is no limitation at all
7 on the corporation's ability or right to request these items in
8 the course of monitoring. Most importantly, there is no
9 standard at all which would guide those requests, no expression
10 of policy or principle as to when it would be appropriate to ask
11 for these additional documents that do contain personal
12 information.

13 Our view is that there is a very simple basic tension
14 here between privacy interests on the one hand, and governmental
15 authority and power on the other hand. A reasonable balance, as
16 in so many of these issues, must be struck. We're asking this
17 board, really, to help strike the balance, not to execute it,
18 not to make a decision in every individual case, or every
19 individual monitoring visit, that's surely the role of staff or
20 the monitors, that's not what we're asking.

21 We are asking for board guidance on the initial policy
22 question. Request for these documents should be an

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1 extraordinary event, not an ordinary event because of the
2 employees' privacy interests involved. We've proposed to the
3 board a couple of precepts or principles that we would recommend
4 to the board be a part of it's policy in formulating such a
5 standard.

6 One would be that these additional documents be sought
7 only where there is a pattern of inappropriate or illegal
8 conduct by a recipient that affects the fundamental performance,
9 the ability of that recipient to perform economical and
10 effective and high quality legal services. Those are the
11 standards in the act.

12 We're suggesting that if there is from, outside
13 evidence other evidence that's apparent to the corporation, from
14 whatever source, an indication that that broad performance by a
15 grantee is jeopardized, then we submit that it may be
16 appropriate to ask for these records.

17 The second piece of that is, are the records relevant
18 to the resolution of those allegations of inappropriate conduct.
19 If they are, then we would say there should be access to them.
20 So we concur and come together at that point. Our position is
21 that the board ought to adopt as a policy a standard which says
22 there needs to be first a pattern of inappropriate conduct

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1 demonstrated by some outside evidence, and secondly that the
2 records sought need to have some relationship to that pattern of
3 inappropriate conduct.

4 There are two other board steps we view as essential
5 in this matter. One is there remains alive to this day a 1988
6 board policy, which provides for the automatic suspension of
7 funding to recipients. That's how Middlesex and Pittsburgh got
8 before you. If there is even an offer, in effect, to negotiate
9 on the part of a grantee or recipient, the issue of access to
10 records.

11 That policy, that 1988 board policy in its breadth and
12 sweep and unconditionality, we suggest, has to be reversed and
13 suspended. The second step is there still remains language akin
14 to the issue I just mentioned in the proposed new grant
15 condition by staff, which contains an acknowledgement by the
16 recipient or a call for an acknowledgement by the recipient that
17 it automatically would forfeit all future money, any right to
18 all future money, if it entered into any agreement, collective
19 bargaining agreement, personnel policy or otherwise, which in
20 anyway limited the corporation's right of access to any of these
21 documents, including the items that were pulled out of the EVA
22 file at the front end.

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1 So the automatic forfeiture language, funding
2 language, like the board policy regarding automatic suspension
3 of recipient funding, are two positions of the corporation that
4 we contend really, really merit major reconsideration and should
5 be reversed.

6 In short, what we would urge is another period,
7 probably in another three or four weeks before the June meeting,
8 perhaps with the involvement of Congressman Molinari who has
9 expressed an interest in meeting on the issue, to try to see if
10 we can further narrow the gap along these lines with the matter
11 to come back to the board at the June meeting for final
12 resolution of these policy issues.

13 We really would urge some guidance, if at all
14 possible, even today, on the policy issue, policy matters that
15 we're raising. Thank you.

16 CHAIRMAN WITTGRAF: Mr. Houseman, did you wish to be
17 heard at this time or just Mr. Miller?

18 MR. HOUSEMAN: No. I'll respond if necessary, but
19 he's presenting the field's position on this.

20 CHAIRMAN WITTGRAF: Mr. Molinari.

21 MR. MOLINARI: I must apologize for Mr. Miller and the
22 others because of some personal problems at home, I was not able

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1 to go ahead and have a meeting with the people that I wanted to.
2 We had a conversation outside, and subject to the consent of the
3 board, we will proceed to do that, hopefully before the next
4 meeting.

5 I just have one question that would be well if we
6 could just get some better readings.

7 Mr. Miller, as I understand what you're saying is if
8 there is a pattern with some indication of illegal behavior,
9 then you would feel it's appropriate to request the files at
10 that point in time, subject to the caveats that you had before.

11

12 Absent any pattern or showing of illegality, you don't
13 believe those files should be made accessible?

14 MR. MILLER: That's right. To put it another way, we
15 feel that there is a clearly a tension here, privacy versus
16 governmental interest and authority. A balance must be struck
17 and the concerns or considerations that should guide the
18 corporation's initial request for those additional files that
19 have now been pulled of the EVA requirement should be whether or
20 not such a pattern exists, A, and obviously, B, whether or not
21 the records are themselves relevant to such a pattern.

22 MR. MOLINARI: Let me just ask you this question so

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1 that I can learn a little something about the matter, it might
2 be helpful to our meeting.

3 Would it not be a point that if in the event this
4 board or members of the staff, which would usually be the case,
5 going out on a periodic auditing type of basis asking for this
6 information might, in fact, find evidence of illegality that is
7 not disclosed otherwise?

8 MR. MILLER: Sure. I mean, if in the course of a
9 monitoring visit from review of a lot of this -- you're probably
10 not aware of it but we usually we ship cartons and cartons of
11 material to the corporation at their request prior to a visit.
12 So there's a lot of material that's already in their hands, and
13 then a lot more is requested on-site.

14 If from a review of that material, not the specific
15 files we're talking about, but any of the other material or any
16 of the interviews or anything else that occurs on-site, a
17 pattern, a problem along the lines I've described becomes
18 apparent, that's precisely the kind of case we're saying would
19 be appropriate, assuming the records are relevant to that
20 pattern.

21 I mean, if there is a pattern of there is a pattern--
22 if somebody is looking through the books of a grantee finds a

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1 pattern of misappropriation of funds on travel, it may not
2 justify looking at an evaluation of an attorney who has been in
3 the program six months. I mean, there may not be that kind of
4 connection.

5 MR. MOLINARI: I guess I have a concern about trying
6 to, in fact, establish that such a pattern exists, I guess. As
7 we get to each specific case we might engage in an argument as
8 to whether that pattern does exist or not.

9 Beyond that it seems to me, and I've not sat down and
10 had the opportunity to review all the documents, it would be an
11 obligation of Legal Services Corporation to conduct periodic
12 audits and to determine whether the grant recipients are, in
13 fact, doing what is right and there is no illegal activity going
14 on, and I think that's a normal part of governmental process.

15 I just welcome the thoughts of the panel as to where
16 that fine line can be drawn or how it should be drawn, if it
17 should be drawn. That's another issue. As I listened to you I
18 got the sense that some of these documents which could be
19 important and could, in fact, expose illegal behavior activity
20 would not be disclosed unless the conditions first are filled;
21 that we have to establish, the staff has to establish this
22 pattern or illegal activity.

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1 I'm wondering how will we fulfill the mandate of
2 accountability. Short of that, I'll welcome anybody's comment.
3 I think Mr. Loines wanted to.

4 CHAIRMAN WITTGRAF: Are responding directly, Mr.
5 Loines?

6 MR. LOINES: Yes.

7 CHAIRMAN WITTGRAF: Please.

8 MR. LOINES: A couple of things. One way of looking
9 at this is when monitors come to programs one of the things
10 we're saying very clearly is that monitors should not start by
11 looking in people's personnel files.

12 It seems to me that there is an obligation for this
13 agency to attempt to draw this line. Now there are a number of
14 cases, and I don't want to -- you know, this, perhaps, should
15 not be considered an appellate court, but we briefed these
16 issues in our Portland case.

17 There are a number of federal agencies, not quasi-
18 governmental agencies, but federal agencies that have been told
19 very clearly by the courts that you have to draw that line.
20 That you simply can't, when it comes to questions of
21 confidential material, and that's all we're talking about here,
22 we're not talking about all the other reams of information that

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1 you can get, but when it comes to confidential information a
2 line has to be drawn.

3 The cases talk about reasonableness. The Portland
4 case decided by, I might add, a conservative judge in Portland
5 very clearly said that LSC had a responsibility to make its
6 demands reasonable and necessary. Part of the reason that it
7 found for us in this case was that LSC did not have an
8 articulated standard. That's one of the things we're saying to
9 you here today, that you have an obligation to draw that line.

10 To some extent, and I commend Mr. Wear for his efforts
11 to date, but to a large extent the corporation's current
12 position is the position that it articulated in the Portland
13 case. In that case the corporation was found to be lacking, so
14 I point that out.

15 One other thing I need to correct, even though there
16 are three programs that have been listed in the various memos
17 that have objected to this EVA file situation, that's not
18 entirely correct. Because if you check the responses when
19 programs responded to the refunding application process, you'll
20 find that quite a number of programs indicated in their
21 responses, while they signed the grant conditions, they very
22 clearly in side letters and other documents indicated that they

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1 saw a serious problem. So I point that out.

2 Even though the situations in these particular
3 programs right now, at least in the immediate weeks prior to
4 this meeting, their defunding has been in abeyance, I anticipate
5 that in the next week or several weeks other programs, again,
6 are going to be in the same situation where they're going to be
7 monitored and without standards and guidelines LSC monitors, if
8 they follow their pattern in the past are going to say, "Look,
9 we have to have access to these personnel files.:

10 CHAIRMAN WITTFGRAF: Mr. Guinot.

11 MR. GUINOT: I was curious when you talk about a
12 pattern, I have to again go back to basic questions of who
13 determines whether a pattern exists, the program head, the
14 person from the monitoring office? What constitutes a pattern,
15 I mean, in other words, two instances, three, four, one?

16 In the event that we're talking here about fraud,
17 waste or whatever, and the office of LSC gets a communication
18 from someone, whether it be confidential or otherwise, is that
19 sufficient for the program to agree to look into it, or do you
20 say no pattern there's only one call, I'm not going to let you
21 look at it?

22 This procedural element still escapes me.

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1 CHAIRMAN WITTGRAF: Mr. Miller.

2 MR. MILLER: I think initially it's really the same
3 kind of point, I think, that Congressman Molinari made a couple
4 of minutes ago. Our suggestion or position would be that
5 because of the significance of the privacy interests involved.
6 These records, these limited records, have to be treated
7 somewhat differently than any other record, any normal record in
8 the possession of grantees. They are not the same. Some
9 deference, if you will, is due them.

