

**ORIGINAL**

ESD.MM

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS MEETING

September 23, 1990

1:30 p.m.

The Oxford Alexis Hotel  
The Sage Room  
160 Seventeenth Street  
Denver, CO 80202

Board Members Present:

George W. Wittgraf, Chairman  
Howard H. Dana, Jr.  
J. Blakeley Hall  
Jo Betts Love  
Penny L. Pullen  
Jeanine E. Wolbeck

Staff Present:

Emilia DiSanto, Interim President  
Timothy B. Shea, Vice President and General Counsel  
Maureen R. Bozell, Secretary  
David Richardson, Comptroller and Treasurer

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

1  
2 CHAIRMAN WITTGRAF: Ladies and gentlemen, this  
3 regularly scheduled meeting of the Board of Directors of the  
4 Legal Services Corporation will be in order.

5 On behalf of the six of us who are here as board  
6 members and members of our staff in Washington, I can say that  
7 it's a pleasure to be in Colorado on such a beautiful day.  
8 And it's really a pleasure to be in someplace other than  
9 Washington, D.C., as much as it is the nation's capital. We  
10 thank those who had a hand in the preparations for our visit.  
11 We thank them for our efforts.

12 We have some business that we will be transacting  
13 this afternoon. We have come as members of the board as much  
14 as anything to work. As I think many of you know from  
15 conversations or from readings, most of us, as new members of  
16 this board since February of this year, have had minimal  
17 involvement with the Legal Services Corporation and legal  
18 services grantees.

19 So this is a particularly important opportunity for  
20 us. Our nameplates introduce us. Hopefully, those of you who  
21 wish will have an opportunity to meet and visit with us later  
22 this afternoon as you wish.

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1           This is a particularly important occasion for our  
2 board, too, in that a great deal of our activity over the last  
3 six or seven months has been devoted to the selection of a new  
4 president for the Legal Services Corporation. As I think  
5 those of you here know, the man who had been president for the  
6 last two years, Terrance J. "Terry" Wear, submitted his  
7 resignation to our board in March. That was effective June 30  
8 of this year. We moved as expeditiously as we could as a  
9 board to select a new president. We have a president elect.  
10 If you haven't met him already, let me introduce him to you.  
11 His name is David Martin. He's actually a native of the  
12 Washington area, which so many Washingtonians aren't. Please  
13 introduce yourself to him if you haven't done so already.

14           Since July 1st, Emilia DiSanto, who is normally the  
15 head of our monitoring Audit and Compliance Division within  
16 the Corporation, has had the dubious honor of being the  
17 interim president, all of the headaches with little of the  
18 long-term authority. But we're delighted at your willingness  
19 to do that and at the job she has done.

20           At this time, it's my pleasure to call on Rabbi  
21 Greenbaum to make an invocation or to give an invocation on  
22 our behalf. Rabbi, thank you.

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1 RABBI GREENBAUM: Thank you. Thank you, members of  
2 the board. I'd like to open the meeting in prayer.

3 (Invocation was given.)

4 CHAIRMAN WITTGRAF: Thank you very much, Rabbi, and  
5 happy New Year.

6 At this time, it's my pleasure to call on Frederick  
7 "Jerry" Conover of the Colorado State Bar Association.

8 WELCOMING REMARKS BY FREDERICK "JERRY" CONOVER

9 MR. CONOVER: For these pillars, where would like  
10 me?

11 CHAIRMAN WITTGRAF: Wherever you're comfortable, Mr.  
12 Conover. We're really a quite informal group, the tables and  
13 the drapings notwithstanding.

14 MR. CONOVER: Let me welcome those of you who are  
15 not from Colorado to Colorado on behalf of the Colorado Bar  
16 Association. We're delighted to have you here on a Sunday  
17 afternoon where we know you are supporting the Denver Broncos.

18 CHAIRMAN WITTGRAF: The question is, have you heard  
19 the latest score on the Minnesota Vikings and the Chicago  
20 Bears?

21 MR. CONOVER: With the constituency that we have  
22 here, it's risky to (laughter).

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1           In Colorado, and you'll hear this this afternoon, we  
2 have had a strong history of legal services to the poor by the  
3 very nature of our state with a large metropolitan area and in  
4 large rural areas. We have not unique but very important  
5 bilingual problems.

6           We have problems with which relate to the tensions  
7 between legal services in the rural areas and urban areas. We  
8 have had the dedicated group of people in our state who have  
9 devoted their lives to providing legal services to the poor.  
10 We are very grateful.

11           Similarly, the Colorado Bar Association has had, I  
12 think, maybe not an unusually active interest in the area but  
13 certainly as active as any state bar association that I'm  
14 familiar with and over the years has worked closely with the  
15 providers of legal services in whatever form or shape they've  
16 taken.

17           We consider that one of our proudest achievements.  
18 Just a week ago today in Snowmass, Colorado, where things were  
19 not quite as brilliant as they probably are today but they  
20 were brilliant, the Board of Governors of the Colorado Bar  
21 Association voted unanimously in favor of legal services and  
22 to oppose the McCollum Amendment.

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1           It's an articulate group. It's a bipartisan group.  
2 It has been active and it's very concerned and very  
3 interested. So I wish you good speed in your deliberations.  
4 I note that you are meeting in the Sage Room. This room is  
5 probably taken from the weed that grows here in the West, and  
6 like many of you see as you drive through Colorado and  
7 Wyoming, the sagebrush. There's another meaning for sage as  
8 well. I'm sure that you will be sage and wise in your  
9 deliberations. We welcome you again. Thank you for being  
10 here. Have a good meeting.

11           CHAIRMAN WITTGRAF: Thank you. May I ask you one  
12 question, if you'd like to comment just a little bit. For how  
13 long and what experience has the Colorado State Bar had with  
14 IOLTA funds?

15           MR. CONOVER: Three or four years ago we went to  
16 mandatory IOLTA. COLTAF, I think, was about three years ago  
17 and did a real job of selling that to the Board of Governors.  
18 Progress around the state springed forth and adopted the rule.  
19 I do not have the statistics on it but it is grown as an  
20 additional source for funds. We've been very pleased and  
21 proud. Loyce Forrest who is the Chair of the availability  
22 of Legal Services Committee of the Colorado Bar Association

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1 will be speaking to you more specifically about the action  
2 taken last week.

3 CHAIRMAN WITTGRAF: I didn't mean to put you on the  
4 spot. Thank you very much for being here. Thank you.

5 MR. DANA: Mr. Chairman?

6 CHAIRMAN WITTGRAF: Mr. Dana?

7 MR. DANA: I can amplify that some. Colorado has  
8 been at the forefront of IOLTA and its leaders include: Bruce  
9 Buhl, who is a member of the ABA IOLTA Commission with me;  
10 Deborah Baxter, who was the first executive director of COLTAF  
11 and is now the executive director of the IOLTA Commission;  
12 and, Meredith McBirney, who is, I think, her successor here in  
13 Colorado.

14 Colorado has led, if not the nation, certainly as  
15 one of the pioneers of IOLTA and is making a major  
16 contribution to IOLTA through its people and through the money  
17 it has raised.

18 CHAIRMAN WITTGRAF: Before we move to our agenda, we  
19 have one other guest who would like to address a few remarks  
20 to us, and appropriately so, on this occasion. We're here as  
21 much or more to learn as we are to conduct the business of our  
22 board.

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1 Luis Trujillo, client board member, has asked to  
2 have an opportunity to share a few of his remarks with us this  
3 afternoon. Mr. Trujillo?

4 STATEMENT OF LUIS TRUJILLO

5 MR. TRUJILLO: I want to welcome all of you from  
6 Washington here to our beautiful State of Colorado. My name  
7 is Luis Trujillo and I've been a client board member in Ft.  
8 Collin since 1983. I've been a member of the Board of  
9 Directors since 1986. I want to tell you all that I'm sold on  
10 Colorado rural legal services. I hope I can tell you why.

11 In the early 70s, I was hospitalized five times with  
12 a heart condition. Eventually, I was declared totally and  
13 permanently disabled. That put me on social security and  
14 veteran's disability benefits. That seriously depleted my  
15 lifetime savings.

16 I had a supplemental insurance carrier. About four  
17 or five years later, that supplemental insurance carrier went  
18 bankrupt. That put me in a position of having to have a  
19 waiting period to qualify for other supplemental insurance  
20 carriers. About that time, I was notified that in an effort  
21 to stave off what he considered to be a massive stroke, I have  
22 to have an operation on the corroded artery. That was done.

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1 And that really wiped out my savings.

2           At the beginning of the Reagan Administration, I was  
3 notified that my benefits were going to be terminated, and  
4 they were. Enter Colorado Rural Legal Services. We've had a  
5 series of meetings and hearings. The situation I was in was  
6 one that, on the one hand, the social security doctors were  
7 telling me that I could work up to four hours daily and lift  
8 20 pounds occasionally, and, on the other, hand my  
9 cardiologist refused to release me to go back to work. So  
10 that was the quandary in which I found myself.

11           The Colorado Rural Legal Services was able to  
12 resolve that problem for me and I was reinstated to my  
13 benefits. Since then, I've been a staunch supporter of  
14 Colorado Rural Legal Services. I believe that story happens  
15 practically every day in our country, even to the point where  
16 I don't understand how our system can operate without having  
17 the Legal Services Corporation in effect through the country.

18           I see that in a period of budget cuts, we have  
19 problems with keeping staff because of low salaries. I see  
20 that in the Ft. Collis case, for instance, we're working in  
21 the Dark Ages. We don't even have a computer in that office.  
22 So all this takes hours and hours and hours to record all of

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1 the transactions and business that you do for the business.

2 I would hope that we would continue on and never  
3 stop having that service for people in need. I don't have  
4 much else to say about this. If I can answer any questions,  
5 I'd be glad to.

6 CHAIRMAN WITTGRAF: What has your experience been  
7 with your service as a member of the board now? What areas  
8 have you been involved in in particular? Are you on one or  
9 more committees of the board, Mr. Trujillo?

10 MR. TRUJILLO: I've been on the Audit Committee and  
11 I've been on the Grievance Committee. I believe at one time  
12 early in that I was on the Personnel Committee.

13 CHAIRMAN WITTGRAF: What is the service area -- and  
14 I'm probably getting ahead of us because we'll get into some  
15 of this more specifically tomorrow -- but what does the  
16 service area of Colorado Rural Legal Services include?

17 MR. TRUJILLO: I don't understand your question.

18 CHAIRMAN WITTGRAF: Which areas? What geographic  
19 areas?

20 MR. TRUJILLO: Well, Colorado Rural Legal Services  
21 serves all of the State of Colorado.

22 CHAIRMAN WITTGRAF: Separate program in the Denver

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1 metropolitan area?

2 MR. TRUJILLO: Yes. I think we have ten offices in  
3 the state.

4 CHAIRMAN WITTGRAF: Do you have a sense of what  
5 kinds of problems are most going unmet today?

6 MR. TRUJILLO: I would say, speaking to you as a  
7 part native America, I think the native American needs are  
8 going unmet today for the most part. In the two reservations  
9 in southern Colorado, we only have until recently a contract  
10 attorney down there. At the last board meeting, we voted to  
11 install an office and an attorney in that Durango area to  
12 service, at least part time, the native Americans. We have  
13 two reservations for those of you who don't know. It's the  
14 southern Ute and the Mountain Ute reservations down there.

15 I see by our statistics that we have a number of  
16 advice-only cases. I've been informed by my attorney, the  
17 managing attorney down there, that many of those cases could  
18 be actual cases had we had the staff to handle them.

19 CHAIRMAN WITTGRAF: Mr. Dana?

20 MR. DANA: Mr. Chairman, how often does your board  
21 meet, sir?

22 MR. TRUJILLO: Once every two months. Are you

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1 talking about the Board of Directors?

2 MR. DANA: Yes.

3 MR. TRUJILLO: Yes, sir. We were meeting for a long  
4 time once a month and we went to once every two months.

5 MR. DANA: Are there lawyers and clients from all  
6 over the state come together?

7 MR. TRUJILLO: From all of those offices that are  
8 represented by the state; yes, sir. I think that the  
9 composition is about 66 2/3 attorneys and 1/3 lay people.

10 CHAIRMAN WITTGRAF: Mr. Hall?

11 MR. HALL: No. I have nothing.

12 CHAIRMAN WITTGRAF: Ms. Love?

13 (No response.)

14 CHAIRMAN WITTGRAF: Ms. Pullen?

15 MS. PULLEN: Thank you for coming and talking to us.

16 MR. TRUJILLO: Than you.

17 CHAIRMAN WITTGRAF: Ms. Wolbeck?

18 (No response.)

19 CHAIRMAN WITTGRAF: Than you very much, Mr.  
20 Trujillo.

21 APPROVAL OF MINUTES

22 CHAIRMAN WITTGRAF: At this time, we will proceed to

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1 the formal business before us, beginning with the agenda the  
2 Chair has prepared; to entertain a motion for the approval or  
3 adoption of the agenda as proposed.

4 M O T I O N

5 MR. HALL: So moved.

6 CHAIRMAN WITTGRAF: It's been moved. Is there a  
7 second?

8 MS. PULLEN: Second.

9 CHAIRMAN WITTGRAF: And seconded. Discussion?

10 (No response.)

11 CHAIRMAN WITTGRAF: Hearing none, those in favor,  
12 signify by saying aye.

13 (A chorus of ayes.)

14 CHAIRMAN WITTGRAF: Those opposed, nay.

15 (No response.)

16 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
17 ayes do have it. The agenda is approved as presented.

18 Next, you will recall, of course, that we had two  
19 meetings, July 30th and August 9th, which were devoted almost  
20 completely to our deliberations over the selection of our  
21 president elect. Hence, we have two sets of minutes before  
22 us. Looking first to those minutes of our meeting of July 30,

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1 1990, the Chair is prepared to and wishes to entertain a  
2 motion for the approval of those minutes as presented.

3 M O T I O N

4 MR. DANA: So moved.

5 CHAIRMAN WITTGRAF: Is there a second?

6 MR. HALL: Second.

7 CHAIRMAN WITTGRAF: Is there discussion?

8 (No response.)

9 CHAIRMAN WITTGRAF: Hearing none, those in favor of  
10 the approval of the minutes as presented will signify by  
11 saying aye.

12 (A chorus of ayes.)

13 CHAIRMAN WITTGRAF: Those opposed, nay.

14 (No response.)

15 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
16 ayes do have it. The minutes of the meeting of the board of  
17 July 30, 1990, are approved.

18 The Chair is prepared to entertain a motion for the  
19 adoption of the minutes of our meeting of August 9, 1990.

20 M O T I O N

21 MR. HALL: So moved.

22 CHAIRMAN WITTGRAF: Is there a second?

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1 MS. PULLEN: Second.

2 CHAIRMAN WITTGRAF: Is there discussion?

3 (No response.)

4 CHAIRMAN WITTGRAF: Hearing none, those in favor,  
5 signify by saying aye.

6 (A chorus of ayes.)

7 CHAIRMAN WITTGRAF: Those opposed, nay.

8 (No response.)

9 CHAIRMAN WITTGRAF: The ayes appear to have it. The  
10 ayes do have it.

11 At this time, the Chair is prepared to discuss the  
12 status of both the reauthorization effort that's pending and  
13 the appropriation process. The Chair would be delighted to  
14 have those persons, Mr. Richardson, Mr. Boehm, and anyone else  
15 who might be able to share their information as well as their  
16 insight with us come forth at this time, please.

17 It may be later in the agenda when we get to some  
18 more specific discussion perhaps in so called reform proposals  
19 as well as the status of the budget and the looming spector of  
20 sequestration that will call on you gentlemen again. But at  
21 this point, I think it would be helpful by way of background  
22 to discuss briefly what is happening legislatively.

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1           Let me say for my part on the matter of  
2 confirmation, while I understand that Mr. Hall is about to be  
3 nominated, I don't think that the confirmation process is  
4 going to move forward at all this year. We, as board members,  
5 will have to look forward, hopefully, I believe, to  
6 renomination in the confirmation process in 1991.

7           Ken, do you concur?

8           MR. BOEHM: Yes.

9           CHAIRMAN WITTGRAF: Let's talk first about the  
10 status of the reauthorization effort. We do finally have a  
11 copy of the House Judiciary Subcommittee's bill before us.  
12 Would you like to speak to that briefly and to the process at  
13 this time?

14                   STATUS REPORT ON REAUTHORIZATION, APPROPRIATIONS  
15                                   AND CONFIRMATION HEARINGS

16           MR. BOEHM: Sure. Thank you very much, Mr.  
17 Chairman. The subcommittee, Barney Frank's subcommittee, has  
18 jurisdiction over the reauthorization of LSC; marked up the  
19 bill on August 2nd and 3rd. That means they just approved it  
20 at the subcommittee level. There was some delay in getting a  
21 written copy, but I believe the board has received written  
22 copies of the subcommittee-approved versions.

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1           Where that is right now is basically pending.  
2 Officially, it's between the subcommittee and the committee.  
3 Theoretically, the Judiciary Committee could take it up as a  
4 practical matter because Congress is at the very end of the  
5 legislative schedule barring a lame duck session. The chances  
6 of it being taken up by the full Judiciary Committee are  
7 somewhat slim at this point. I think there's a consensus in  
8 that respect. But nobody has officially ruled it out.

9           The appropriations process is a little more  
10 complicated. Right now the appropriations bill that contains  
11 the funds for Legal Services Corporation is before the Senate.  
12 In fact, as of just a little over a week ago, the  
13 subcommittee, the Senate Appropriations Committee, did mark up  
14 their version. The next step along the path is to go to the  
15 full committee for appropriations.

16           Now, we're captive to the rest of the budget  
17 process. As a practical matter, it's impossible to predict  
18 exactly what might happen. There are a couple scenarios and I  
19 can lay them out. One is that it follows last year's  
20 procedure. If that happens, the Senate will pass it. It will  
21 go to a conference committee. It will go back to the House.

22           At that point, because the House version and Senate

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1 version are different, there will be an opportunity to amend  
2 it on the House floor through preferential motion. If that  
3 happens, we could have a scenario almost identical to last  
4 year where whatever reform amendments or changes people want  
5 to make, they could be made from the floor of the House.  
6 There would be a vote there and it would continue as last  
7 year.

8           The other way we could go, because we're at the end  
9 of the legislative session -- we're almost out of time.  
10 Congress and the White House have not reached a budget  
11 resolution of the problem. What they could very well do is do  
12 a continuing resolution and put all of the appropriation bills  
13 that remain unpassed, which is all 13 of them, in one big  
14 resolution, pass it to some date certain, either to a lame  
15 duck session, which hasn't occurred since 1982 but is a  
16 possibility, or until next January or until whatever date they  
17 want to set.

18           The closer you get to an adjournment without a  
19 resolution in the budget process, the more likely you are to  
20 have some sort of continuing resolution, even if it's short  
21 term. So we're, in effect, captive passengers on the budget  
22 bus and we just have to see what will happen.

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1           But there is still a possibility that there would be  
2 a scenario similar to last year where there would be a vote  
3 from the House floor on whatever package of changes the  
4 congressmen may wish to offer. It's just as likely, for  
5 whatever number you want, that we won't get that opportunity  
6 this year.

7           CHAIRMAN WITTGRAF:    The second scenario or the  
8 alternative scenario would have essentially no substantive  
9 discussion?

10           MR. BOEHM:   Right. Well, generally speaking, when  
11 they roll everything together in one big continuing  
12 resolution, they do it because of a lack of time. The chances  
13 of them opening it up for amendments, especially just for  
14 legal services -- because you have all the spending bills, all  
15 13 of them, in effect, in one package -- it's theoretically  
16 possible but the chances of it happening are rather slim, in  
17 which case it would not be a vote on any kind of reform this  
18 year.

19           Things would continue along the same lines as last  
20 year and it may be part of a lame duck session if there is  
21 one, or next January you'd have to start over again.

22           CHAIRMAN WITTGRAF:    What is, without laying odds,

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1 what is your sense of a date for congressional adjournment or  
2 a recess?

3 MR. BOEHM: Well, the fiscal year begins October  
4 1st. That's something of a benchmark. They're trying to get  
5 out of town before the end of the second week of October at  
6 the latest. That's a possible benchmark. You have any number  
7 scenarios. For example, they could do a short-term continuing  
8 resolution until they reach a resolution of the budget process  
9 and then revisit it, in which case, theoretically, since our  
10 appropriation bill is a little further along than some of the  
11 other 13, we may get an opportunity.

12 There's as many scenarios as there are sagebrush in  
13 Colorado. So it's hard to say. My guess is we'll know  
14 something very soon. Of course, that's what everyone was  
15 saying a month ago, too. Within the next two weeks, I think  
16 we'll have something.

17 CHAIRMAN WITTGRAF: But adjournment or recess,  
18 whichever it might be, is likely either just two or three  
19 weeks from now?

20 MR. BOEHM: Yes. It's an election year. Generally,  
21 the department --

22 CHAIRMAN WITTGRAF: You're prepared, as I understand

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1 it, to talk later, more specifically when we get to that point  
2 of the agenda, about the specifics of the Frank Bill, the  
3 McCollum-Staggers-Stenholm alternative, and to respond to  
4 questions and comments at that time.

5 MR. BOEHM: Sure.

6 CHAIRMAN WITTGRAF: Dave Richardson, you have shared  
7 with us the figures that came out of the Senate Appropriations  
8 Committee to which Ken Boehm has referred. Would you like to  
9 elaborate on those a little bit?

10 MR. RICHARDSON: The only other thing that I would  
11 mention is we have received no such figures from the House at  
12 all. It is just buried in your total CR that they're  
13 considering. The information for the public we've not --

14 CHAIRMAN WITTGRAF: Let me interrupt you for just a  
15 moment. My understanding for the last several years has been  
16 that Congressman Smith, as the Chair of the appropriation  
17 subcommittee, has not moved any appropriation for the Legal  
18 Services Corporation by virtue of the fact that it legally  
19 does not exist or has not been reauthorized.

20 MR. RICHARDSON: For the past two years, yes, sir,  
21 that's true.

22 CHAIRMAN WITTGRAF: So, it seems unlikely that we'll

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1 actually get any numbers out of his subcommittee; does it?

2 MR. RICHARDSON: We've actually been told that we  
3 will not at this point. The only thing that I would mention  
4 for the information to the public, the subcommittee did report  
5 out \$329,186,000. If that figure would be approved, that  
6 would be the amount subject to the sequestration instead of  
7 the \$316,525,000 that we received last year with the sequester  
8 figuring the '89 funding levels.

9 It's not a straight across-the-board increase in  
10 each line. Some of the lines are increased 4.2 percent. Some  
11 of the lines are increased approximately 4 percent. Some are  
12 somewhere in the neighborhood of 3.9. So it's not a straight  
13 across-the-board increase.

14 For further information, the budget request that the  
15 president did give was basically a freeze budget of what the  
16 sequestered levels were; last year, the \$316,525,000. Of  
17 course, the board requested last year the \$343,000,000.

18 If any of you do have any questions, of course, we  
19 will have time later in the agenda to go through that if you'd  
20 like.

21 CHAIRMAN WITTGRAF: My greatest concern at this  
22 point is that everybody have some sense of the status in both

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1 reauthorization and the appropriation.

2 Any questions or comments from either Mr. Boehm or  
3 Mr. Richardson at this time? Mr. Dana?

4 (No response.)

5 CHAIRMAN WITTGRAF: Mr. Hall?

6 MR. HALL: No.

7 CHAIRMAN WITTGRAF: Ms. Pullen?

8 MS. PULLEN: No.

9 CHAIRMAN WITTGRAF: Ms. Wolbeck?

10 (No response.)