10 In terms of the question of whether pattern is the
11 best choice of words or there is another better choice of words
12 or a better formulation of a standard that we could come to
13 after a discussion, that may well be. I think our point,
14 though, would be that there needs to be some standard because
15 they are a special kind of record with special sensitivity.

16 There needs to be some standard, board promulgated, to
17 be applied by the monitoring teams and the LSC staff on site.
18 Now whatever the standard is, whether it's pattern or outside
19 evidence of illegal conduct, without the word pattern or
20 something else, initially no question, the corporation staff or
21 the monitoring team would have a position on that standard.

22 The program conceivably may not agree with that. If

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1 there is disagreement, then that matter is going to have to be
2 worked out and pursued. I'm not going to try to suggest that
3 there couldn't be a disagreement between the program and the
4 corporation staff, but it still doesn't, I think, take away from
5 the fact that because of the nature of the records there must be
6 some standard to guide them.

7 It can't just be a wide open fishing expedition with
8 no limitation or no sensitivity to incursions into those files.

9 MR. GUINOT: You're preaching to the choir. When
10 you're talking to somebody here who wants to make sure that
11 these records are given a certain degree of protection, but
12 you're not answering my question because I believe that the word
13 "pattern" -- let me start again.

14 This is, perhaps, the one issue since I have been
15 sitting on this board where we are sitting down and talking with
16 each other as opposed to talking at each other. You folks have
17 come up with some suggestions, and I believe that the staff has
18 come up with some suggestions. You're trying to get to a middle
19 ground. I like that very much.

20 However, the word "pattern" seems to come from your
21 side, okay. It was not the staff side.

22 MR. MILLER: That's true.

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1 MR. GUINOT: I'm merely asking you aren't you now
2 getting yourself into a very difficult situation trying to
3 define what a pattern is? Who determines when a pattern has a
4 arisen? I don't believe that you answered my question. You
5 told me what I already know, which is these are sensitive
6 records and we should do the best we can.

7 I'd like to pose it again, please. If you're talking
8 pattern, this is the essence of your position, can you elucidate
9 a little bit more as to how you would go over that, as a help to
10 us, as an aid to trying to get to a middle ground here.

11 CHAIRMAN WITTGRAF: Mr. Miller.

12 MR. MILLER: Well, for one there are two points I
13 guess I would stress in the standard that we're offering. One
14 is certainly the word "pattern," which is in there. The other
15 is the significance of the inappropriate conduct that's being
16 talked about.

17 I'll come back to pattern in a second because I think
18 that's the harder and I think you're right on that. On the
19 latter point if there is evidence of violation, let's just say
20 of a minor cooperation regulation or something like that, the
21 reason to stress the overall effect of the violation on the
22 program's activity, rather than whether this particular staff

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1 attorney had broken a rule once, is because we suggest the
2 corporation's role in this sort of thing just in terms of
3 managing its own resources, is to see things that really have a
4 serious effect on the operations of a recipient; not trivial,
5 but significant.

6 I come back, I guess, to try to deal with the question
7 of pattern through that same kind of notion, which is what we
8 were trying to get at through the use of the word. It may not
9 be the best word, or a better approach to the problem. We were
10 trying to get at a concept which emphasized that whatever the
11 miscreants is, whatever the alleged deeds are, that it really
12 has to be more than trivial, more than isolated, something
13 that's genuinely affecting what the recipient is able to do for
14 poor people in its area or seriously illegal.

15 We won't cut loose the word "pattern," but that's what
16 we were trying to get at, some notion of significance of
17 importance of breadth, of sweep, of scope.

18 MR. GUINOT: Who determines this?

19 MR. MILLER: Initially, obviously, it will be
20 triggered by the monitoring team in consultation with the
21 corporation staff back at headquarters. That's the way a lot of
22 these issues come up. I mean, they'll make the initial

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1 determination. I suppose it's fair to say we haven't worked all
2 of this all the way through, but the program, conceivably as I
3 said before, would disagree with that.

4 If the program disagreed and the corporation chose to
5 pursue it and the matter couldn't be worked out, the one point I
6 guess I would make here is, and I think Mr. Wear's memo observed
7 it, and it's been observed at the prior discussions of this,
8 most of these disputes historically have been worked out on site
9 between the program and monitoring team, not all. You hear
10 about the ones that aren't, but most have.

11 So we may have some sense of confidence that it might
12 be worked out. If there is a flat out disagreement, then I
13 think the corporation would pursue it. I assume the corporation
14 would pursue it at that point and take whatever disciplinary or
15 other action it deems appropriate in the circumstances. We
16 haven't built in a hearing right or any of that sort of thing.

17 MR. GUINOT: It's my understanding that when the
18 monitoring visits are made, in rare instances that they go
19 looking for something, basically they do it as a matter of
20 course. So many programs are selected and they go and check, so
21 they're not actually looking for specific violations in a
22 specific program unless by the nature of information that they

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1 have they believe that some fault is present there.

2 If that is the case, it would be very difficult, of
3 course, to overcome pattern test, to use that expression. That
4 may be well and good.

5 MR. MILLER: Yes.

6 MR. GUINOT: The next thing is how would you overcome
7 a hypothetical where the monitoring office, or anyone here,
8 receives word that a particular program is misappropriating
9 funds and that the director of the program is misappropriating
10 funds? If you want to hear the truth about it, attorney so and
11 so who quit two weeks ago is the guy who really knows and he
12 left because he couldn't stand it. What do we do then?

13 We go to the program and the program says, no. After
14 all he's the fellow out there in charge and he says, "No, that's
15 not a pattern."

16 MR. MILLER: Just on that, you certainly -- under the
17 current EVA files and access to documents there is no question a
18 corporation team, a special team going in to investigate that
19 would absolutely have the right of access to information about
20 who that employee was, where that employee is to the extent that
21 the corporation -- there is nothing limiting the ability of a
22 corporation team, I think, to go in and talk to that individual.

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1 MR. GUINOT: What if it's a falsehood? What if it's
2 done on purpose. I mean, how are you going to -- are they not
3 permitting the monitoring team to go on a fishing expedition if
4 something is untrue? How do you determine that, I'm trying to
5 overcome the pattern check.

6 MR. HOUSEMAN: Let me see if I can try to answer this
7 a little bit. To investigate your hypothetical, which LSC
8 should do, it seems to me there is both a -- you should provide
9 an opportunity for someone to respond, but secondly whatever
10 that response is and LSC is not persuaded, it has the authority
11 to come in and make an investigation.

12 Rarely will it need to get in to these kinds of files
13 to make that investigation, that's our point. We're talking
14 about a standard, not for generally monitoring, we're talking
15 about a standard that's related to these types of files that
16 raise serious privacy issues.

17 Rarely will you need to get the employees resume,
18 performance evaluations, grievances, employee's letter of
19 resignation in order to investigate that kind of a complaint or
20 to investigate matters that involve fraud, criminal fraud,
21 alleged criminal fraud or embezzlement. You have full access to
22 all of the fiscal records of the program, all of the fiscal

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1 records. There is no dispute about that here, that's not what
2 we're talking about here.

3 You have access to virtually tons of records that are
4 provided prior to the monitoring visit, truckloads literally,
5 prior to the monitoring visit and at the monitoring visit, and
6 you have access to all of the fiscal records. You're not going
7 to have a roadblock in your way from trying to investigate those
8 kinds of charges. Rarely will you need the information that is
9 in these kinds of files in order to do that.

10 If you do, it seems to me that would probably cross
11 the line. It's going to be very, very rare.

12 MR. GUINOT: That means this information can be gotten
13 somewhere else?

14 MR. HOUSEMAN: In virtually every situation it can,
15 and it's not in this information. It can be gotten looking at
16 the fiscal records. For example, if there is fraud and
17 embezzlement, you're going to find those in the fiscal records.

18 MR. GUINOT: It might be in a letter of resignation.

19 MR. HOUSEMAN: Let me give you an example. Assume an
20 ex-employee made a charge. The employee can waive the right and
21 have you get that letter of resignation. We're not blocking
22 that, what we're trying to do is set up a situation where, if

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1 the employees don't want to give information that's private and
2 personal and there is no reason to get that information or do
3 this investigation, we're trying to set some standards in that
4 context.

5 In the situation you talked about, the employee could
6 waive that right and give the monitors the letter of resignation
7 or anything else in that employee's personnel file.

8 MR. GUINOT: Mr. Loines, I'd really like to hear from
9 you.

10 MR. LOINES: Let me give it a stab. I suppose you
11 could articulate a hypothetical where one of these items that we
12 consider confidential is not only relevant but necessary to the
13 corporation to have.

14 I don't envision, we have not -- the people at this
15 table have not gotten together and consulted each other on all
16 of these possibilities. It seems to me that under that kind of
17 scenario you would be able to get access. I'm not aware of any
18 law, any court proceeding that would be precedential in this
19 area that would keep you from getting information.

20 MR. GUINOT: The union does not object?

21 MR. LOINES: We have a lot of things to do. Filing
22 Portland-type lawsuits or other types of lawsuits all over the

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1 place is not something that we look forward to. I mean, we have
2 to make difficult decisions from time to time just like
3 everybody else, and we can also read the law.

4 We're aware of what the law says generally in this
5 area. I think that the important thing for us, however, is I
6 think this community can, in fact, come together on this and can
7 articulate a stand that we'll be willing to live by.

8 MR. GUINOT: I'd like to say once again that I like
9 the fact that on this particular issue and trying to work it out
10 together. There will come a point where virtually show and
11 we'll have to bridge that gap somehow. I really am very, very
12 pleased with the fact that the staff and you folks are sitting
13 down and working it out together.

14 Like I say, it's the first example since I've been
15 here. I'd like to commend you on that. Thank you.

16 MR. LOINES: If I can make one other point, there is
17 an item that Mr. Wear retains in his proposal, and that has to
18 do with prohibiting programs from developing personnel
19 procedures or negotiating contracts that in any way has any
20 limitation on LSC's right to access.

21 Obviously if we're able to work out a standard and a
22 procedure, then that is dealt with. I just point out that

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1 that's still on the table, so to speak.

2 CHAIRMAN WITTGRAF: Mr. Hall.

3 MR. HALL: My question has been answered.

4 CHAIRMAN WITTGRAF: At this time the chair recognizes
5 the president for some additional comments. Mr. Wear.

6 PRESIDENT WEAR: Thank you, Mr. Chairman.

7 Mr. Chairman, the dispute over records and access to
8 records of programs is one that was fought three years. There
9 are few things that remind me of Vietnam, but this is one of
10 them. You resolve an issue and then you leave that piece of
11 territory and the Viet Cong come back and then you go back and
12 do it again.