11 CHAIRMAN WITTGRAF: I guess not. Actually, I'm not  
12 sure, but the two of you might keep your seats there.

13 DISCUSSION OF FUTURE BOARD MEETING SCHEDULE

14 CHAIRMAN WITTGRAF: Speaking principally to the  
15 board members at this point, if each of you has a calendar  
16 available to you, it might be helpful to be able to refer to  
17 it as we look ahead to the possible board meetings in October,  
18 November and December. The principal we've attempted to  
19 follow, you recall, is the last Monday of each month, or I  
20 should say the fourth Monday of each month. A couple of  
21 months had five Mondays.

22 In October, that would mean the 22nd. In November,

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1 that would mean the 26th, although the 19th would be before  
2 the Thanksgiving holiday and may have some appeal. Likewise,  
3 December would mean the 24th. The preceding Monday would be  
4 the 17th.

5 At this point, and following up on a discussion that  
6 Ms. Pullen and I had earlier in the month, I'm not sure, as we  
7 look forward today, how compelling the need is for a board  
8 meeting in October. Now, something could happen regarding  
9 sequestration, the appropriations process, that at least might  
10 change my way of thinking and we certainly, I'm sure, could  
11 get together and would look toward the date of the 22nd of  
12 October.

13 At this point, does anybody see any problem with our  
14 tentative decision not to meet in October?

15 (No response.)

16 CHAIRMAN WITTGRAF: Hearing none, I will assume  
17 there is none. The meeting in November, then -- and I'll  
18 share my thoughts with the specific concept of our symposium  
19 or conference with you in a moment. But, looking to November,  
20 is it the feeling that meeting the 19th or the 18th and 19th  
21 would be more convenient, that being the week preceding  
22 Thanksgiving, more convenient than perhaps the 25th and 26th,

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1 the weekend following Thanksgiving?

2 Ms. Pullen?

3 MS. PULLEN: Are you beginning to establish a  
4 pattern of meeting on Sundays, Mr. Chairman?

5 CHAIRMAN WITTGRAF: Not necessarily. Monday is the  
6 day we worked with, particularly earlier in the year. In  
7 November, I foresee the possibility of two days or the  
8 likelihood of two days and those two could be Sunday and  
9 Monday or they could be Monday and Tuesday.

10 Sunday, obviously, is the day of personal and family  
11 time, although we have typically ended up travelling on  
12 Sundays, I believe, up until now so that we were able to begin  
13 meeting early on Monday mornings.

14 Would you, Ms. Pullen, for example, prefer a Monday  
15 and a Tuesday, such as the 19th and 20th, rather than the 18th  
16 and the 19th?

17 MS. PULLEN: Well, yes, I would, Mr. Chairman. When  
18 we're travelling on a Sunday for a Sunday meeting, as is the  
19 case of this meeting, and I would imagine it would in the  
20 future, it knocks out Sunday morning when some of us feel that  
21 we have a different duty. Sunday evening travelling has never  
22 presented a problem. But having an official meeting on a

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1 Sunday is a different matter, in my view.

2 While you're asking what I think of November, the  
3 19th and 20th would be preferable to me to the 26th and 27th  
4 in terms of my own personal view.

5 CHAIRMAN WITTGRAF: Perhaps we should do the 5th and  
6 6th in Chicago and then we could join you.

7 MS. PULLEN: No, that's all right.

8 CHAIRMAN WITTGRAF: In celebrating.

9 MS. PULLEN: The 5th and 6th I won't be celebrating  
10 yet.

11 CHAIRMAN WITTGRAF: Well, later on the 6th.

12 MS. PULLEN: Very late.

13 CHAIRMAN WITTGRAF: Any other thoughts on the 19th  
14 and 20th? I saw a couple of heads nods, I believe, in talking  
15 about meeting prior to Thanksgiving rather than after  
16 Thanksgiving. You've heard Ms. Pullen's comments regarding  
17 Sunday and Monday as opposed to Monday and Tuesday or perhaps  
18 I should say Monday Tuesday as opposed to Sunday and Monday.

19 Does anybody here have any conflicts or whatever at  
20 this time with Monday and Tuesday November 19th and 20th?

21 MS. LOVE: That leaves Sundays for travel?

22 CHAIRMAN WITTGRAF: Yes, ma'am.

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1 MS. LOVE: I'll go along with that.

2 CHAIRMAN WITTGRAF: Looking to December, and I think  
3 at this point it's hard to say, but we certainly may conclude  
4 as much as I think we have for October and we may not need to  
5 meet. Were we to meet, is it fair to assume that Monday the  
6 17th is preferable to Monday the 24th?

7 MS. PULLEN: Yes.

8 CHAIRMAN WITTGRAF: All right. I think that's the  
9 guidance I need. Thank you.

10 REPORT ON SYMPOSIUM OF TWENTY-FIVE YEARS OF  
11 FEDERALLY FUNDED LEGAL SERVICES

12 CHAIRMAN WITTGRAF: Going beyond that, then, let me  
13 talk about what is in my mind, at least in general terms,  
14 looking at the 19th and 20th of November in addition to  
15 regular board business.

16 Back on March 26th and March 27th we did, of course,  
17 have the opportunity to be informed as to some of the issues  
18 pending before the Legal Services Corporation at this time. I  
19 think, at least as I reflect back on it, most of the  
20 discussion, not all of it but most of it, was geared toward  
21 current issues and particularly issues that would, at least  
22 back in March, had come under the hearing of McCollum-Stenholm

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1 or so-called reform measures.

2           The legal services program, while it was  
3 restructured from being a part of the Office of Economic  
4 Opportunity to a quasi-governmental Corporation in 1974, is a  
5 program that has existed for 25 years. By comparison, our  
6 brothers and sisters and friends involved in the Head Start  
7 program have had a year's worth of commemoration regarding  
8 that program.

9           In fact, that's a little easier to see perhaps than  
10 regarding the legal services program. There's a quote in a  
11 special issue of Newsweek this last week that says, "Who can  
12 object to a program that helps the most innocent and adorable  
13 of poor," referring to the children in Head Start?

14           I'm not sure that our program, the legal services  
15 program or the Legal Services Corporation perhaps has the  
16 fortune of having the most innocent and the most adorable of  
17 the poor with which to be concerned. But like the Head Start  
18 program, like the Outward Bound program, like many other  
19 programs, we have a program that is at its 25th anniversary,  
20 it's silver anniversary.

21           I'm not sure that what we did in March was adequate  
22 in terms of reflecting on the 25 years that have come before

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1 and on the 25 years that lie ahead. Certainly, there have  
2 been successes and failures over the last 25 years. Certainly,  
3 there's been a great deal of controversy over the last 25  
4 years.

5 Just as we are a new board, hopefully to be  
6 renominated early in 1991, just as we have a new president  
7 elect ready to assume his responsibilities full time with us,  
8 I think we're bound to more of a look and a broader look than  
9 we had in March. I can't help but think that perhaps you  
10 could and should have an impact on the reauthorization if not  
11 the appropriations process as well.

12 I believe, if my reading of the book is correct,  
13 that the then board Chairman, Clark Durant, and Douglas  
14 Besharov and others did, in November of 1986, convene a  
15 conference upon which or the transcript of which the book  
16 "Legal Services for the Poor: Time for Reform" is based.  
17 Even so, I think there is the need for us to take a look back  
18 and look ahead.

19 I was told that out of ignorance, my use of the word  
20 symposium was probably misleading. Symposium perhaps  
21 requiring formal papers and the reproduction thereof and  
22 perhaps a banquet. I guess the euphemism I should have been

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1 using perhaps was simply conference, which perhaps is not  
2 required quite such formalized proceedings and perhaps can be  
3 handled with a luncheon instead of a banquet.

4 But as I look at November 19th and 20th, and I guess  
5 which day is board business and which day is conference, will  
6 depend a little bit on the availability of some of the people  
7 we will ask to share their ideas and their perspectives with  
8 us. I can start at this point with any ideas that any of the  
9 board members have regarding how such a conference might be  
10 framed. If you look, and I think all of you probably have  
11 some in Mr. Besharov's book, you've seen one framing there.  
12 My preconceived notion at this point is nothing more than a  
13 look back and look head. Actually, looking at many of the  
14 people in this room, I'd very much appreciate the thoughts and  
15 ideas that you have as we construct that conference.

16 But I think with the new quarter century ahead, with  
17 the new board, with the new president, and perhaps with  
18 reauthorization legislation, that there is some burden upon us  
19 to take such a look back as well as to take such a look  
20 forward.

21 Mr. Hall?

22 (No response.)

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1 CHAIRMAN WITTGRAF: Ms. Love, any comments?

2 MS. LOVE: Not yet.

3 CHAIRMAN WITTGRAF: Ms. Pullen?

4 MS. PULLEN: Mr. Chairman, I'm concerned about what  
5 your budget for this is. I think it sounds like a marvelous  
6 idea and I can understand why you want to do it. But I am  
7 concerned about the timing of it in view of the pending  
8 sequestration. I think it goes -- I'm sure it's not going to  
9 be grandiose and it's not going to be spending a lot of money.  
10 What it spends will be diverting resources at a time when our  
11 resources are potentially being cut drastically. I have  
12 concerns about that.

13 CHAIRMAN WITTGRAF: You have my pledge to fiscal  
14 responsibility.

15 MS. PULLEN: I'm not sure what that means.

16 CHAIRMAN WITTGRAF: I'm not sure yet either. As you  
17 indicated, I don't remember seeing anything grandiose in  
18 anything that would involve particularly a great deal of  
19 expense at all.

20 Mr. Dana?

21 MR. DANA: Mr. Chairman, I guess I would be  
22 interested to know what you had in mind as to how this would

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1 be conducted. Is this primarily for our benefit? Is it  
2 designed to celebrate 25 years?

3 CHAIRMAN WITTGRAF: In my view, I guess, it's  
4 designed for the benefit of the board, of the staff, of the  
5 people in the field across the country and of the Congress.  
6 Certainly, not only with Mr. Besharov's book, with which a  
7 great deal, I believe, of Legal Service's Corporation money  
8 was expended, I'd have to look to Mr. Richardson or somebody  
9 else to have a figure put on that, probably a great deal more  
10 than anything I'm contemplating having spent.

11 Certainly, the Clearinghouse has published a great  
12 deal of material along these lines. I think that we have, in  
13 my judgment, some obligation to cast a brighter light on the  
14 discussion of the past and of the future. As we look to  
15 impressing on the staff, on the board, on the persons in the  
16 field, and on the Congress what has been accomplished, what  
17 hasn't been accomplished, what can be accomplished, how best  
18 it can be accomplished, I think a brighter light is necessary  
19 on this occasion of 25 years.

20 MR. DANA: With that in mind, I would support you in  
21 that. I think that there is -- I'm aware that a lot has been  
22 done to -- a lot of constituencies have gathered to look at

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1 the 90s in an enlightened fashion from all camps. I think it  
2 would be helpful. I'm not sure how it would be structured,  
3 but I think the objective is certainly worthwhile.

4 CHAIRMAN WITTGRAF: Over the course of the next week  
5 or two, I will prepare for the members of the board just a  
6 brief memorandum of my thoughts on the structuring so that it  
7 will be possible for everybody to react and share ideas about  
8 what might be done better, what might be differently, what  
9 might be done instead.

10 MR. DANA: You might have created an agenda for an  
11 October meeting if you're not careful.

12 CHAIRMAN WITTGRAF: I trust that the money that we  
13 might save by not having an October meeting can then be  
14 devoted to the so-called conference.

15 Further comment? Further discussion?

16 (No response.)

17 COMMITTEE SELECTION

18 CHAIRMAN WITTGRAF: The only other item I wanted to  
19 touch on then is the matter of our committee structure. I've  
20 got to admit I'm feeling a little hard-pressed to get too far  
21 with that at this point. We've talked about it briefly in the  
22 past. Ms. Bozell did provide us with a memorandum dated

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1 September 13, reviewing for us again the regulated committees.

2 We have, since last week, discussed a committee  
3 structure created -- one staff committee which is that to  
4 oversee the Office of Inspector General, Chaired by Mr.  
5 Guinot. It was joined by Mr. Dana and Ms. Pullen. Mr.  
6 Guinot, who I believe most of the board members know at least,  
7 came out of surgery just Friday evening and, as I talked to  
8 him an hour or so ago and was still feeling the after effects  
9 of anesthesia, plans to join us during the executive session  
10 tomorrow morning to report to us regarding the Office of  
11 Inspector General. We have established that one standing by  
12 telephone.

13 MS. PULLEN: I knew Luis was macho, but I didn't  
14 know he was that macho.

15 CHAIRMAN WITTGRAF: I guess Mr. hall and Mr. Dana  
16 may have an advantage on us here because both of them have  
17 served on the board prior to 1990 and have been more actively  
18 involved in the committee structure. While this is a subject  
19 we will probably not finish discussing at this meeting, I'm  
20 not sure it will require an October meeting, but it may be  
21 carried over until November when the rest of the board is able  
22 to be with us.

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1 I'd be interested in particularly what thought you  
2 two have regarding the functioning of those committees in the  
3 past.

4 Mr. Hall?

5 MR. HALL: Well, on the committee that forms  
6 regulations, I think you should -- and I was never on that  
7 committee or took part in that, but I think that you should  
8 try to pick some members that may have had some experience in  
9 that. I guess I think of Penny. She seems to do that for a  
10 living or maybe as a hobby, I'm not sure. She's been  
11 reelected to do it for another number of years. I think she  
12 would be good on a committee like that. The other committees  
13 weren't superactive on the short year that I was on there, so  
14 I didn't have a lot of experience on those.

15 CHAIRMAN WITTGRAF: Which committee were you on?

16 MR. HALL: The provision of legal services. We had  
17 a couple hearings on competitive bidding. It probably wasn't  
18 even the correct committee to do that, but we did. Otherwise,  
19 I don't think that that committee had ever met in some time.

20 CHAIRMAN WITTGRAF: Mr. Dana, what was your  
21 experience with the committee structure?

22 MR. DANA: In 1982, it was far more active than it

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1 obviously has been this year. The Audit and Appropriations  
2 Committee was the committee that staff came to if they wanted  
3 to make any changes in their budget. As you and the audience  
4 knows, the board adopts a budget at the beginning of the year.  
5 Most of the money goes to grants that go to the field and the  
6 balance remains within the Corporation's purview to run the  
7 Corporation.

8 Inevitably, there were needs to move money from  
9 account to account within the Corporation's budget. The Audit  
10 and Appropriations Committee was involved in that. Since  
11 about 1985, I gather, staff has done that on their own, a  
12 situation which I think should change.

13 But as long as they really are moving money around  
14 with the board involvement, the Audit and Appropriations--  
15 I'm not sure what the Audit and Appropriations Committee does  
16 except work on a budget mark. Maybe if we ever got sort of  
17 out of the trench warfare that we're in now, maybe it would be  
18 involved in trying to free up resources for new ventures or to  
19 do legal services better. That ultimately comes down to an  
20 allocation of resources.

21 The regulations Committee has been the committee  
22 that has been most active during the 80s. It's come up with

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1 new regulations to essentially harass the program. Most of  
2 those have been declared either by Congress or the courts to  
3 be legal in recent years, but they have been an active  
4 committee. Service on that is important.

5 I suspect that until a board is confirmed, service  
6 on that committee is not going to be very exciting because  
7 Congress, at least herefore, has said until a board can  
8 develop sufficient credibility with the Senate to be  
9 confirmed, we're not going to let it pass any regulations.

10 The final committee is what I think could  
11 potentially be the most fun committee because it has no  
12 particular restraint. It can look into the provision of legal  
13 services and can explore issues like competition and  
14 timekeeping and whether or not the programs are doing a good  
15 job. In passed years, it has been quite active in what  
16 critics may have characterized as junkets, but certain that  
17 this fiscally responsible board would never go on a junket.

18 But they have travelled to investigate the provision  
19 of legal services in different parts of the country and have  
20 learned from both the providers of legal services and the  
21 recipients of legal services what the program is about.

22 I think probably the Chairman has been correct in

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1 not dividing us up and having us go through the motions this  
2 year. But in all candor, I think the most deliberative work  
3 that this board could do would be in committee. If we got  
4 committees that were interested and could devote the time and  
5 attention necessary to, for instance, carefully examine  
6 proposals before Congress and develop thoughtful positions,  
7 pro and con various proposals, I think that could perhaps best  
8 be done in a subcommittee setting. That could be done either  
9 in the Provisions Committee or in the Regulations Committee.

10 CHAIRMAN WITTGRAF: Mr. Shea?

11 MR. SHEA: Yes.

12 CHAIRMAN WITTGRAF: Any comments on the mandatory  
13 committee structure, anything beyond what either Mr. Hall or  
14 Mr. Dana have shared?

15 MR. SHEA: I don't think so. It surely is fair to  
16 say that the recent times that the Regulations Committee was  
17 probably the most active and nevertheless the manner of  
18 provisions, the responsibilities of the Provisions Committee,  
19 particularly with respect to assessing the highly implemented  
20 manners of this competition were emerging with the last board.

21 I don't think there's much else to say. It's  
22 certainly true that now the board's authority to entertain

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1 rule changes are severely constrained. So there may be some  
2 reason, for at least the Rules Committee, to deferring active  
3 consideration, at least in the specific rules. There are  
4 always subsidiaries used that lead to a -- I don't know what I  
5 contributed, but perhaps repeated what you already heard.

6 CHAIRMAN WITTGRAF: On the issue of the drafting and  
7 approving of regulations -- I guess I'm asking this to Ken  
8 perhaps as much as anyone -- is it fair to assume that if  
9 there would be a continuing resolution regarding the Legal  
10 Services Corporation's appropriation, that the prohibition  
11 regarding regulations in the present appropriation is to be  
12 read in the disjunctive October 1 of 1990 or the confirmation  
13 in the new board? And, as suggested by Mr. Shea and I think  
14 also by Mr. Dana, that there would still be no regulatory  
15 authority for this board until confirmation?

16 MR. BOEHM: That's right.

17 CHAIRMAN WITTGRAF: So we would remain regulatory  
18 units?

19 MR. BOEHM: Until the board's --

20 CHAIRMAN WITTGRAF: It's the Chair's hope,  
21 consistent I think with the authority given to the Chair back  
22 in March, to appoint members of the board to committees before

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1 our next meeting. I don't want to put anybody on the spot  
2 today in terms of any preferences that he or she has. I'll  
3 follow this discussion with a note to the board members asking  
4 for any preferences they have or any strong disinclinations  
5 they may have on the other hand.

6 Any further discussion by anybody about the  
7 committee structure; Ms. Pullen, Ms. Wolbeck, Ms. Love?

8 (No response.)

9 CHAIRMAN WITTGRAF: Thank you. At this time, it's  
10 the Chair's pleasure to call upon our interim president,  
11 Emilia DiSanto for the purpose of filling us in on what's been  
12 happening since she last had the opportunity to address us.  
13 Emilia?

#### 14 PRESIDENTS REPORT

15 MS. DiSANTO: Good afternoon and thank you, Mr.  
16 Wittgraf. The first matter of which I wish to advise the  
17 board relates to the current status of our decision in  
18 California rural legal assistance and their involvement in two  
19 specific cases.

20 Secondly, I've been requested to update the board on  
21 three particular matters; that is, sequestration, competitive  
22 bidding and timekeeping.

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1           First, to date, the Corporation has not issued its  
2 final determination on California rural legal assistance.  
3 Certain aspects of the case merit further examination to  
4 ensure that the Corporation's decision is fair, reasonable  
5 and, most importantly, correct.

6           With regard to sequestration, you may recall that at  
7 our last Board of Directors' meeting, I reported that the  
8 Office of Management and Budget had directed the Corporation  
9 to reduce its FY 1991 budget by about 32 percent beginning on  
10 October 1, 1990.

11           In response to that directive, the Corporation  
12 immediately suspended all hiring, notified all temporary  
13 employees that contracts would not be extended past October 1,  
14 1990, and it eliminated all expenditures related to capital  
15 purchases, overtime approvals and employee development  
16 activities.

17           In addition, we notified all staff members that in  
18 order to meet the anticipated sequestration levels for those,  
19 although not a certainty, were definitely a real possibility.  
20 In that regard, we initially designated October 4th and  
21 October 5th as the two potential furlough days. In the event  
22 that Congress does not reach a budget agreement, we plan to

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1 furlough employees an addition two days at the end of October.

2           The Chair also requested a brief status report on  
3 competitive bidding. As you know, the FY 1990 Appropriations  
4 Act requires the Corporation to develop and implement  
5 competition once the Senate confirms an LSC Board of  
6 Directors. Similar language has appeared in appropriation  
7 acts in the previous fiscal year.

8           In the interim, Congress encouraged the Corporation  
9 to research competition and to hold hearings to review  
10 competitive bidding proposals. To date, the Corporation staff  
11 has reviewed competitive bidding procedures used by other  
12 federal agencies, including agencies that award grants for  
13 legal services.

14           We've also reviewed various studies that have been  
15 made on competitive bidding with delivery of criminal legal  
16 services for the indigent. And we have analyzed some of the  
17 legal issues involved in implementing competitive bidding,  
18 focusing primarily on any statutory or regulatory changes that  
19 would be required.

20           On May 26, 1989, the Corporation published an  
21 advance notice of proposed rulemaking to elicit public comment  
22 on the proposed competitive bidding system. The notice

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1 addressed, among other things, the transition of process, the  
2 selection criteria and peer review and negotiation procedures.

3 A proposed competition manual for the purpose of  
4 reviewing grant or contract proposals was also prepared and  
5 has already been provided to the LSC board. In addition, two  
6 public hearings were held to afford interested parties an  
7 opportunity to discuss competitive bidding for legal services  
8 grants. Those hearings at that time were held by the former  
9 board's committee for the provision of legal services.

10 The Chair also requested that I provide a brief  
11 overview regarding the Corporation's timekeeping proposals.  
12 Under the direction of the last Corporation board, we examined  
13 timekeeping in light of the GAO report that was issued several  
14 years ago. The report noted that timekeeping, in and of  
15 itself, was indeed a valuable tool for evaluating program  
16 performance and for controlling costs.

17 The GAO also found that LSC's past efforts in this  
18 regard constituted an appropriate initial step toward  
19 implementing a timekeeping system. At the same time, the GAO  
20 recommended the need for a number of additional steps and a  
21 need for more careful analysis on both costs and benefits.

22 In response to the GAO's recommendations, the

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1 Corporation has developed criteria based on OMB's (A) (122).  
2 That is the circular that sets for the requirements for non-  
3 profit Corporation's use of federal grant funds. We have  
4 assessed the benefits that could be derived from a uniform  
5 timekeeping system and we have conducted a detailed review of  
6 the timekeeping system used by about 15 current LSC  
7 recipients.

8 A review of those 15 timekeeping systems revealed  
9 more or less three elements that they all had in common, three  
10 characteristics. The first one was that the time records were  
11 maintained on a daily basis. The second one was that charges  
12 to different funding sources were distinguished. The third  
13 was that the specific activities undertaken were identified by  
14 a consistent description or code.

15 These three elements certainly provide a solid  
16 framework for a timekeeping system. At the same time, there  
17 is no doubt that additional requirements will be needed to  
18 ensure that any timekeeping system provides the necessary  
19 tools to allow for the accountability of LSC funds.

20 That's all for right now, Mr. Chairman.

21 CHAIRMAN WITTGRAF: Thank you, Ms. DiSanto. Let me  
22 go back to sequestration first. I believe I asked you this

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1 question at our last meeting on August 9th, but let me be sure  
2 I understand correctly. The October 1, 1990, sequestration  
3 implementation would have no direct bearing on Legal Services  
4 Corporation grantees until January 1 of 1991?