13 To resolve that question the last time, if the
14 document weren't provided, the corporation is going to suspend
15 the funding of that program for 30 days, that's the point Mr.
16 Miller made earlier. He doesn't like that proposal very much.
17 I guess if I were on his side I might not either.

18 The bottom line is that the corporation has to be
19 responsible for the use of these fund and has to be able to
20 examine these records. These records are spot checked, certain
21 records are pulled. In a few minutes, Mr. Chairman, I'm going
22 to ask Emilia DiSanto to come up to the table and comment

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1 further on this.

2 I think that the corporation has gone a long way to
3 resolving this issue, more than half way by taking these items
4 that seem to be the ones that were of the most concern to the
5 programs off the table. We'll deal with those on a case-by-case
6 basis as we have in the past. I think that that really should
7 resolve the debate.

8 If I may, if one of you gentlemen could provide Emilia
9 with a chair, I'm going to invite her up at this time for any
10 further -- actually two chairs I'm going to need -- I'm going to
11 invite her up, as well as Susan Sparks to comment further and to
12 give you a little background on this particular question.

13 Emilia, if you would, I'll ask you to summarize our
14 recent experiences with monitoring and the EVA files as well as
15 to fill in any gaps that I may have left.

16 MS. DiSANTO: Sure. Thanks a lot for the opportunity
17 to provide you with some brief comments, both on our policies
18 and procedures with regard to the EVA issue. As Mr. Wear said,
19 I've asked Susan Sparks, who is manager of Compliance Review and
20 Analysis, to join us today to summarize for you what is actually
21 occurring in the field since March 1, 1990, the date that the
22 EVA files were supposed to be established, so you can hear what

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1 has really happened out there.

2 Before turning over the discussion to Susan, I'd like
3 to just tell you about a couple of matters. First about our
4 monitoring policies and procedures and the way in which they
5 relate directly to document requests. I'd like to discuss the
6 scope of MAC's request for documents, talk about the proposal
7 that we're currently looking at with the regard to the EVA grant
8 condition and just briefly restate the uses to which we put the
9 information that was initially established in the EVA file.

10 First, in the spring of 1989, MAC did write a
11 monitoring guide which sets forth, among other things, written
12 policies and procedures to be followed during every single on-
13 site review. Every individual who monitors for LSC receives
14 training with regard to these policies and procedures.

15 Included in our training and in the monitoring guide
16 are very specific and detailed discussions regarding procedures
17 to be followed when an individual on site asks for records. As
18 I reported to you in March, we are at times unsuccessful in
19 obtaining some of the documents that we ask for. However, we
20 have found that the procedures work well in enabling us to
21 isolate those situations where material facts are withheld,
22 versus those situations that require that some accommodation be

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1 made.

2 Let me be clear on this point, LSC has never defunded
3 a program solely because of a recipient's denial of access to a
4 document. In fact, over the past five years LSC has issued only
5 three preliminary notices to suspend funding due to a
6 recipient's denial of access to requested information. The
7 third notice was issued just recently to the Legal Services of
8 New York City.

9 There, New York City denied LSC access to information
10 that was both critical and material to LSC's review. For
11 example, New York City receives \$12.5 million per year from the
12 Legal Services Corporation. They did not allow us to see salary
13 authorizations and payroll records, despite the fact that such
14 documents relate to the expenditure of over \$8 million in
15 federal funds per year.

16 The second area I'd like to clarify is the issue
17 relating to our requests for documents. It is true that prior
18 to a monitoring review, about 10 to 12 weeks before each on-site
19 review, we request that the program send us certain documents.
20 This occurs, as you know, about once every 20 months. The
21 number of documents that we request has not increased over the
22 past couple of years. Rather, the requests are more streamlined

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1 and are tailored to the specific functions of that specific
2 grantee.

3 This allows us to review up-to-date information so
4 that we have a better understanding of the current state of the
5 program. In the event a request includes documents that we
6 already have, we ask the program to tell us, instead of sending
7 us another copy.

8 Let me also say that all the materials that we receive
9 from the program are carefully reviewed and analyzed. The
10 amount of material that we request from the program before the
11 on-site review is reasonable. Let me put this in context. The
12 average LSC grantee receives about \$900,000 from LSC per year.
13 The amount of material that we receive before the on-site review
14 averages about 850 pages.

15 Turning to the third area regarding access to
16 documents to be contained in the EVA file, I'd like to share
17 just a few thoughts with you. First, we have proposed to
18 eliminate from the EVA file five of the 14 items that we
19 understand to be problematic.

20 Those five items are the employee's resume, the
21 employee's evaluations, grievances, evidence of disciplinary
22 action and a letter of resignation. If the proposal is

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1 accepted, all the programs can now keep these five items in
2 whatever type of file they deem appropriate.

3 Prior to and during our reviews, we will request
4 information regarding these items. We anticipate that most
5 programs will produce the information. Let's keep in mind that
6 the EVA file was established initially in an effort to narrow
7 our request for information to include only that information
8 related to compliance, to standardize our request for similar
9 information, to eliminate any distinction being made as to union
10 affiliation, and to reduce the potential conflicts with regard
11 to the access to personnel files.

12 Eliminating these five items from the EVA files will,
13 to some extent, merely be returning us to the original practice
14 of requesting documents on a one-by-one basis.

15 Finally, as stated in the EVA paper provided to you
16 last month, EVA-related information is used to cross check and
17 verify a program's compliance with the law. The issue is not
18 one of micromanagement, it's one of verifying information to
19 insure that proper systems are in place. To insure that such
20 systems work, we routinely test the system through the review of
21 related documents and through interviews with program personnel.

22 In this regard, I listened with much interest to Mr.

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1 Polgar of Senator Rudman's staff during his presentation to you
2 at the last board meeting. Mr. Polgar at that meeting
3 encouraged LSC to review personnel management systems. I was
4 pleased to hear that, since we do, and have been doing so
5 routinely and systematically for quite some time now.

6 In fact, our recommendations in this area have made
7 programs better. A recent letter from the grantee in California
8 references our success in this regard. I'd like to read you
9 just two paragraphs from that letter.

10 The letter states, "We benefitted from the time
11 devoted to our agency by members of your monitoring team. The
12 recommendations for improvement in the management of our program
13 were made at a time of the exit interview and our agency has
14 implemented a majority of them. As a former monitor and as a
15 trainer for management programs, I feel that most nonprofits
16 benefit from constructive critiques.

17 The posture of the monitor must be apolitical and he
18 or she must be experienced in the specific field of management
19 in which he or she may be providing recommendations. The
20 monitoring team that you provided to us was experienced and task
21 orientated."

22 This letter illustrates the usefulness of our

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1 recommendations in the management area. It is my hope that we
2 can now put aside the EVA issue and with your support continue
3 our effort to insure that recipients provide high quality legal
4 assistance in an efficient, effective and lawful manner.

5 I will now ask Susan to generally discuss the status
6 of our request to review EVA files as it has been in the fields
7 since March 1, 1990.

8 Susan.

9 MS. SPARKS: Thank you, Emilia. Good afternoon. My
10 name is Susan Sparks, and I am the manager of the Compliance
11 Review and Analysis Division within MAC.

12 Emilia has asked that I report to you today on what
13 has actually occurred out in the field since we began asking for
14 EVA files. The second item I'd like to briefly discuss with you
15 is what we've done with the information. Third, I'll explain to
16 you the specific way in which our monitoring procedures are
17 applied to requesting documents.

18 Since about March 1, 1990, the date that EVA files
19 were to be established, we have conducted 31 on-site reviews.
20 More than half of the 31 programs, specifically 18 programs, had
21 established EVA files and provided LSC access to those EVA
22 files. These programs were located in such diverse places as

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1 Wyoming, Ohio, California and Texas.

2 Each of these had established EVA files. Less than
3 half of the 31 programs, specifically 12 programs, did not
4 establish EVA files or had incomplete information in EVA files.
5 In fact, a large program that we recently visited in Colorado,
6 didn't know about the grant condition at all.

7 Another program in South Carolina kept the personnel
8 evaluations separate and apart from EVA file, maintained the
9 personnel evaluations in a separate file. Upon request, that
10 information was provided to us and this particular alternative
11 to the EVA file was of no consequence to the thoroughness of our
12 review.

13 The other programs that did not have EVA files
14 established in this group of 12 offered personnel files and
15 offered documentation relating to the other items to be
16 established. Our preliminary findings to date indicate that
17 this alternative was of no consequence to the thoroughness of
18 our review, in that it generally provided the necessary
19 information to cross check and verify our findings on site.

20 In the remaining one program, specifically Legal
21 Services of New York City, the program refused to provide our
22 monitors with access to any information that was to be contained

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1 in the EVA file. This action did not allow us to cross check
2 and verify information. To be very simple about it, this denial
3 did not enable us to do our job.

4 As Emilia noted to you, there was a good deal of
5 money, \$8 million worth, that we were unable to verify the
6 expenditure with regard to salary-related payments. It is for
7 this reason that MAC recommended a 1623 preliminary notice to
8 suspend funding be issued to Legal Services of New York City.

9 In summary, our experience to date demonstrates that
10 significant concerns regarding access to EVA-related information
11 is isolated to one instance.

12 I'd like to return to the issue regarding the use of
13 this information. During the course of these on-site reviews
14 you've heard it time and time again, we use the information to
15 cross check and verify compliance with specific provisions of
16 the LSC Act, with specific regulations and with specific
17 provisions of LSC's audit and accounting guide.

18 Copies of this information is rarely requested, rather
19 we use the information on site to test program wide management
20 systems and to test internal controls in the fiscal area. We
21 have also used this information to review specific allegations.
22 For example, we received a complaint alleging that employees,

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1 more than one employee of a particular program that they were
2 using program resources to support their activities with regard
3 to the outside practice of law.

4 In the course of reviewing this complaint we did
5 assess hiring practices, outside practice of law approval forms
6 were reviewed. We reviewed the employment status of specific
7 individuals in question. In response to our requests for the
8 information that was to be contained in the EVA file, the
9 program provided much of the information.

10 However, some of the information provided to use was
11 redacted, and in this particular instance we will seek the
12 complete information because the redacted material does have a
13 bearing on the thoroughness of our on-site review.

14 Finally, I wanted to just briefly describe to you the
15 application of our procedures which are written, which we have
16 trained on, the application of those procedures to document
17 requests.

18 Every monitoring team has a team leader. Our team
19 leaders apply the monitoring procedures set forth in our
20 monitoring guide book in every on-site review. As contemplated
21 by these procedures, team leaders use their discretion on site
22 in identifying practical solutions to fit the situation at hand.

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1 In so doing we are usually able to fulfill our
2 obligations under the statute while at the same time relying
3 upon flexibility and reasonableness. Indeed, this is the
4 typical way we conduct our reviews. There are instances,
5 however, when the integrity of the review process is jeopardized
6 by a program.

7 For example, in one of the three instances to which
8 Emilia referred, this is not Legal Services of New York City,
9 but another instance, where issued a preliminary notice to
10 suspend funding, the program would not let us see original
11 fiscal records.

12 In its place, for example, the program offered a
13 general, a copy of a general journal, that had redactions in
14 over 300 lines. The program also offered a copy of a cash
15 disbursements journal. The cash disbursements journal was 99
16 pages long, 64 pages had redactions. This was not acceptable to
17 us because we were unable to do our job.

18 In closing, it's important to keep in mind as Emilia
19 suggested to you last March that access to documents is an
20 integral part of our monitoring process. It is, indeed, an
21 integral part to effective monitoring. While we intend to
22 remain fair and reasonable during this process when we request

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1 documents, we must insure that the integrity of our work remains
2 in tact.

3 Thank you very much.

4 CHAIRMAN WITTGRAF: Thank you both. Let me just ask,
5 for purposes of our give and take here, would any of the others
6 of you care to respond briefly, or take particular exception to
7 anything Ms. DiSanto and Ms. Sparks just said?

8 MR. MILLER: I will not try point by point refutation
9 or anything like that, much of what was said relates to volume
10 of documents and access to records that have nothing to do with
11 personnel records. In other words, much of it was just wide of
12 the issue immediately in front of this board.

13 I would like to highlight, hopefully in a positive and
14 affirmative way, a couple of word choices, I think by Ms.
15 DiSanto, that may be opening a bit of a window. She used, I
16 think, in describing one of the programs, it may have been New
17 York, the terms critical and material as descriptive of
18 information that the corporation was seeking in relation to some
19 particular issue, critical and material in terms of the struggle
20 for words in addition to pattern.

21 I suggest that that may be an avenue down which we
22 could travel jointly if we have the opportunity to discuss.

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1 Nothing, really frankly, that was said here in the last 15
2 minutes or so takes away from our basic thrust or point that
3 we've closed some ground, there are still some substantial
4 issues relating to personnel records, not all of the other kinds
5 of records, but personnel records that we need to try to work
6 through, and that ultimately because of the criticality of those
7 issues, the personnel records, the privacy interest involved,
8 will call for some kind of call by the board, a decision by the
9 board.

10 So I think our recommendation will still be the same,
11 which is with the board's endorsement and guidance and
12 participation, perhaps from Congressman Molinari, we still, I
13 think, need to sit down and see if we can continue to narrow the
14 differences and bring back whatever the status of it is to the
15 June meeting for some sort of board resolution of it.

16 CHAIRMAN WITTGRAF: Mr. Loines, briefly.

17 MR. LOINES: Very quickly, I'm not aware of some of
18 the -- obviously the specific situations that were cited. I
19 mean, I, just thinking back, I can't think of any situation that
20 was described that might not warrant access. However, and I
21 hasten to add, I'm not aware of all the specifics. Certainly
22 with respect to personnel files, however, a lot of what was said

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1 by the last two speakers had to do with, frankly, fiscal records
2 and a whole host of other records that are not really at issue
3 before us, it seems to me. I just wanted to point that out.

4 CHAIRMAN WITTGRAF: Mr. Mullen.

5 MR. MULLEN: Just one comment in response to something
6 Mr. Wear had said, and the last comments that were made. I
7 wasn't aware that things had changed until 1988, until we got a
8 new grant condition. Back in 1988, we were monitored, we were
9 requested access to personnel evaluations, we refused access.
10 It apparently wasn't a problem. In late February of 1990, this
11 year, the week before the new grant condition took effect, we
12 were again monitored.

13 We were again asked for access to personnel
14 evaluations, we again refused. In discussing the matter with
15 the monitoring team leader, we were able to ascertain that what
16 they were interested in was personnel systems. Fine. I went
17 through the personnel files and explained to them when people
18 had been evaluated, that we had a system in place for evaluation
19 of employees.

20 That is totally different from giving personal
21 information from personnel files to monitors. You can assess
22 personnel management systems without access to files. That was

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1 my comment.

2 CHAIRMAN WITTGRAF: I think that's where we're headed.
3 If I understood Mr. Molinari earlier, he stands by his offer of
4 three weeks ago today to attempt, let's say, with Mr. Houseman
5 on behalf of management, Mr. Loines on behalf of staff
6 attorneys, or at least organized staff attorneys and such of the
7 members of our staff as he deems appropriate, to try to resolve
8 the final differences.

9 Clearly progress has been made in the last three
10 weeks. I guess I'm hopeful, as all of you are, that we can get
11 to the end of the road, perhaps, by June 25th when next this
12 board meets. I think it's going to be necessary for those
13 efforts to take place in the New York City area as opposed to
14 the Washington, D.C. area. I think it's with that understanding
15 that Mr. Molinari has made his generous offer.

16 This thing, the status, I guess it's the chair's view
17 that this matter will come before the board again in June 25th.
18 Unless there is objection, the proposed defunding of the three
19 agencies in question, being Pittsburgh, Middlesex County, New
20 Jersey and Legal Services of New York City again will be held in
21 abeyance through the month of June.

22 Is that your understanding, Mr. Wear?

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1 PRESIDENT WEAR: Mr. Chairman, as I indicated to you
2 privately earlier, if Mr. Molinari is agreeable to meet with the
3 interested parties during the course of the upcoming weeks, we
4 will do that. I've since had an opportunity to confer with Mr.
5 Molinari and he's indicated that he is willing to do that.

6 So we will fund the three programs in question for an
7 additional month while these negotiations continue. Thank you.

8 CHAIRMAN WITTGRAF: Thank you, ladies and gentlemen.

9 Mr. Loines.

10 MR. LOINES: I'm sorry. On each occasion I've had to
11 ask the board to consider the fact that, again, we may be in a
12 situation where a program in the midwest or the west coast, et
13 cetera, is in this precise situation. I should also add because
14 of the scope of this particular grant condition, there are a
15 number of programs that are involved in collective bargaining.

16 The impact of this grant condition is that those
17 programs are, at least saying to us across the table for the
18 most part, that they can't even discuss this. Now minimally
19 that leads to the possibility of filing unfair labor practices
20 and things of that nature in order to, frankly, preserve our
21 situation.

22 I would rather not, I'm not interested in getting

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1 into, as I've said on three of four occasions, additional
2 litigation either in court or in terms of the labor board.
3 These things are ongoing, so we need -- perhaps if Mr. Wear is
4 prepared to make an assurance that in a situation if an employee
5 is not prepared to waive his or her rights that in that
6 particular situation a program not be subject to any
7 disciplinary actions right at this moment until we've had a
8 chance to come back and address this issue.

9 In the absence of that you've put me in a very
10 difficult situation.

11 CHAIRMAN WITTGRAF: I'm not sure that it's possible
12 for Mr. Wear or for the staff or for any successors to Mr. Wear
13 or the staff, to give an absolute guarantee in that regard,
14 because the monitoring process is an ongoing process. I guess
15 what I would say to you personally and on behalf of the board,
16 Mr. Loines, is that I think we've been dealing since February
17 12th in reasonably good faith with you.

18 One of our number, wisely or otherwise, is even
19 willing to jump into the fray. I guess I'd have to, in the
20 absence of an iron-clad guarantee, ask you as well as Mr.
21 Houseman and the people whom each of you represent to accept our
22 representations of good faith that we've extended over the last

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1 three months.

2 Mr. Wear.

3 PRESIDENT WEAR: Mr. Chairman, let me just add one
4 thing.

5 All of these negotiations have dealt with the
6 materials that go into the EVA file. There has been no
7 negotiation, nor as far as I'm concerned will there be any, over
8 whether or not programs may in the future sign contracts with
9 these kinds of restrictive provisions in it.

10 Mr. Loines made a comment, I'm not sure that he was
11 getting at that point, but in case there are any programs that
12 are confused about that, the corporation will continue to insist
13 on that portion of the grant condition. As these contracts
14 expire, these provisions will go out of the contracts and this
15 problem will go away.

16 Thank you, Mr. Chairman.

17 MR. LOINES: Frankly, just for the record, that is not
18 creating an atmosphere that's going to, you know, it seems to
19 lead towards a constructive resolution. As I suggested before,
20 if we're able, it seems to me, to come up with standards it
21 seems to me that that question might very well become a moot
22 question.

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1 This is a serious problem that you're basically
2 telling me that the corporation is, perhaps, going to put itself
3 in the position of -- I don't know if you want to become a joint
4 employer with local programs, I doubt it, but that's the
5 direction you're heading in with that sort of an approach.

6 Mr. Loines, I just want you to be sure that there
7 aren't any programs out there that you're negotiating contracts
8 with who think that this provision in the grant condition that
9 says that they cannot put that into the contracts is somehow
10 held in abeyance, it is not. We would take a very dim view of
11 programs signing a contract with that provision in it, since
12 they previously signed a grant condition saying that they would
13 not.

14 They will have to choose, really, between that
15 provision in the contract and whether or not they're going to be
16 eligible for funding in the future.

17 MR. LOINES: This corporation may very well have to
18 choose whether or not it's going to have to deal with us in a
19 collective bargaining relationship.

20 CHAIRMAN WITTGRAF: The chair is prepared to move on
21 to agenda item number 7. Thank you, ladies and gentlemen, all.

22 Would you like very briefly, Mr. Shea, to summarize

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1 the materials that have been provided to you through the
2 president, Mr. Wear, in response to agenda item number 7?

3 MR. SHEA: Certainly. I furnished the board
4 memorandums dated May 21, addressing acceptable legislative
5 lobbying activities for directors, president and other LSC staff
6 and grantees.

7 It focuses, at least as to the corporation, to
8 statutory provisions. The first is section 1006 C of the LSC
9 Act, which prohibits the corporation from "seeking to influence
10 the passage or defeat of any legislation by Congress, except
11 that the corporation personnel may testify or make other
12 appropriate communication when formally requested to do so, or
13 in connection with legislation or appropriations directly
14 affecting the activities of the corporation."

15 CHAIRMAN WITTGRAF: Mr. Shea, let me interrupt you.

16 We will stand in recess for two or three minutes at
17 this point. I ask the board members and anyone else please not
18 to disburse because we will be picking up momentarily. Thank
19 you.

20 (A brief recess was taken.)