5 MS. DiSANTO: That's correct.

6 CHAIRMAN WITTGRAF: So that, as Ms. Pullen and I  
7 have discussed previously, the immediate impact of  
8 sequestration really of the Legal Services Corporation's own  
9 staff?

10 MS. DiSANTO: Yes.

11 CHAIRMAN WITTGRAF: Any questions or comments for  
12 Ms. DiSanto regarding the matter of sequestration?

13 MR. DANA: Just one. What percent are we  
14 anticipating?

15 MS. DiSANTO: Right now we're anticipating -- the  
16 initial level that was given to us was 32 percent. Kind of on  
17 a daily basis we hear other numbers, but 32 percent is what we  
18 have in writing to date.

19 MR. DANA: Do I understand it is your decision to  
20 allocate that substantially, uniformly across the various  
21 departments?

22 MS. DiSANTO: At this point in time, yes, to the

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1 interest of everyone, I guess, biting from the same bitter  
2 apple. Yes, all divisions would be reduced on a 32 percent  
3 level evenly across the board.

4 MR. DANA: Before you do that, have you looked  
5 around for surpluses?

6 MS. DiSANTO: Yes. We have considered any surplus  
7 within the Corporation. Indeed, that would be some  
8 assistance. However, we are required by law to have a 32  
9 percent reduction of FY 1991 funds on a monthly basis.

10 MR. DANA: In other words, you can't put it off?

11 MS. DiSANTO: Precisely.

12 MR. DANA: If, for instance, there were \$500,000--  
13 unfortunately there's not, but let's assume there were  
14 \$500,000 that by careful planning you were not going to spend  
15 in the last three months of this calendar year, would that be  
16 some of the money that you save? In other words, would that  
17 reduce the amount of cuts in other departments that you would  
18 have to make?

19 MS. DiSANTO: We have, in doing the current  
20 calculations, considered any carryover funds that we might  
21 have. In the event we could not consider 1990 funds, the  
22 level of the reduction would be more substantial than it

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1 already is.

2 MR. DANA: Is the answer to my question yes, that  
3 you have taken carryover funds and reduced those?

4 MS. DiSANTO: Yes.

5 MR. DANA: But are there any carryover funds in  
6 excess of what you had previously anticipated?

7 MS. DiSANTO: Not at this point in time.

8 David, do you have any additional information?

9 MR. RICHARDSON: Let me address the question a  
10 little bit. We did supply, as we talked at a previous board  
11 meeting, both House and Senate subcommittees, asked for a  
12 projection of carryover. That was supplied to them. The  
13 projection of carryover that we are showing on committee  
14 carryover at this point is approximately \$2 million.

15 The appropriation from last year was \$8.5 million  
16 approximately. When they would sequester that now, the  
17 Corporation would only receive approximately \$6 million. So,  
18 in answer to your question, they have considered the carryover  
19 when they speak of the M&A budget for the Corporation. They  
20 have for a number of years.

21 MR. DANA: I understand that. But I understood  
22 Emilia to say earlier that she had implemented some austerity

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1 budgets in September not in August.

2 MS. DiSANTO: Oh, yes, I understand.

3 MR. RICHARDSON: Yes.

4 MR. DANA: Now that should increase, it would seem  
5 to me, the amount of carryover funds over and above what there  
6 would have been prior to her actions.

7 MR. RICHARDSON: Yes. It will increase its sum. I  
8 actually anticipate carryover at this point of approximately  
9 maybe \$2.1 or \$2.2 million.

10 MR. DANA: And the difference between what you told  
11 Congress and what we're coming up with, is that going to help  
12 us?

13 MR. RICHARDSON: Yes, sir; it will.

14 MS. DiSANTO: Yes. It should help us for that  
15 additional increment of \$100,000 to \$200,000.

16 MR. DANA: Thank you.

17 CHAIRMAN WITTGRAF: Thank you, Mr. Richardson, Mr.  
18 Dana.

19 Further questions, comment, discussion regarding the  
20 matter of sequestration?

21 (No response.)

22 CHAIRMAN WITTGRAF: Regarding the matters of

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1 competitive bidding and timekeeping, I had asked Ms. DiSanto  
2 to touch on those for the reason that should we have  
3 regulatory authority at some point. Those were a couple of  
4 issues, I think, that will be before us immediately and with  
5 which we need to be prepared to deal. They may well, as  
6 suggested earlier by Mr. Dana, follow the purview of a couple  
7 of different of our committees once we're structured along  
8 those lines.

9 Does anybody have any questions for either Ms.  
10 DiSanto? Mr. Dana?

11 MR. DANA: Ms. DiSanto, your report made mention of  
12 a proposed manual.

13 MS. DiSANTO: Yes, it did.

14 MR. DANA: I have probably 10 to 15 feet of files.  
15 Is it in there?

16 MS. DiSANTO: Yes, it is, Mr. Dana. I have another  
17 copy if you'd like.

18 MR. DANA: That would be wonderful. Thank you. My  
19 understanding is that some time during the 80s the Corporation  
20 conducted some experiments itself with some private projects  
21 dealing with competition. Is that your understanding?

22 MS. DiSANTO: Yes. That is the case.

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1           MR. DANA: My further understanding is that efforts  
2 were made to evaluate that but that the Corporation, for  
3 reasons not explained, has not released those evaluations. Is  
4 that your understanding?

5           MS. DiSANTO: Not to the best of my knowledge, Mr.  
6 Dana, but I'd be happy to look into that particular matter.  
7 You're saying there are studies, the results of which have not  
8 yet been released.

9           MR. DANA: My understanding is that we have had  
10 several other projects already dealing with the concept of  
11 competition; that it was studied at some length by outside  
12 observers and that these reports have never been released to  
13 the public. I think it would be personally of some value to  
14 those of us on the board to have whatever analysis the  
15 Corporation has in its files concerning the competition  
16 experiments that it has conducted within the last few years.

17           MS. DiSANTO: I'd be happy to look into the matter,  
18 Mr. Dana.

19           MR. RICHARDSON: If I may, I don't believe there are  
20 studies on competitions, but its different methods of  
21 providing services to the poor. That is a voucher project was  
22 handled in two different areas, but they were not competition

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1 per se as we are now discussing.

2 MR. DANA: Well, I don't have my facts and I've been  
3 led to believe that there had been studies that were germane  
4 to this issue. Perhaps Mr. Houseman -- I see him ranting and  
5 raving back there -- could help us.

6 CHAIRMAN WITTGRAF: The Chair will be happy to  
7 identify either Alan Houseman or Regina Rogoff if he or she  
8 wishes to add something.

9 Mr. Richardson, were you through? I didn't mean to  
10 interrupt you.

11 MR. RICHARDSON: I was just going to identify the  
12 two cities that this take place in. It was San Antonio,  
13 Texas, and it was also Orange County, California. They were  
14 reduced fee set up for providing services to the poor.

15 MR. DANA: Were these services provided by the  
16 existing legal services or some other arrangement?

17 MR. RICHARDSON: There was another arrangement.

18 CHAIRMAN WITTGRAF: Ms. DiSanto?

19 MS. DiSANTO: Mr. Dana, if you'd like, I think we  
20 will look into this matter. I think these are the two  
21 projects to which you are referring. I'd be happy to look  
22 into it a little bit further.

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1 CHAIRMAN WITTGRAF: Mr. Dana?

2 MR. DANA: I'd be very happy to hear from Mr.  
3 Houseman or Ms. Rogoff if she could tell us what your  
4 understanding of these studies are.

5 CHAIRMAN WITTGRAF: Mr. Houseman? Ms. Rogoff?

6 MR. HOUSEMAN: Well, the Corporation funded a number  
7 of contract grantees around the country, not just in San  
8 Antonio and Orange County, and at one point labelled these  
9 contracts as competitive bidding and that kind of thing.  
10 There were a number of them and Regina can talk about the one  
11 in Austin, Texas. There has never been a report released on  
12 all of those activities we funded by contract and by other  
13 means. The only report that's been released, which wasn't  
14 released by the Corporation, was the voucher study in San  
15 Antonio, which was released by the American Bar Association.

16 Then the Orange County folks did their own study of  
17 public document that's been released to the public. But the  
18 study of all the other grants and contracts that were made has  
19 never been released.

20 MS. ROGOFF: I was just going to distinguish that  
21 what's being referred to is the voucher studies. There were  
22 also a series of programs that were conducted, one in our 16

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1 county service area, one in Jacksonville, Florida. I will say  
2 that we repeatedly requested the results of that study.

3 I'd be more than happy to give you my impressions  
4 any time you're interested in that, which I've also provided  
5 to the Corporation. We have never received a report and the  
6 study was terminated probably in '86, I believe, or '87.

7 MR. DANA: These were studies that were done by the  
8 Corporation?

9 MS. ROGOFF: Yes. The Corporation came into a  
10 community, issued an RFP, asked for lawyers to respond,  
11 prepare bids. Lawyers did that. The Corporation selected  
12 bidders enter into contracts with private attorneys to deliver  
13 a certain volume of service and did so over a period of time  
14 in a very narrow area. In our area, it was just divorces.

15 I think I've share the information with Mr. Hall on  
16 this previously and I'd be happy to share whatever information  
17 you would find useful.

18 MR. DANA: Well, I think this has been helpful.  
19 Maybe with this amplification, Ms. DiSanto could look into it  
20 and find out if we do in fact have reports that analyze what  
21 we have done in the past and share it with the board and other  
22 interested parties.

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1 CHAIRMAN WITTGRAF: Thank you, Mr. Houseman and Ms.  
2 Rogoff.

3 Further discussion regarding the matters of either  
4 competitive bidding or timekeeping? Mr. Dana?

5 MR. DANA: Sorry. On timekeeping, you mentioned  
6 time records kept on a daily basis and funding sources  
7 identified. What was the third you found to be a common  
8 denominator?

9 MS. DiSANTO: They had a consistent description for  
10 code that they used throughout their timekeeping system.

11 MR. DANA: That is a description of what was done?

12 MS. DiSANTO: Yes.

13 MR. DANA: Was it customary in these studies for the  
14 lawyers to fill out time records or all employees; do you  
15 recall?

16 MS. DiSANTO: To the best of my recollection it was  
17 primarily the attorneys that were filling out the time  
18 records, and paralegals also.

19 CHAIRMAN WITTGRAF: Further discussion?

20 (No response.)

21 CHAIRMAN WITTGRAF: At this time, we will take a  
22 five-minute personal comfort recess. We will reconvene for

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1 the purpose of discussing agenda items 6 and 7 at  
2 approximately 2:50 p.m.

3 (A brief recess was taken.)

4 CHAIRMAN WITTGRAF: Mr. Boehm, as I indicated  
5 earlier to the members of the board, it's my understanding  
6 that you're prepared to discuss with us, at least in summary  
7 fashion, the provisions of the House Judiciary subcommittee  
8 bill, so-called Frank Bill and also the provisions of the  
9 McCollum-Staggers-Stenholm alternative thereto.

10 DISCUSSION AND CONSIDERATION OF REAUTHORIZATION  
11 AND REFORM PROPOSALS

12 MR. BOEHM: Thank you, Mr. Chairman. Let me start  
13 off with a disclaimer like discussing apples and oranges  
14 because the Frank proposal is a proposal that was passed in  
15 the authorization subcommittee. The authorization, just by  
16 way of brief background, is the legislative process by which  
17 Congress gives any federally funded entity the right to exist.  
18 It sets up the permanent institution.

19 Now, as a practical matter, authorizations such as  
20 the ones under consideration are good for a limited period of  
21 time. In this case, the one under discussion was three years.  
22 We were last reauthorized in 1977 for a three-year period. So

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1 we've been without an authorization for about 10 years. This  
2 one has now passed the subcommittee level.

3 It's scheduled officially for consideration at the  
4 full committee, which is the Judiciary Committee in the House.  
5 If we had a lot more time in this session of Congress and it  
6 went all the way, that would then reauthorize. Then, for the  
7 first time in 10 years, that would reauthorize us.

8 The general feeling is, as I mentioned before, that  
9 it's not going to be completed in time. So the Frank proposal  
10 is only a proposal that deals with reauthorization. It's not  
11 a proposal to the appropriations process. The appropriations  
12 process deals with our funding. When our funding bill comes  
13 up, we're part of Justice, Commerce, State and the Judiciary,  
14 one of 13 general appropriations bills that goes through the  
15 House in any given fiscal year.

16 The way Congress has been having its impact  
17 legislatively on legal services over the last 10 years since  
18 the last reauthorization expired, has been through legislative  
19 riders. That is, generally speaking, legislative writing  
20 that's packed onto the appropriations and there's a very  
21 important limitation there. That is that whatever legislative  
22 language is passed on as a legislative rider, appropriations

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1 rider, is only good for that fiscal year.

2           So what we have with Legal Services Corporation over  
3 the last 10 years is a collection of writers. Many of them  
4 are rolled over from year to the next with very little change.  
5 For example, the Moorehead amendment, as it's called, deals  
6 with lobbying.

7           The proposal, Humphrey amendments, Senator  
8 Humphrey's amendment with regard to abortion litigation, those  
9 are put on one year after the next, but they're not part of  
10 our permanent law. The authorization process of Congressman  
11 Frank is permanent law. So the Frank proposal only deals with  
12 authorization.

13           The McCollum-Staggers-Stenholm proposal was offered  
14 in the authorization process as well. It was offered by  
15 Congressman Staggers who is a member of the subcommittee.  
16 There were some stylistic differences, but it's basically the  
17 same provision, provisions that McCollum-Staggers-Stenholm  
18 planned to offer as an appropriations amendment if there's an  
19 opportunity this year.

20           So, with that preface, they do deal with a lot of  
21 the same issues. While it's not in exact comparison, there  
22 are some points in which it's very important to do some

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1 comparative shopping. The feeling is, by the way, that  
2 regardless of what happens this fall, that the process, the  
3 reauthorization process would go forward next year.

4 In that case, you would have a direct comparison.  
5 This language of McCollum-Staggers-Stenholm would be up for  
6 consideration for the Judiciary Committee and the subcommittee  
7 in competition with Frank. There you would have a straight  
8 comparative authorization language.

9 There is a number of big differences between the two  
10 sets of proposals. Several of them are issue related. For  
11 example, on the question of abortion related litigation,  
12 lobbying and so forth, the Frank proposal, the proposal that  
13 passed the subcommittee, removes the current restrictions on  
14 abortion litigation. It would enable recipient attorneys to  
15 engage in both lobbying and litigation with respect to  
16 abortion-related issues.

17 The McCollum-Staggers-Stenholm proposal actually  
18 curtails what could be done by legal services grantees with  
19 respect to abortion-related activities. Specifically, it  
20 would take the status quo, which is represented by the act,  
21 the writers and regulations, it would take the status quo and  
22 restrict it to say that in the future, no IOLTA funds, public

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1 or private, no IOLTA funds could be used for abortion-related  
2 activity. So that's a principal difference with respect to  
3 the issue of abortion between Frank and McCollum-Staggers-  
4 Stenholm.

5 With respect to lobbying, the relative provision  
6 that's been law has been as a result of the legislative  
7 writing. It allows some lobbying when you have an eligible  
8 client. McCollum-Staggers-Stenholm takes the position that  
9 LSC recipients should not be in the lobbying business and  
10 says, in effect, that that arrangement under the Moorehead  
11 amendment can no longer be in effect. That's the next affect  
12 of McCollum-Staggers-Stenholm.

13 The Frank proposal actually preserves this  
14 arrangement. In other words, it allows for lobbying when you  
15 do have an eligible client. It enlarges it and it permits  
16 grantees to engage in publicity, grassroots lobbying, if you  
17 will, which is currently prohibited. So there's a polarity  
18 there between the two different proposals in respect to the  
19 issue of lobbying.

20 On redistricting, there's some common ground between  
21 the two, very limited common ground. McCollum-Staggers-  
22 Stenholm prohibits all redistricting activities, whether this

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1 is state, local, federal. When the legislatures meet to draw  
2 congressional district lines, there can be no involvement of  
3 LSC grantees, attorneys in the process of litigation or  
4 lobbying under McCollum-Staggers-Stenholm.

5 The Frank proposal that passed the subcommittee says  
6 that it will prescribe congressional redistricting as an  
7 activity to be engaged in by our attorneys. It would allow  
8 census litigation. It would allow litigation with regard to  
9 local or state redistricting; that is, the state legislative  
10 districts, judicial districts, that sort of thing, and with  
11 regard to the census.

12 So, as I say, there some common ground in that both  
13 Frank and McCollum-Staggers-Stenholm would prohibit  
14 congressional redistricting, but there the similarity ends.  
15 They part ways.

16 With regard to drug-related evictions, the Frank  
17 proposal, as the subcommittee, bans drug cases only when the  
18 client has been convicted of a drug charge. That is, the  
19 person who would be involved in the case has prior criminal  
20 conviction on a drug charge. The current law in this is  
21 silent. There is no prohibition in the act and regs, et  
22 cetera.

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1           The McCollum-Staggers-Stenholm proposal would  
2 prohibit recipients from handling drug-related eviction cases  
3 unless the program executive director determines that drugs  
4 are not a material issue in the case. So it would involve  
5 that decision by the program's executive director.

6           With regard to some of the other issues that have  
7 come up, Congressman's Frank proposal, again the one that  
8 passed the subcommittee, has a great deal to say about  
9 monitoring. There are a number of change that have been put  
10 into place through the Frank proposal. For example, there is  
11 a requirement that a written complaint be filed to initiate an  
12 investigation. These investigations, the investigations of  
13 grantees by the Corporation, are to be completed within 90  
14 days.

15           There is also additional restrictions with respect  
16 to the Corporation's access to records of its recipients. On  
17 the other hand, the McCollum-Staggers-Stenholm amendment does  
18 not get into the question directly of monitoring. So it is  
19 silent as to monitoring proposals, in effect, large measures  
20 of the status quo.

21           With respect to timekeeping, McCollum-Staggers-  
22 Stenholm requires timekeeping from all funding sources. The

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1 Frank proposal does require recordkeeping and it allows but it  
2 doesn't mandate timekeeping, is the language of the Frank  
3 proposal. Even in that case, the requirement applies to non-  
4 LSC funds. That is, with the Frank amendment, the federal  
5 funds would not be covered. They'd be exempt from that  
6 requirement.

7           With respect to competition, McCollum-Staggers-  
8 Stenholm provides for implementing a competitive bidding  
9 system for the allocation of LSC funds. The Frank proposal  
10 addresses competition with the requirement that there be a  
11 study. The study would last for three years with respect to  
12 competitive arrangements and how they could best be put into  
13 effect. That's the distinction between Frank and McCollum-  
14 Staggers-Stenholm with respect to competition.

15           With respect to solicitation, McCollum-Staggers-  
16 Stenholm would restrict what is allowed with respect to  
17 solicitation by program attorneys. In-person solicitation  
18 would be banned. The Frank proposal would actually -- with  
19 respect to solicitation, would allow in-person solicitations  
20 with the exception, however, that any type of in-person  
21 solicitation that is considered outright abusive or coercive  
22 would not be permitted. That was the way it was addressed in

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1 the subcommittee in terms of the Frank legislation.

2           Then with respect to agricultural litigation,  
3 McCollum-Staggers-Stenholm requires recipients exhaust  
4 administrative remedies or pursue alternative dispute  
5 resolution prior to filing a complaint. The Frank bill would  
6 not. The McCollum-Staggers-Stenholm amendment requires a  
7 signed affidavit before negotiation are -- this is in regard  
8 to the question of identity of plaintiffs. The Frank proposal  
9 does address this question. However, it would not require a  
10 signed affidavit but would require a signed retainer  
11 agreement.

12           So that would be the distinction there. Those are  
13 the highlights between the two. Both of them are somewhat  
14 lengthy legislation running 15-20 pages. Again, there's some  
15 differences because one right now is set up as an  
16 appropriations bill and the other is an authorization bill.  
17 In sum and substance, that's it.

18           The only other caveat I would add is that when they  
19 are likely to be in head-to-head competition, if that's to be,  
20 that would be next year in the authorization process not  
21 anymore this year since the authorization process if more or  
22 less stopped and the appropriations process is at least open

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1 to question as to whether it will occur this year or not.

2           So this is really an advance look at what might  
3 happen next year. As the legislative process sometimes goes,  
4 there could be further refinements. So this may not be what  
5 would be under consideration by a subcommittee in the next  
6 Congress.

7           With that, I'll answer any questions you may have.

8           CHAIRMAN WITTGRAF: Did you mention any limitations  
9 on AWPA litigation?

10          MR. BOEHM: Pardon?

11          CHAIRMAN WITTGRAF: On agricultural or AWPA  
12 litigation, did you mention that?

13          MR. BOEHM: Limitations on it? Well, there's  
14 several different ways there could be limitations. One is  
15 with regard to the -- it actually comes under board authority  
16 with regard to class action suits. Under McCollum-Staggers-  
17 Stenholm, there's a requirement that there be a vote,  
18 affirmative vote of the local board with respect to class  
19 action suits.

20          For example, if you had a class action suit of  
21 agricultural employees against a farm organization, that would  
22 need to be voted on by the board. Under Frank, there would

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1 not be that case. There is a limitation, as I mentioned  
2 before. The big one or the one that's received the most  
3 attention is the necessity to exhaust administrative remedies  
4 or pursue ADR alternative dispute resolution prior.

5 That was there last year, but the difference between  
6 last years and this years is last year's McCollum-Stenholm  
7 proposal required both. It required an exhaustion of  
8 administrative remedies and pursuit of alternative dispute  
9 resolutions. This year it has become either/or. You can do  
10 either one and satisfy the provisions this year. So that's a  
11 change over last year.

12 CHAIRMAN WITTGRAF: Before we go to discussion, any  
13 questions or comments, am I correct in my assumption that all  
14 members of the board received a copy of the letter of August  
15 28, 1990, from Congressmen McCollum-Staggers-Stenholm? There  
16 is a cover memorandum from Ms. DiSanto.

17 Do all of the board members have a copy of the  
18 letter of September 20th from John J. Curgin, Jr., President  
19 of the American Bar Association? Anybody need copies of  
20 either of those?

21 Similarly, Alan Houseman who is here this afternoon,  
22 as you know, has indicated that he and a couple of his

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1 colleagues have a couple of comments they'd like to make of a  
2 relatively brief nature on the subject of the pending  
3 legislative proposal.

4 Mr. Houseman?

5 PRESENTATION OF ALAN HOUSEMAN, LOYCE FORREST AND LeANNA GIPSON

6 MR. HOUSEMAN: Thank you, Mr. Chairman. We are here  
7 today to urge the board not at this time to adopt the  
8 McCollum-Staggers-Stenholm amendments as most recently  
9 proposed. I am referring to the bill which includes 20  
10 sections when I talk about the most recent amendments.

11 Before addressing, and I will do this, several of  
12 the technical and factual issues posed by this package, and  
13 before responding to the LSC analysis of July, Ms. Pullen's  
14 analysis which is in the board book, and Ken Boehm's comments,  
15 I would first like you to hear from the two other panel  
16 members who will describe the problems that this package  
17 proposes from the perspective of a state bar leader and the  
18 perspective of a local program board director.

19 So I would turn it over to them and let them give  
20 you their perspectives on this.

21 CHAIRMAN WITTGRAF: Mr. Houseman, both for the  
22 record and for our benefit, could I prevail upon you to go

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1 ahead and introduce yourself more fully in terms of whom  
2 you're representing this afternoon? Then I'll ask your  
3 colleagues either through you or by themselves to do the same.  
4 Thank you.