21 CHAIRMAN WITTGRAF: Ladies and gentlemen, our meeting
22 will come back to order, with your indulgence.

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1 Mr. Shea, we'll return to your comments summarizing
2 your memorandum of May 21 regarding legislative lobbying
3 activities, please.

4 MR. SHEA: Certainly. Mr. Chairman, there are
5 basically two prerequisites to legislative lobbying by the
6 corporation. One, either a formal request or two, legislation
7 or appropriations directly affecting the activities of the
8 corporation. Now assuming either one are present, there are,
9 nevertheless, some other limitations.

10 The provision permitting personnel of the corporation
11 to undertake lobbying has been construed that it be basically
12 LSC employees, officers and staff, and to exclude contractors,
13 attorneys or basically people who are on employees of the
14 corporation.

15 Likewise, the notion of what is "other appropriate
16 communication." Obviously, if the corporation can testify, if
17 it has been invited to testify, that's perfectly appropriate.
18 For instance, what is other appropriate communication, that
19 permits the corporation to express it's views in writing or in
20 person on legislation to the legislative body and to other
21 members.

22 Now the substantive provision, that is that LSC can

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1 undertake what is called self-interest lobbying or lobbying with
2 respect to legislations or appropriations directly affecting the
3 activities of the corporation. That is, there are
4 prerequisites. Either it directly affects the corporation, or
5 there is some sort of invitation to testify.

6 Now all of these matters must be distinguished, from
7 what I style in my note, informational matters. That is, the
8 corporation, like any agency, is free to educate the relevant
9 interested parties or any interested parties, about legislative
10 developments that do affect or are likely to affect its
11 authority, its appropriations, its activities generally.

12 It may even express its views, in a general sense, his
13 views with respect to particular legislation. Those are so-
14 called educational or informational communications. Those are
15 perfectly permissible. They do not constitute lobbying, it is
16 an attempt to influence legislation that would be, for instance,
17 a request that third parties contact legislators, that would
18 turn educational matters into lobbying.

19 If I may then turn very briefly to section 601 of our
20 appropriation act --

21 MR. COLLINS: What page is that on?

22 MR. SHEA: I'm turning to page three of my memo.

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1 Section 601 of our appropriation act provides that not part of
2 any appropriation contained in this act shall be used for
3 publicity or propaganda purposes not authorized by Congress.

4 I will tell you that is a kind of cryptic and not
5 necessarily self-explanatory proposition. It has been
6 interpreted, as I note in my memorandum by the General
7 Accounting Office, to prohibit what is called puffery or self-
8 aggrandizing statements of agencies. I might add that this is a
9 standard provision that applies to LSC and a lot of other
10 federally funded organizations.

11 First of all, it does not preclude legitimate
12 informational activities as I described before; that is
13 descriptions of existing legislation or pending legislation that
14 may have some impact on the authority or activity of the
15 corporation.

16 It does prohibit matters that exaggerate the import or
17 the support or proposals that are outstanding. Some of the
18 examples that I offer here is that the certain editorials that
19 were promulgated by the Small Business Administration were found
20 to be misleading in origin and reasonably constitute propaganda
21 within the meaning of that term, because they misrepresented
22 both the scope and the support for issues that were pending

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1 relating to the Small Business Administration.

2 Likewise, a speech that was made by a Deputy Assistant
3 Secretary of Defense to an aircraft industry association that
4 was designed to enlist aid in publicizing and selling a certain
5 program and certain equipment, was deemed to be inappropriate
6 because it constituted -- it was an attempted to enlist their
7 aid, and was deemed to be propaganda for purposes of this
8 provision.

9 That's all I have as to LSC activities. There are
10 different provisions that relate to LSC programs, and that is a
11 little more arcane. The section 1007 A 5 of the LSC Act
12 prohibits the use of LSC funds for legislative, administrative
13 and grassroots lobbying, except for when there is representation
14 of an eligible client, or when there is an official request of a
15 government agency, or in connection with legislation affecting
16 the self-interest of the program of the corporation.

17 Those prohibitions have largely been overtaken by the
18 prohibitions in the appropriation act, which prohibit all
19 grassroots lobbying, all administrative lobbying, except for
20 that performed on behalf of the eligible client, and all
21 legislative lobbying except for communications made in response
22 to a request by a public official.

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1 So the LSC Appropriation Act restrictions are more
2 restrictive than the restrictions that are in our organic act.

3 Finally, to make it even more convoluted, the
4 corporation's regulations dealing with lobbying are set out in
5 45 C.F.R. part 1612. They were the subject of a herculean
6 amount of deliberation by the former board, and in particular
7 Michael Wallace who was the chairman of the Regulations
8 Committee.

9 A rule was adopted that was subject to some
10 legislative prohibitions, the matter was revisited at least once
11 and, perhaps, twice. I forget, frankly. The board adopted in,
12 I think it was 1987, some new regulations which governed both
13 lobbying with LSC funds and lobbying with private funds. Those
14 regulations are fully effective, to the extent that they govern
15 the lobbying activities with LSC funds.

16 To the extent that those regulations govern lobbying
17 with private funds, the current LSC appropriation prohibits
18 implementation of that portion of 1612 which is not explicitly
19 set out in the LSC Act. So, in effect, some of the limitations
20 on lobbying activity with respect to private funds in 1612
21 remain, and some -- the ability of the corporation to enforce
22 some of those provisions, again relating to private funds, have

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1 been -- the ability to enforce it has been prevented by
2 operation of our appropriation act, again as to private funds.

3 That is a nutshell explanation. I've also furnished,
4 for what it's worth, two discussions which I thin may be
5 helpful. They provide some discussion of the legislative
6 history and some general background information relating to the
7 corporation authority. One is a May, '81, opinion to F. James
8 Sensenbrenner and it deals with the legislative history and it
9 sets out a fairly thorough discussion of the authority of the
10 corporation, both under appropriation acts and under its organic
11 act with respect to legislative lobbying.

12 The second is the June 7, 1988 letter opinion by the
13 General Accounting Office also dealing with the same subject
14 matter.

15 Having said that, I will make myself available for
16 comments.

17 CHAIRMAN WITTGRAF: Questions, comments, concerns?

18 (No response.)

19 CHAIRMAN WITTGRAF: Hearing none, thank you. At this
20 time the Chair is prepared to move to agenda item 7A, the
21 resolution presented this morning and made a part of the agenda
22 pursuant to the motion of Ms. Pullen.

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1 Ms. Pullen, would you like to speak to your
2 resolution?

3 MS. PULLEN: Mr. Chairman, I would like to read the
4 resolution into the record if I may.

5 CHAIRMAN WITTGRAF: Yes, Ms. Pullen, please.

6 M O T I O N

7 MS. PULLEN: Whereas, the board of the Legal Services
8 Corporation has heard extensive testimony and been supplied with
9 numerous documents concerning certain practices of some legal
10 service grantees.

11 And, whereas, the Honorable William McCollum and the
12 Honorable Charles Stenholm, distinguished members of the United
13 States Congress have appeared before the board at their own
14 request seeking our understanding and support for their legal
15 services reform effort in the Congress.

16 And, whereas, the board is committed to focusing the
17 limited resources entrusted to it by the American people on the
18 recognized needs of indigent clients.

19 And, whereas, the board is troubled by evidence
20 presented to it that some programs receiving the support of the
21 Corporation are involved in activities prohibited by Congress or
22 disapproved of by this board, including abortion activities,

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1 redistricting and other political activities, and the defense of
2 drug dealers in poor neighborhoods.

3 And, whereas, the board is concerned that without
4 legislative reform, some legal services programs receiving the
5 support of the Corporation will continue to be involved in
6 questionable activities.

7 Therefore, be it resolved that the Legal Services
8 Corporation supports, in principle, the proposals for reform
9 made by Congressman McCollum and Stenholm, reserving judgment on
10 the specific details of these proposals until such time as
11 individual board members have had an opportunity to study
12 revisions made by their legislative sponsors in response to
13 comments made by members of the board, other interested parties
14 or members of the general public.

15 And, be it further resolved that the board authorizes
16 the Corporation staff to provide technical assistance regarding
17 reform to members of Congress, congressional staff and other
18 parties upon their request.

19 However, the Corporation staff shall make clear to
20 those it assists that the rendering of such technical assistance
21 should not be construed as an endorsement of any particular
22 reform measure on the part of the Legal Services Corporation or

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1 its board of directors.

2 CHAIRMAN WITTGRAF: Ms. Pullen, you will recall our
3 discussion earlier this afternoon wherein after I had had an
4 opportunity to review your resolution, I expressed my concern
5 that to move to a consideration of it at this time is violative
6 of Section 1622.4 of the regulations which govern us and which
7 in that instance pertain to the announcement or notice to be
8 given to the public for meetings such as this into substantive
9 matters to come before these meetings.

10 I believe that both Mr. Wear, the president of the
11 Corporation, and Mr. Shea, the vice-president of the Corporation
12 and general counsel, concurred in my concern.

13 Is it my understanding then that you are prepared to
14 withdraw your resolution at this time with the understanding
15 that it or another draft, if you have one, will be a part of the
16 board's agenda at its next regular meeting on June 25.

17 And, further, that to the extent any of them wishes,
18 the members of the board now may want to share with me and with
19 the public in anticipation of and in my preparation for the
20 reauthorization hearing at which I am obligated to make some--
21 they will be written -- remarks this Wednesday, May 23rd.

22 Their thoughts, if any, they have at this time

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1 regarding reform proposals, either those which come under the
2 heading of McCollum-Stenholm or any other reform ideas or
3 reauthorization ideas that they would like to have carried to
4 the House Judiciary Subcommittee.

5 MS. PULLEN: Mr. Chairman, as you know, I personally
6 believe that the board ought to be prepared to move forward on
7 this at this time as Congress is moving forward on it. Out of
8 deference to your request, I am agreeable to postpone
9 consideration of the resolution until the June 25th meeting in
10 terms of a vote.

11 MR. COLLINS: Mr. Chairman?

12 CHAIRMAN WITTGRAF: Thank you, Ms. Pullen. Mr.
13 Collins?

14 MR. COLLINS: It is my understanding that the
15 Congress, particularly the subcommittee of Congressman Frank,
16 may be considering having a discussion and possibly taking
17 action on some version of McCollum-Stenholm. Is that correct?

18 CHAIRMAN WITTGRAF: This Wednesday, May 23?

19 MR. COLLINS: No. I am not specifying the date on
20 which they might do it, but they are proceeding towards the
21 taking of a vote on McCollum-Stenholm possibly in June.

22 CHAIRMAN WITTGRAF: At some point in the future, I

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1 have no reason to believe from anything anybody has said to me
2 that anything is apt to happen in June, but you may have
3 information available to you that I do not have available to me.

4 MR. COLLINS: Mr. Chairman, what disturbs me is that
5 those of us who believe that the present system is not a perfect
6 system and is in need of reform in a number of the areas which
7 have been alluded to in Ms. Pullen's memo.

8 I think it is very important for us to realize and to
9 permit the Congress to realize that we think there are a number
10 of vital issues which are going to be subject to public
11 discussion and litigation this year, which should be controlled,
12 to be controlled by this board and/or the Congress.

13 And elements of the McCollum-Stenholm bill in whatever
14 form, in principle, should be supported while the proponents
15 thereof and those who adhere around the issue will be in a
16 position to articulate a final version, which we could then
17 debate.

18 I think to permit the Congress to believe that there
19 may not be many of us on this board who believe that reform is
20 necessary and vital would be to give an erroneous impression.
21 There are a number of issues, including the likelihood that pro-
22 abortion activity will be increasing dramatically in the next

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1 year or two.

2 The whole question of the ABA and its present stance
3 in favor of abortion, and the increase proclivity to use IOLTA
4 funds at the same that IOLTA funds are being filtered through
5 LSC grantees disturbs me mightily.

6 There are a whole raft of issues on which the Congress
7 should be informed and I do hope, Mr. Chairman, if you have the
8 opportunity that you will articulate those views when you are
9 before the committee.

10 CHAIRMAN WITTGRAF: Thank you, Mr. Collins. Ms. Love,
11 did you wish to give the Chair any guidance? Ms. Wolbeck?

12 MS. WOLBECK: No.

13 CHAIRMAN WITTGRAF: Ms. Pullen, further?

14 MS. PULLEN: I just think that it is an urgent matter,
15 Mr. Chairman. I can appreciate your reluctance to entertain the
16 resolution at this meeting. I was, frankly, a little surprised
17 that it was not on the agenda that was published. But I do
18 appreciate that you are planning to put it on the agenda for the
19 next meeting and we can go forward on it then.

20 CHAIRMAN WITTGRAF: I am not sure initially. As I was
21 listening to Mr. Collins, he questioned to me that when he was
22 talking about June, I guess I was thinking of some form of vote

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1 and I have certainly been given no indication of some form of
2 vote. When Congressman Stenholm was here there weeks ago today,
3 he did refer to the redrafting or recrafting of a so-called
4 McCollum-Stenholm proposal.

5 Do you have any knowledge as to when a draft of the
6 McCollum-Stenholm proposal in its current form will be
7 available?

8 MS. PULLEN: Mr. Chairman, I have not been in touch
9 with the two members of Congress that are bringing this forward
10 or with their staffs. This resolution does not propose to
11 endorse the specifics of their proposals, so I did not feel that
12 it was necessary to determine from them exactly what condition
13 they are in at this time.

14 CHAIRMAN WITTFRAF: Is there anything further in
15 response to Mr. Collins' inquiry that you know regarding any
16 timetable?

17 MS. PULLEN: I am not privy to that.

18 MR. COLLINS: May I just add that I have heard since I
19 arrived here this morning in this room that McCollum, Stenholm
20 and their staffs are meeting with a number of our grantees and
21 their representatives, and it becomes increasingly clear to me
22 that there may be a final coming together of some form of

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1 McCollum-Stenholm within the month of June prior to the time
2 that we have an opportunity to discuss it on the 25th.

3 It is for that reason that I think that those of us
4 who feel that there is some need for reform, so-called, should
5 indicate that we feel that way. In principle, not in detail.

6 CHAIRMAN WITTGRAF: Mr. Molinari?

7 MR. MOLINARI: Well, I think, Mr. Chairman, it is my
8 sense that what we have learned in the past month that there
9 seems to be a narrowing of the differences between McCollum-
10 Stenholm and Congressman Frank and others.

11 I think it is fair to say and we have heard testimony
12 that both Congressman McCollum and Stenholm are anxious to try
13 to accommodate the others by making changes in the pending
14 legislation. And the sense that I have received is that they
15 are very close to reaching agreement. Whether they will be able
16 to come to a full and complete understanding, I don't think
17 anybody can answer that at the present time.

18 But I think that whatever will happen, that whether it
19 is the June meeting or not, we will see a narrowing of the
20 differences. I think it is going to make our job a lot easier.
21 I hope that they can reach a complete understanding. If so, it
22 would be refreshing and remove a lot of the controversy that we

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1 have today before the board.

2 I think they are working very hard at it and I am
3 pleased to see that there seems to be -- they are not
4 approaching this on a confrontational basis, but more in an
5 attitude of trying to accommodate the concerns of each other and
6 come up with a final measure that they probably are going to
7 fully support. We will know pretty shortly I suspect.

8 CHAIRMAN WITTGRAF: Mr. Dana?

9 MR. DANA: Mr. Chairman, I just would like to
10 underline and endorse the Congressman Molinari's statements. I
11 think that this is a fluid process and that you and others on
12 this board have been encouraging both sides to work out their
13 differences and I am hopeful that that will occur or
14 substantially occur.

15 I think that it is important for not only the House,
16 but the Senate to be supportive of reform proposals, not only
17 McCollum-Stenholm proposals, but proposals that are being
18 advanced by others.

19 I think that -- and my hope is that this board serves
20 to facilitate rather than inhibit that process. I think so far
21 we have been.

22 CHAIRMAN WITTGRAF: Mr. Erlenborn?

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1 MR. ERLNBORN: Mr. Chairman, I have nothing further
2 to add. I would like to adopt my colleague, Guy Molinari's,
3 comments as my own and I am encouraged that in the finest
4 tradition our former colleagues on the Hill are working together
5 trying to resolve their differences rather than engaging in
6 confrontation. For that, I applaud them.

7 MR. MOLINARI: If I could, I am not aware of the other
8 reform measures, Howard. If you could give us the benefit of
9 what you made reference to there? Is it other bills that you
10 are talking about?

11 MR. DANA: I received a letter from -- I think it was
12 Mr. McCalpin of the NALDA in which he, and I thought he sent a
13 letter to all of us, am I the only one who got one?

14 MS. WOLBECK: I received one.

15 MR. DANA: Yes. And I think they have made a series
16 of proposals that they outlined generically dealing with
17 monitoring and the internal workings of the corporation. I am
18 really -- other than that communication, which I can't -- don't
19 have right in front of me, I can't enlighten you any further.

20 I do think that with a room that full there are plenty
21 of ideas, especially since we have not had reauthorized for a
22 decade and there may well be a -- long before reauthorization is

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1 finally voted on, there may be all kinds of proposals, which we
2 will have an opportunity to review and analyze.

3 My hope is that this board will not, as the parade of
4 ideas are proposed or pass by us, we won't just stop the music
5 and say let's go with that. That is essentially where I am
6 coming from.

7 CHAIRMAN WITTGRAF: My understanding, Ms. Pullen, is
8 that you have for the purposes of today's board meeting
9 withdrawn your resolution from further consideration with the
10 understandings that I expressed earlier.

11 MS. PULLEN: I have agreed to postpone the vote until
12 June 25th.

13 CHAIRMAN WITTGRAF: Thank you. At this time we move
14 to agenda item 7B, another resolution, that having been
15 presented this morning by Mr. Collins. Mr. Collins, do you wish
16 to speak to your resolution at this time?

17 M O T I O N

18 MR. COLLINS: Yes. First, it is my understanding that
19 this is not covered by the Sunshine Law. This is primarily a
20 hortatory resolution in which I think it is before us in a
21 timely fashion. Before I say anything further, I would like to
22 ask Mr. Shea whether or not that statement is accurate.

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1 CHAIRMAN WITTGRAF: Let me just ask one thing first,
2 have you changed the wording in any way from the --

3 MR. COLLINS: There was a friendly amendment by my
4 friend to my north.

5 CHAIRMAN WITTGRAF: Perhaps before Mr. Shea renders an
6 opinion, it would be well for you or Mr. Dana to share the
7 current working of your resolution with the board and with the
8 public.

9 MR. COLLINS: Go ahead. Why don't you read it?

10 MR. DANA: Okay. The motion, as amended, reads as
11 follows: Whereas the board of directors of the Legal Services
12 Corporation is concerned about reports of LSC recipients
13 representing persons accused of drug related activity in drug
14 related eviction proceedings involving publicly funded housing;
15 be it resolved that the staff of the Legal Services Corporation
16 report to the board with recommendations for discouraging the
17 taking of such cases.

18 MR. COLLINS: That is the language.

19 CHAIRMAN WITTGRAF: That is the end of the resolution.
20 Mr. Shea?

21 MR. SHEA: Certainly there is no Sunshine Act problems
22 with direction by the board of directors that the staff return

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1 with a report and some recommendations for the next meeting. I
2 see there is no Sunshine Act consequence to that.

3 MR. COLLINS: Thank you, Mr. Shea. Mr. Chairman, I
4 assume since I have a copy and it was distributed just a moment
5 ago, that each of the other members of the board have received a
6 copy of the letter from Secretary of Housing and Urban
7 Development, Jack Kemp, in which he essentially requests that on
8 behalf of the people -- well, permit me to read it since
9 everybody there does not have one.

10 This is a letter dated today, addressed to "Dear Mr.
11 Wittgraf."

12 "I am writing to urge your support to limit Legal
13 Services Corporation grantees representation in drug related
14 cases involving housing. Such limits would assist the 3,300
15 public housing agencies and Section 8 landlords across the
16 nation in their efforts to provide safe, decent and drug-free
17 living environments for the law abiding residents of public and
18 assisted housing.

19 "I constantly hear reports of the unreasonable delays
20 in the eviction process caused by local legal service groups.
21 For example, legal service groups are forcing some PHAs, Public
22 Housing Authorities, to spend between 5 and \$7,000 in each

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1 eviction action. In clear cut cases with arrest for drug
2 dealing, legal services prolong evictions with unnecessary,
3 lengthy and numerous depositions and discovery motions.

4 "In at least one drug-related case, which is not a-
5 typical, it took a jury only four minutes to reach a verdict to
6 evict the tenant for whom the LSC grantee had delayed action for
7 over a year. The time and money involved is virtually crippling
8 the ability of many public housing agencies to evict drug
9 dealers from public housing and preserve the rights of other
10 residents.

11 "This is clearly a case of government programs working
12 at cross purposes. While the Department of Housing and Urban
13 Development is funding programs to help PHAs improve security
14 and streamline evictions, Legal Services Corporation grantees
15 are working to frustrate these efforts.