5 MR. HOUSEMAN: I'm Alan Houseman. I am director of  
6 the Center for Law and Social Policy. I am here representing  
7 not the center but the Project Advisory Group and the National  
8 Legal Aid and Defender Association and the remarks that I will  
9 make will be made on their behalf.

10 MS. FORREST: Good afternoon. My name is Loyce  
11 Forrest. I Chair the availability of Legal Services Committee  
12 for the Colorado Bar Association. I should start out by  
13 saying that the Board of Governors at the Colorado Bar  
14 Association has adopted a resolution opposing the passage of  
15 McCollum-Staggers-Stenholm.

16 There are several areas of concern that the board  
17 has discussed. I am only going to address a few of those this  
18 morning. I'll start out with Section 8 of the bill which  
19 addresses case selection. It's our understanding that Section  
20 8 of the bill gives local board directors full and complete  
21 authority over the selection of cases to which staff are to  
22 devote their time and resources.

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1           This section places local boards in a position of  
2 unethically interfering with the independent professional  
3 judgment of local staff attorneys. This is in direct  
4 violation of disciplinary rule 5-107(b) of the Code of  
5 Professional Responsibility.

6           For those of you who are not aware of that  
7 provision, it provides that a lawyer shall not permit a person  
8 who recommends employees or pays him to render legal services  
9 for another to direct or regulate his professional judgment in  
10 rendering such legal services.

11           This particular bill places the board directly in  
12 violation of that particular provision. Attorneys on local  
13 boards of directors will rightfully refuse to carry out this  
14 role because it will place them in the position of  
15 participating in violation of the Code of Professional  
16 Responsibility.

17           In addition, our concern is what overwhelming task  
18 that places upon local boards of directors. In 1989, in the  
19 Denver metropolitan area alone, thousands of people requested  
20 free legal services from legal aid. Volunteer boards would  
21 have time for nothing else except to be determining which of  
22 those thousands of cases are to be handled by their staff

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1 attorneys. It's inappropriate and a violation of the Code of  
2 Professional Responsibility. It certainly should not be the  
3 role of those particular boards of directors.

4 The second section that's a concern to our Board of  
5 Governors is Section 12 which concerns attorney  
6 accountability. That would allow the Corporation to sanction  
7 any employee of a recipient for a violation of this state, the  
8 applicable state Code of Professional Responsibility.

9 This section places the Corporation in the position  
10 of interfering with the authority of local governing bodies to  
11 discipline attorneys in their state. It sets up a situation  
12 whereby the acts of attorneys who are employed by recipients  
13 could be interpreted differently by the board as opposed to  
14 the local governing body, but enforces the Code of  
15 Professional Responsibility.

16 In Colorado, the Supreme Court Grievance Committee  
17 apprised the Code of Professional Responsibility to all  
18 attorneys in the state regardless of where they are employed.  
19 Under this section, individual attorneys would be subject to a  
20 dual system of accountability.

21 They would be both liable for an interpretation by  
22 the board of what that local Code of Professional

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1 Responsibility means and requires them to do, and they would  
2 also be subject to the interpretation of their state  
3 committees. This section clearly interferes with the  
4 authority of our state disciplinary authority to be the sole  
5 trier of fact in such matters, as they should be.

6 The third area regards attorneys fees and that's  
7 Section 13 of the bill. Once again, the bill interferes with  
8 the authority of the state court to determine whether  
9 attorneys fees should be awarded to corporate recipients.  
10 Currently, our state has several statutes that concern  
11 attorneys fees. One is Colorado Revised Action 1317-102 which  
12 allows attorneys fees to be awarded against individuals who in  
13 part bring suits that are groundless, frivolous, vexatious and  
14 lack substantial justification.

15 Now the intent and purpose of that statute when it  
16 was enacted by the Colorado legislature is clearly set forth  
17 in that statute. Specifically they state that the General  
18 Assembly recognizes the courts had become increasingly  
19 burdened with litigation which was straining the judicial  
20 system and interfering with the effective administration of  
21 civil justice.

22 In addition, this particular part of the bill would

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1 suggest that even where that was the case, where someone  
2 brought a frivolous suit against a client of a recipient  
3 organization, attorneys fees could not be sought. That  
4 directly flies in the face of the whole intention of our  
5 particular statute regarding attorneys fees.

6 Now, no one is suggestion that pro bono  
7 representation should be entitled to greater or more frequent  
8 awards than the private sector. However, the establishment of  
9 a separate rule for recipients than nonrecipients would be  
10 inconsistent with the whole purpose and intent of our  
11 particular state statute.

12 The second statute that speaks directly to the issue  
13 of attorneys fees is that under the domestic relations  
14 statute. That is CRS 14(10)(119) which allows the court  
15 discretion to award attorneys fees after looking at the  
16 financial circumstances of both parties. Once again, this  
17 particular bill would, at times, fly in the face of that  
18 particular statute.

19 The next section of the bill of concern is that of  
20 Section 9 which concerns the use of public funds other than  
21 those that are set forth by the Corporation. Section 9  
22 prohibits recipients from expending funds received from any

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1 source other than the Corporation for any purposes prohibited  
2 by the Legal Services Corporation or by this bill.

3           Although it's acknowledged that Congress has the  
4 authority to restrict the use of funds it appropriates for  
5 legal services, it should not interfere with the use of funds  
6 provided by other entities whose purpose of funding might vary  
7 from Congress'.

8           It's possible to require that Legal Services  
9 Corporation funds directly or indirectly be used only for the  
10 purpose provided by Congress but without interfering with  
11 other funding sources. We would oppose that particular  
12 portion of the bill.

13           Overall, I must say to the concern of our Board of  
14 Governors is that this bill establishes a dual system of  
15 justice. For example, if one looks at Section 10, it  
16 prohibits recipients from representing individuals who are  
17 only alleged to have engaged in drug-related criminal activity  
18 on school property; not convicted, alleged.

19           Indigent citizens would therefore be denied  
20 representation even where there had only been an unproven  
21 allegation of such conduct. Yet, individuals who can afford  
22 private legal representation would be entitled to different

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1 rights. We are concerned about that kind of precedent being  
2 set by a bill like that. It's a dangerous precedent, one that  
3 concerns the board.

4 Finally, let me state that one of the purposes  
5 indicated for this bill is a diminished controversy that  
6 surrounds recipients of LSC funds. As Chairperson of our  
7 State Board Association's availability of legal services  
8 committee, let me state that the recipients in our state have  
9 not generated the kind of controversy that supporters of this  
10 bill indicate exist.

11 They have an excellent, cooperative relationship  
12 with the state and county bar associations and are generally  
13 viewed as an indispensable, valuable and respected part of the  
14 overall provision of legal services in this state. However,  
15 the provisions of the McCollum-Staggers-Stenholm bill would  
16 unnecessarily and unreasonably restrict their programs when  
17 it's not necessary. We don't have that kind of controversy in  
18 this particular state.

19 Thank you.

20 CHAIRMAN WITTGRAF: Thank you. Would you be kind  
21 enough to spell your name for the record?

22 MS. FORREST: My first name is Loyce, L-o-y-c-e. My

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1 last name is Forrest with two "R"s.

2 CHAIRMAN WITTGRAF: Thank you.

3 MS. GIPSON: My name is LeAnna Hart Gipson. That's  
4 L-e-A-n-n-a G-i-p-s-o-n. I've been in legal services for  
5 about 14 years. Although I am a licensed attorney in three  
6 different jurisdictions, my work with legal services over the  
7 last 14 years has almost all been in the area of management,  
8 first as the executive director of the Tennessee Association  
9 of Legal Services, which is a state support center in  
10 Nashville, Tennessee, serving legal services grantees in the  
11 State of Tennessee.

12 The last six years I have been the chief executive  
13 officer of a nonprofit legal services Corporation in  
14 Rochester, New York, called Monroe County Legal Assistance  
15 Corporation. MCLAC is the acronym that we use around home.  
16 The name is a little bit of a misnomer. In fact, we provide  
17 services to the entire State of New York and not just to  
18 Monroe County.

19 I'm here today to talk with you a little bit and  
20 share some information with you about my program. I'm not  
21 going to talk about legalities and ethical considerations. I  
22 will leave that up to Alan to straighten out for you. I

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1 thought it might be helpful if you heard a little bit about my  
2 program, understood it a little bit in terms of helping you  
3 make some decisions about this felony impact that it would  
4 have on my program.

5 Monroe County Legal Assistance Corporation, as I  
6 said, is chartered to provide legal representation in the  
7 entire State of New York. Under one non-LSC grant, we provide  
8 legal representation in disability cases, backup research and  
9 training. We're called legal services state support grant.  
10 We provide state support services to upstate New York which is  
11 everything except New York City.

12 With several other statewide contracts, we provide  
13 representation to different multiple county catchment areas.  
14 For example, we receive about \$600,000 from the State of New  
15 York to provide legal representation to people who are seeking  
16 to establish disability, social security, SSI disability of  
17 benefits.

18 We receive those monies to provide services in a 19-  
19 county area, pretty much all of western New York State. We  
20 receive LSC funds, however, to provide direct legal services  
21 to only a six-county area, Monroe County and five fingerlake  
22 counties surrounding Monroe County. Then we also have a

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1 variety of both county and state grant stuff or specifically  
2 county-oriented, single county grants. For example, our  
3 Office of Aging Grants are through each individual county.

4 We also receive a grant from the county of Monroe to  
5 provide legal representation to pregnant and parenting teens.  
6 We also receive county contracts in two of our rural counties  
7 to provide representation to persons who may become homeless.  
8 We also have a contract in Monroe County for the same purpose.

9 So, as you can see within this one Corporation, I  
10 deal with a number of grants and contracts that include a  
11 significant amount of non-LSC public funds. Our total budget  
12 in 1991 will be approximately \$3.5 million. Of that, \$750,000  
13 will be from the Legal Services Corporation to provide direct  
14 services in that six-county area that I talked about.

15 About a million and a half dollars will be non-LSC  
16 public funds state and county contracts to provide services in  
17 single or multiple counties in other parts of the state. So,  
18 as you can see, any changes in the provisions of what I can do  
19 with public funds is going to have a tremendous impact upon my  
20 program.

21 I want to talk very, very briefly about what it's  
22 like to contract with the sovereign State of New York and with

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1 the counties that I deal with. I don't know whether any of  
2 you have the experience of entering into state contracts or  
3 not, but at least in New York State it is a pretty much fait  
4 accompli by the time the contract hits your desk.

5           The State of New York has a significant number of  
6 persons in Albany who, for a living, work out different--  
7 pretty much model-state contract provisions and clauses which  
8 are included in every contract that they sign. By the time  
9 that that contract gets to my desk, there has already been a  
10 significant amount of input into it.

11           As you can imagine in a bureaucracy, it's been quite  
12 difficult to render any significant changes to that contract.  
13 It's even more difficult when your contracting with the state  
14 and you're not the only prime contractor. Under our  
15 disability unit, as I said, we receive about \$600,000 from the  
16 State of New York, but there are also five other prime  
17 contractors who receive sizable amounts of money.

18           So for me to change in any major way the provisions  
19 of the contract that I have with the state would also require  
20 the other five prime contractors to change their provisions  
21 with the state. My own estimate is that my ability to change  
22 this contract language is highly doubtful. I'll say that as

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1 nicely as I can.

2 We were able to manage a change in one of our county  
3 contracts in 1988. It took me approximately four and a half  
4 months. This was a contract to provide legal representation  
5 to custodial parents who were seeking to establish or enforce  
6 child support payments.

7 Under that contract, we are to provide legal  
8 representation to any custodial parent, regardless of income.  
9 As well, we were at first required to charge attorneys fees  
10 back from any recovery from our clients. Also, we are  
11 required to apply for attorney's fees from the opposing party,  
12 which is a private individual.