16 "I hope that the board of directors will assure that
17 Legal Services Corporation grantees not participate in drug-
18 related cases in housing. Each part of the Federal Government
19 must cooperate in our endeavor to achieve a drug-free nation.

20 "Very sincerely your's." Signed Jack Kemp.

21 The Gentleman from HUD who spoke this morning did not
22 have a strong database or statistical evidence to show the

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1 pervasive nature of this problem. In chatting again in the room
2 today with several members of the staff, it is clear that in at
3 least 80 cases in 30 jurisdictions across the country, this
4 practice has been engaged in.

5 I think it is incumbent upon us to minimize this lest
6 we discourage all of the good grantees and good providers who
7 are in truth dealing with the problems of indigent people.

8 CHAIRMAN WITTGRAF: Further discussion?

9 MR. DANA: Mr. Chairman?

10 CHAIRMAN WITTGRAF: Mr. Dana?

11 MR. DANA: It is my hope, and I think that John would
12 join me in that, that we, as part of the exercise, we learn more
13 about this database. In particular, I would like to know the
14 instances in which the client allegedly is the accused drug
15 dealer and how many instances that has occurred as opposed to
16 someone else who may be the -- who may or may not have rights to
17 remain in the particular place where the drug dealer was caught.

18 I am concerned that we in our enthusiasm, which is
19 great, for helping to solve this problem, that we don't
20 overreact if that is possible. I admit that it may not be
21 possible to overreact with this problem. But if we could have
22 some improvement on the database that was reported at the last

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1 meeting where lots of drug related issues were merged into one
2 ball, I would appreciate it.

3 MR. COLLINS: That may be a distinction without a
4 difference though really, because I can understand that the drug
5 pusher may not be the fellow in whose name the lease may be
6 carried. But nonetheless, if it such a pervasive use of the
7 premises that is the occasion of police activity on a repetitive
8 basis, one would find it difficult to indicate that the lessee
9 himself or herself was aware of the purposes for which the
10 apartment was being used.

11 MR. MOLINARI: Mr. Chairman?

12 CHAIRMAN WITTFGRAF: Mr. Molinari?

13 MR. MOLINARI: I think Mr. Dana has made a very good
14 request of some of the very useful information to the board. I
15 certainly would be interested in having the information. I
16 would like to ask the president or perhaps some of the other
17 staff members, whoever is most capable of answering the
18 question, how we can get that information and is it readily
19 available to us. If not, how difficult would it be to secure an
20 accurate reading on what is happening out there.

21 MR. WEAR: Mr. Chairman?

22 CHAIRMAN WITTFGRAF: Mr. President?

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1 MR. WEAR: Thank you, Mr. Chairman. In response to
2 Mr. Molinari's request, the staff has worked with the staff in
3 the Department of Housing and Urban Development to try to come
4 up with some figures on that.

5 I had some concerns that if the resolution is
6 restricted to persons accused of drug-related activity, I am not
7 sure whether that means the drug dealer themselves or the
8 girlfriend who allows the drug dealer to use the apartment for
9 this purpose.

10 Under your amendment, Mr. Dana, would that also cover
11 the girlfriend in this situation?

12 MR. DANA: Well, it is representing persons accused of
13 drug-related activity, but that is what the resolution speaks
14 to. Following up on John's point, if the -- maybe the
15 girlfriend is accused of drug-related activity if she is
16 knowledgeable and aware, and understands that a felony is being
17 committed in her presence.

18 I am anxious to, and I think the -- I assume the
19 secretary is anxious to discourage that kind of representation.
20 If we are talking about -- and we may end up as a board or if
21 the president is not able to draw lines, we may end up saying
22 that we don't want to represent -- all you have to do is mention

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1 the word "drugs" and the grantees are -- and the people involved
2 are essentially without counsel.

3 If that is where we are going because we can't draw
4 lines any finer, fine. But my hope for data is to learn of
5 these 80 instances in 30 programs or 30 instances in 80
6 programs, or whatever we were told about, how many of them were
7 -- in how many instances was a legal services grantee actually
8 representing the person, the alleged drug dealer, and how many
9 instances were they representing the girlfriend or the
10 grandmother or the owner who permitted the person to stop by.

11 MR. COLLINS: Mr. Chairman, that certainly would be an
12 interesting bit of statistics, but scarcely relevant. If the
13 apartment is used for the peddling of drugs, to the extent that
14 it invites police action and court action, that is drug related
15 activity within the apartment.

16 CHAIRMAN WITTGRAF: Ms. Pullen?

17 MS. PULLEN: With respect to Mr. Wear's point, Mr.
18 Chairman, it seems to me that the phrase -- that the word
19 "accused" appears only in the "whereas" clause and does not
20 limit the body of information or the recommendations that can be
21 brought to the board by the staff pursuant to the resolved
22 clause.

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1 CHAIRMAN WITTGRAF: Mr. Collins, I assume that you do
2 view Mr. Dana's amendment as a friendly amendment?

3 MR. COLLINS: Yes. Except that I would -- since it is
4 friendly, I would like to ask him to substitute. Mr. Dana and I
5 just had a brief discussion about this and we were trying to
6 derive a distinction between legal services lawyers who would
7 seek to assist management in eviction from those who are seeking
8 to prevent management from evicting them.

9 Therefore, I am sure that Howard would not object to
10 substitute the word for "involved" for "accused." In other
11 words, those involved with drug dealing as opposed to those
12 accused. Therefore, it would cover both the drug peddler and
13 his girlfriend.

14 MR. DANA: Well, I -- if I understood what you said,
15 let me move to Ms. Pullen's observation, which is that the
16 request for -- I certainly feel that the request for
17 recommendations should cover the whole waterfront, girlfriends,
18 grandmothers, offender and other's. So that the fact that we
19 are -- if that is consistent with your concerns, we remain
20 friendly.

21 MR. COLLINS: And, therefore, involved is a good word.

22 CHAIRMAN WITTGRAF: With unanimous consent, the Chair

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1 will assume that we have before us the resolution as amended. I
2 am not sure that we actually have a second for it. Is there a
3 second to the resolution as amended?

4 MS. PULLEN: I will second it.

5 CHAIRMAN WITTGRAF: It has been made and seconded.
6 Before we move to any further discussion, would you, Mr. Dana,
7 as best possible restate the resolution for the benefit of the
8 board and the public?

9 MR. DANA: Yes. Whereas, the board of directors of
10 the Legal Services Corporation is concerned about reports of LSC
11 recipients representing persons accused of --

12 MR. COLLINS: Why don't we stop there? Persons
13 "involved" in drug-related eviction proceedings.

14 MR. DANA: Well, all right. But you and I --

15 MR. COLLINS: You are trying to still draw the line
16 between management and the tenants?

17 MR. DANA: My understanding is --

18 MR. COLLINS: Let that -- we will let it go.

19 MR. DANA: Yes. All right. Fine. "Involved" is all
20 right.

21 MR. COLLINS: All right.

22 MR. DANA: -- in drug-related eviction proceedings

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1 involving publicly funded housing. Be it resolved that the
2 staff of the Legal Services Corporation report to the board with
3 the recommendations for discouraging the taking of such cases.

4 CHAIRMAN WITTGRAF: Hearing no further discussion, the
5 Chair is prepared to move to a vote. Those in favor, signify by
6 saying aye.

7 (A chorus of ayes.)

8 CHAIRMAN WITTGRAF: Opposed, nay?

9 (No response.)

10 CHAIRMAN WITTGRAF: The ayes appear to have it. The
11 ayes do have it. The resolution is adopted.

12 At this time, the Chair is prepared, pursuant to the
13 early polling of the board regarding executive closed session
14 and announcement made of that fact, proceed to executive session
15 for the purpose of discussing further information regarding the
16 activities of the Presidential Search Committee and, to the
17 extent necessary, to review the matters of any changes in Legal
18 Services Corporation officers or proposals therefore, and to
19 review pending or outstanding contractual arrangements for Legal
20 Services Corporation officers.

21 At this time, the Chair asks that all in attendance,
22 save the members of the board, the reporter, the president and

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1 the secretary, please excuse themselves for what we hope will be
2 a relatively brief closed session.

3 Thank you very much.

4 (Whereupon, at 3:57 p.m., the board adjourned, to be
5 reconvened this same day, at 5:05 p.m.)

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(5:05 p.m.)

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CHAIRMAN WITTGRAF: Jerry, can you tell us who, if anyone, on the staff is prepared to comment on this?

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MR. WEAR: Thank you, Mr. Chairman. Yes, Mr. Chairman. Our policy development staff member, Kathy Betancourt, she is prepared to summarize what the Corporation has done in this area for the last year or so. Mr. Chairman, if I may, while --

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CHAIRMAN WITTGRAF: You might fill us in as to the background on this. I think there has been some funds set aside in the budget for that purpose.

12

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MR. WEAR: Yes, Mr. Chairman. That is the case. I should back up, Mr. Chairman, and tell you that in the fall of 1988 the Congress mandated that the Corporation award its grants and contracts for legal services on a competitive basis. I think the language was the Corporation shall develop and implement a system of competitive award of grants and contracts.

18

19

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22

That language was made a part of the fiscal year 1989 appropriations bill. It is included again in this year's appropriation bill and I believe the language may have been added into one of the supplemental appropriation bills that was passed last summer.

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1 The Congress is on record as strongly favoring this
2 approach. In response to the requests, rather the clear
3 direction from Congress, the Corporation began to look at this
4 issue. I should also mention to the board that there is a
5 description in the Corporation's bill for both fiscal year 1989
6 and 1990 that competition will be implemented after this board
7 is confirmed.

8 CHAIRMAN WITTGRAF: Mr. Wear, if I could interrupt for
9 just one moment. The executive session of the board having been
10 completed, the board will now resume its open session. Mr. Wear
11 has been, let us say, informally informing the board members as
12 to the background of this item on number 9, review of
13 competitive bidding ideas or proposals.

14 I will ask you to continue and complete your comments,
15 Mr. Wear, and then I understand one of the staff members will be
16 giving us an update.

17 MR. WEAR: Thank you, Mr. Chairman. Yes, Mr.
18 Chairman, in view of the language and the requirement that
19 Corporation implement competitive bidding when this board is
20 confirmed, it seemed appropriate that the Corporation begin to
21 work on this issue. So, beginning in 1989, the Corporation
22 published for comment a proposed draft on competition. The

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1 proposal elicited a great number of comments.

2 In addition, the Corporation attempted to gauge the
3 interest in competition by advertising the fact that the
4 Corporation will be going into competition and received
5 responses from a large number of interested parties, who were
6 interested in learning more about competition.

7 The Corporation subsequently held hearings on the
8 issue chaired by Mr. Hall, as I recall. If I may, Mr. Chairman,
9 I would like to ask Kathy Betancourt to come forward at this
10 time and to say a little bit more about the hearing process.
11 And, also, Kathy, if you would, to fill in the gaps on anything
12 that I may have left out.

13 MR. COLLINS: Mr. Chairman, I have to leave at 5:15,
14 so I want to apologize in advance if I leave in the middle.

15 CHAIRMAN WITTGRAF: Kathy, before you begin, let me
16 just ask if Member Hall has any comments, since you chaired
17 those hearings?

18 MR. HALL: Well, there was a draft proposal submitted.
19 It was made clear from the beginning that it was a draft, that
20 it wasn't intended to pass in the regulation. The purpose of
21 the hearing was to kick it around the first time, to identify
22 the problem areas, and just to give us a basis to begin on it.

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1 It was not a proposal that was in any way intended to
2 be voted on or even considered to be voted on at the time. We
3 did have two hearings on it. We had a tremendous amount of
4 people talk on it. I was criticized for letting so many people
5 talk as a matter of fact. We had some good ideas and identified
6 some good problem areas from it.

7 CHAIRMAN WITTGRAF: Thank you. Kathy?

8 MS. BETANCOURT: What I will do then is just briefly
9 summarize the two hearings and some of the issues that were
10 brought up and some of the problems that remain to be solved.

11 There were two meetings, as President Wear mentioned,
12 one in Chaumberg, Illinois and one in Washington, D.C.
13 Witnesses and the public were at both meetings and they
14 addressed the proposal that had been published in the "Register"
15 and discussed the outlines of a competitive bidding system.

16 The staff, of course, initially began by discussing
17 the advance notice of proposal rule making on competition.
18 There are a lot of things that go into that.

19 For example, the service areas. How do you define
20 service areas? They are defined now in various ways.

21 There is another question about would the potential
22 providers be required to bid on an entire service area as they

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1 are defined now or would there be several providers in one
2 service area? For example, in New York City there might be two
3 or three providers.

4 Another question is whether, even within one given
5 service area, could a potential provider bid on providing one
6 particular kind of service? For example, family law. Or would
7 potential providers be required to bid on the entire variety of
8 legal services that the providers now provide?

9 That draws in another problem when you talk about
10 priorities, because each legal service program now sets its own
11 priorities and doesn't address or doesn't provide a full range
12 of legal services.

13 So, these are some of the elements that have to be go
14 into a competitive bidding system. The advanced notice of
15 proposed rule making also addressed other issues. For example,
16 the selection criteria.

17 What goes into judging or evaluating each proposal?
18 The advance notice laid out criteria based on other draft
19 solicitations from other agencies that do competitive bidding,
20 such as the bidder's experience, the organizational capacity,
21 the types of cases they propose to cover. Also other evidence
22 that they could provide that would give evidence that they could

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1 provide quality legal services.

2 Another very important issue is the question of
3 quality review as an integral part of this review process. How
4 do you ensure that the peer review includes considerations of
5 quality? So, there was quite a bit of discussion, especially at
6 Chaumberg, on how you build in quality assessment as well as the
7 questions of cost efficiency and effectiveness.

8 Many problems were raised in the discussion.
9 Generally there was a fear expressed on the part of several
10 witnesses that this was an attempt by a hostile board to
11 dismantle the current delivery system. That was an objection to
12 competition generally.

13 Other problems raised were that competition would
14 jeopardize the existing supply of experienced legal service
15 providers that are already in place and not only that it would
16 not take adequate account of the experience they have to offer,
17 but also would jeopardize those programs relationship with their
18 communities and with their other funding sources.

19 For example, IOLTA is given to many legal services
20 programs based upon their relationship with the Legal Services
21 Corporation and the fact that they are provider. Competition
22 might, some commentators objected, might tend to undermine the

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1 good will that exists between programs and their communities.

2 There are also comments that address the particular
3 proposal specifically. For example, that too much discretion is
4 lodged in the president of the Corporation who makes the final
5 grant, makes the final decision. Although one commentator
6 argued that in almost every competitive bidding among the
7 Federal Government, that the president of the agency does have
8 to make the final discretionary decision. That is lodged
9 somewhere and it customarily is lodged in the president.

10 There was questions about whether the peer reviewers
11 are given sufficient guidance. There was a question about legal
12 services programs monitoring reports, how much weight would
13 those be given in the evaluation.

14 I recall Mr. Hall was concerned as well about what
15 effect this competition would have on pro bono, for example, if
16 private attorneys can bid on particular contracts, why -- you
17 know, would they have the same motivation to offer services at a
18 reduced rate or for free.

19 There are also questions with the current structure,
20 the existing statutory requirements and regulations. For
21 example, we have a requirement for PAI, 12 and a half percent.
22 What effect would this have on that? What about --

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1 MS. PULLEN: What is PAI?

2 MS. BETANCOURT: Private attorney involvement. Would
3 a private law firm, if it bid, would it be required to expend
4 12.5 percent of its grant on PAI. The two have to be resolved.

5 There is also the question of governing boards. There
6 is a McCollum amendment that requires that grantees be governed
7 by a board. If for profit firms bid for grants or I mean for
8 contracts, would that have to be -- how would that be resolved?

9 There is also some concern that this would diminish
10 local controls since the final decision would be based in the
11 Corporation.

12 There is -- I have summarized, I don't know if you--
13 I have summarized some of the comments. You -- I will also
14 provide for anyone who does not have it yet a copy of the
15 Corporation's advance notice for proposed rule making to see the
16 initial outlines and the competition manual.

17 CHAIRMAN WITTGRAF: I would suggest that you might
18 mail that to the members so they don't have to carry it.

19 MS. BETANCOURT: Right. Okay. And, also, a summary
20 of the two meetings. Also at the -- both at the Chaumberg
21 hearing and at the Washington meeting, other potential providers
22 spoke before the board. Specifically three prepaid legal plans

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1 providers. They expressed their interest in bidding for a legal
2 services grant.

3 The Corporation received over 400 inquiries about
4 bidding for legal services grants. And a large portion of those
5 were prepaid legal service providers. These are groups that
6 provide legal services for unions. One provided services for a
7 teachers union, two in Washington provide for labor unions.
8 They do provide a full range of services and even benefits.

9 Several of the commenters feared that private
10 attorneys while they might be able to provide and successfully
11 bid for contracts in family law, would not have that very
12 specialized experience that legal services attorneys acquire
13 after years and years of working through the various benefits
14 law, AFDC, social security.

15 Would a private attorney have that same sort of
16 expertise? However, the prepaid legal service providers argued
17 that they have in the past and will continue to provide legal
18 assistance in benefits laws and would be willing to bid.

19 The remaining questions, many of which still have to
20 be addressed, are if private firms are permitted to bid, will
21 they be required to comply with all the current statutory and
22 regulatory requirements concerning local board.

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1 How would local priority setting be addressed? How
2 would local providers know what to bid on without having some
3 sort of priority setting? Would that come from prior priority
4 setting or just what would that mechanism be?

5 There are also the questions of how to split up the
6 services. Whether attorneys would be permitted to bid on
7 particular areas of law or whether competition would be for the
8 full variety of services.

9 Also, whether competition should require some -- well,
10 as one commentator said, second sourcing. In other words, to
11 try to fund two service providers in one area so that you really
12 have a true test of competition so that you can actually
13 evaluate which programs are providing more quality legal
14 services at a better price.

15 Along with that, there is also the issue of in many
16 areas are you going to have other competitors and serve in some
17 rural areas where there are not a lot of lawyers, where there is
18 not one on one coverage. You might not have as ambitious a
19 competition for the legal services grant.

20 These are just some of the problems that were brought
21 up at the two meetings. There is certainly a lengthy period of
22 discussion and deliberation which has to go on before

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1 competition can be put into place.

2 Do you have any questions? I will be happy to provide
3 you with some of the documents.

4 CHAIRMAN WITTGRAF: Do any of the board members have
5 questions? Ms. Pullen?

6 MS. PULLEN: What has been done since these meetings
7 to try to define answers to some of the questions that were
8 raised?

9 MS. BETANCOURT: Well, we have worked through some of
10 the questions and tried to define what can be done. There has
11 been an analysis done of each regulation and a statutory
12 provision that would be affected by competition, by a
13 competitive bidding system and an analysis of what changes have
14 to be made. So, some of the answers have been defined.

15 There has -- obviously we have been waiting to a
16 certain extent for a new board to discuss the issue.

17 MS. PULLEN: But there has been staff work to take
18 advantage of the information that was developed in these
19 meetings.

20 MS. BETANCOURT: Yes.

21 MS. PULLEN: And try to come up with recommendations
22 that would solve some of the problems raised?

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1 MS. BETANCOURT: Yes.

2 MS. PULLEN: Thank you.

3 CHAIRMAN WITTGRAF: Any other questions? Mr. Dana?

4 MR. DANA: Is there a current version of a regulation
5 that you have that is in-house?

6 MS. BETANCOURT: Well, there was the advance notice of
7 proposed rule making, which was published in the "Federal
8 Register," which served as the basis of discussion. We do have
9 a copy of that.

10 MR. DANA: But so far as you know, even though you
11 have --

12 MS. BETANCOURT: That has not been amended because, as
13 I said, it was a basis for discussion and deliberation. There
14 has been no attempt to amend.

15 MR. DANA: So, what have we done since the hearings in
16 order to "work through" the learning that we acquired?

17 MS. BETANCOURT: Well, in a certain -- to a certain
18 extent, we were waiting for a new board. I mean obviously there
19 was -- this board has to set policy on this.

20 CHAIRMAN WITTGRAF: Any other questions? Comments?

21 (No response.)

22 CHAIRMAN WITTGRAF: Thank you very much. That

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1 completes the items on the agenda unless anyone has some
2 additional comments, questions, anything. Otherwise, the
3 Chairman will entertain a motion to adjourn to the next
4 regularly established date, which I understand is the 25th of
5 June.

M O T I O N

6
7 MR. DANA: I so move.

8 CHAIRMAN WITTGRAF: Is there a second?

9 MS. LOVE: Second.

10 CHAIRMAN WITTGRAF: All in favor?

11 (A chorus of ayes.)

12 CHAIRMAN WITTGRAF: It is unanimous. We stand
13 adjourned.

14 (Whereupon, at 5:24 p.m., the proceedings were
15 adjourned.)

16 * * * * *

17

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