13 If this bill is passed, we would have to convince  
14 the State of New York and the county of Monroe, which we'd get  
15 this grant through, to change several provisions of that  
16 contract. First of all, they would have to limit the number  
17 of clients that we serve to those who were only income  
18 eligible under LSC guidelines.

19 They would have to delete our obligation to  
20 represent those clients in administrative and legislative  
21 forums, especially with regard to the Child Support Guideline  
22 Act which passed in New York in 1989. They'd also have to

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1 delete the requirement that we obtain attorneys fees from  
2 noncustodial parents.

3           They'd also have to release us from our licensing  
4 requirement that we follow the ethical standards that have  
5 been promulgated in the State of New York. You've already  
6 heard a little bit of background on that. I doubt that I can  
7 convey to you that sense of impossibility that I have in terms  
8 of my ability to change that kind of contract language.

9           My own sense is that this bill could seriously  
10 jeopardize many of the contracts that I have with the State of  
11 New York and with the counties that I work with. This is not  
12 even to mention the difficulty that it places me in when I  
13 negotiate with the professionals at the state and county  
14 level. When I have to go to them and tell them what they  
15 have to do in order to give me money that I have been begging  
16 for for the last few years, they don't take that very well.  
17 They are used to applying their own standards and requirements  
18 to their contracts. I do not think they are going to look  
19 very favorably upon a grantee informing them that there are  
20 additional restrictions to the money that they wish to give  
21 us.

22           The other area that I just want to touch very

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1 briefly on in terms of some of the impact that will happen  
2 practically in my own program with regard to the case-by-case  
3 review of class actions by the Board of Directors and then all  
4 cases by the Board of Directors or myself, if that were  
5 delegated to me, first of all, I just want to say that I am  
6 not aware of any problems, certainly in my area, which would  
7 cause a need for a provision like this. So I'm assuming that  
8 Alan will address some of the legal and ethical issues  
9 involved in this.

10           If the purpose of this section of the bill is to  
11 ensure quality control or to provide some kind of a merit  
12 determination, then all I can say to you with perhaps some  
13 slight embarrassment is that it would simply fail in that  
14 regard. The reason that it will is because one of the first  
15 things that you learn when you govern a Board of Directors,  
16 especially the non-profit, is that a Board of Directors sets  
17 policies and usually a fairly broad policy.

18           It's up to the staff to implement that policy.  
19 Well, there are real practical reasons for that besides some  
20 ethical and legal boundaries. There are some real practical  
21 reasons for that. That is that people who set policy are  
22 often not technicians. They often do not have the information

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1 necessary on a day-to-day basis, the detail to make the  
2 judgments that are necessary to make on a day-to-day basis  
3 within a program.

4 I think that my Board of Directors would be the  
5 first one to say, you know, for example, take my Board of  
6 Directors, please. I have a 20-member board, 12 of whom are  
7 licensed to practice law in my jurisdiction. I have seven of  
8 whom are client board members. Then we have one person who  
9 does not have to be either an attorney or a client board  
10 member.

11 Of the 12 attorneys, there are only two who have  
12 some small experience or history in practicing in any of the  
13 areas that my program delivers services in. I think that they  
14 would be the first to say that if this were some kind -- if  
15 they were supposed to perform some kind of merit of  
16 determination in these cases, that they would be sadly lacking  
17 in an ability to do that.

18 Obviously, it presents a lot of practical problems  
19 as well. That is, I have this 20-member board. My quorum is  
20 six. It is reasonable that there would be times when I would  
21 have perhaps all or substantially a number of clients at my  
22 board meetings and not attorneys. What I see happening is a

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1 regulation like this or a bill like this really polarizing my  
2 board and causing a politicizing of my board.

3           What will happen is I will have some members who may  
4 support a particular case, other members who may not. It may  
5 often split along lines between client and attorney board  
6 members. As I mentioned, I can foresee situations where I  
7 might have a majority of clients at a board voting to, in  
8 fact, take a case.

9           What do I do then if later on a majority of the  
10 attorneys on the Board of Directors decides that the case  
11 doesn't have merit or that we shouldn't take the case? Not  
12 that they should, in any event, have this responsibility.  
13 What I'm trying to point out is that even if it were ethically  
14 possible or legally possible for them to exercise this amount  
15 of control, practically it creates a tremendous amount of  
16 problems and I think polarizing of the organization.

17           The other thing that I wanted to mention with regard  
18 to the board's oversight, as I read the bill, it would also  
19 require our pro bono project which is this separately  
20 incorporated organization, volunteer legal services project.  
21 It would require their Board of Directors also to perform the  
22 same responsibilities.

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1 I can't tell you the trepidations that I would have  
2 in terms of coming before their Board of Directors who are  
3 composed primarily of prior presidents of the Monroe County  
4 Bar Association, sitting judges, major partners in local law  
5 firms and telling them that they were to take the time out of  
6 their day, if ethically possible, to review these cases and to  
7 make this determination.

8 We also have, as I mentioned, a state support unit  
9 within our office. So again, in terms of just  
10 administratively how this would work, I'm a little bit  
11 befuddled. The state support office often cocounsels on  
12 cases. In New York, our state support office has a number of  
13 very experienced attorneys who provide backup support,  
14 technical information and experience with federal court cases  
15 and can work with attorneys around the state and small rural  
16 programs, many of whom do not have very many years of  
17 experience.

18 Well, what is going to happen? The local program  
19 board decides to handle a class action and our state support  
20 office is to cocounsel on it. Then does our board have the  
21 ability to overturn the decision of the local board as to  
22 whether or not that class action will be taken?

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1           It's very confusing to me as to exactly how this  
2 would work. As I said, it would create an administrative  
3 nightmare for us as well as polarizing, I believe, our own  
4 Board of Directors.

5           The other thing I just wanted to mention briefly was  
6 that if this is not a merit, if the purpose of a portion of  
7 the bill is not to determine the merit of a case, if it's for  
8 compliance reasons to see that in fact we are serving income-  
9 eligible clients, to determine whether or not this case falls  
10 within the priorities of our program, well, again, I have to  
11 raise significant objections about this as a purpose of this  
12 bill.

13           First of all, I don't know of any problem, again,  
14 I'll just say, that exists, certainly in my jurisdiction, as  
15 to whether or not we are handling any cases that are outside  
16 our priorities or where our clients are not eligible. I think  
17 that we have an extremely good reputation and a lot of  
18 oversight and monitoring by not only our Board of Directors  
19 but by also about 17 different funding sources.

20           Even if it made sense in that respect for myself or  
21 the Board of Directors to review each and every case, I have  
22 kind of a like a rule of thumb financial test which, as far as

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1 I knew, pretty much everybody, at least that I had talked to,  
2 also used. That is, you do not have a higher paid employee  
3 performing the functions that can be performed by a lower paid  
4 employee. It just doesn't make financial sense to do that.

5 Well, what you would have us do is have the Board of  
6 Directors -- which I should, as an aside, say they are the  
7 highest paid persons within our organization. They don't  
8 receive a salary, and I'm not just talking about the partners  
9 and firms who make 10 times more than I do, but also because  
10 they are volunteers. They are, in fact, some of your "highest  
11 paid" employees.

12 So you have the Board of Directors and myself, the  
13 highest paid employee in the organization performing what, in  
14 many instances, was a routine review of eligibility and  
15 priorities which presently, to a great extent, is performed in  
16 great measure by our receptionist. It doesn't make financial  
17 sense for this to happen.

18 Let me talk just a little bit about how that review  
19 takes place in our office. Just for our six counties that--  
20 I'll just speak with regard to the six counties that we  
21 receive LSC funding to provide services. We receive on an  
22 average of 200 to 300 telephone calls a day. That's 6,000

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1 calls a month. Now many of those calls are about pending  
2 cases or other kinds of things like that.

3           Between 1200 and 1300 of those calls every month are  
4 new clients. About 1000 of those clients are turned away  
5 because we do not have the resources to serve them or because  
6 they fall outside of our priorities. About 275 of those  
7 clients are accepted.

8           Now the receptionist sits out there at the front  
9 desk. She's bilingual. She sits out there all day long. She  
10 answers that telephone. She makes quick judgments as to  
11 whether or not the person is income eligible. She can tell  
12 that by asking a few questions and as to whether or not the  
13 case falls within a priority area that our office serves.

14           There is little leeway in there for her to squeeze  
15 through a client who is either not income eligible or falls  
16 outside our priorities. There is, believe me, no incentive  
17 for her to do this. In addition, when the cases get to the  
18 advocates within the office, at least once a week there is a  
19 case acceptance meeting with their supervisor.

20           At that case acceptance meeting, the supervisor  
21 reviews the intakes for that week and decisions are made  
22 around the merit of the case, whether it falls within our

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1 priorities, what level of service we have the resources to  
2 provide in that case. From that case selection mechanism,  
3 then once a month the director of litigation and myself meet  
4 with the unit supervisors to review what cases have come into  
5 the program for that month.

6 Reports are then prepared on a quarterly and yearly  
7 basis for the Board of Directors. So you have a process of  
8 information being gathered, the largest amount of information  
9 from the lowest paid employee and then working your way up  
10 with less and less time having to be given as you work your  
11 way up. So you have a cost effective way of, in fact,  
12 reviewing the compliance issues within a program.

13 So I wanted to mention to you and try to help you  
14 understand why cost effectively having the highest paid  
15 employees within our organization provide these services  
16 simply makes no sense.

17 I just want to close by saying I'm very proud of the  
18 office I work with. I think that we have one of the highest  
19 reputations in the State of New York for the work that we do.  
20 I was going to bring letters from our federal court judges to  
21 you to certify our compliance and the quality of work that we  
22 do in our area.

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1 I also wanted to mention that several months ago I  
2 had, through a letter to Chairman Wittgraf, invited the Board  
3 of Directors to meet in Rochester at one of your board  
4 meetings so you'd have a chance to visit my program, to visit  
5 a local pro bono project that is separately incorporated, to  
6 visit a state support unit, also to visit a migrant office,  
7 the Farm Workers Legal Services program in Rochester, New  
8 York.

9 I would just like to take the opportunity at this  
10 time to renew my invitation to you because I really believe  
11 that the more you know about my program and the more that you  
12 see, not only about the work that we do but also the way we do  
13 it, the better decisions that you will make as our Board of  
14 Directors.

15 I thank you for the opportunity for speaking with  
16 you today.

17 CHAIRMAN WITTGRAF: Thank you, Ms. Gipson and Ms.  
18 Forrest. Mr. Houseman?

19 MR. HOUSEMAN: I want to briefly comment on several  
20 of the sections. In particular, I want to focus on two  
21 things. First, that many of these sections are inconsistent  
22 with the basic principles of the Legal Services Corporation

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1 Act. Secondly, that the factual case for many of these  
2 provisions has not been made and indeed the facts that have  
3 been presented are, in some sense, misleading.

4 Let me start with the basic principles of the ISC  
5 Act. Section 10.001 says that there is a need to provide equal  
6 access to the system of justice in our nation. Secondly,  
7 there's a need to provide high-quality legal assistance to  
8 those who would otherwise be unable to afford adequate legal  
9 counsel. Third, that one purpose of legal services is to  
10 assist in improving the opportunities for low-income persons.

11  
12 Finally, attorneys providing legal assistance must  
13 have the full freedom to protect the best interest of their  
14 clients in keeping with the code of professional  
15 Responsibility and the high standards of the legal profession.

16 Now, let's take a look at some of these provisions  
17 and some of the arguments that have been made which we have  
18 not previously responded by those who support them. I'm going  
19 to go through section by section, not in the order that Ken  
20 did and not in the order that my two colleagues did, but in  
21 the order that they appear in the latest version of the  
22 McCollum-Stenholm bill. I'm going to do it very quickly.

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1           Redistricting:     the basic argument for a flat  
2 prohibition on redistricting is three.     It's inherently  
3 political.     No other groups are available.     Legal services  
4 involvement diverts scarce resources from the real needs of  
5 the poor.     Well, the fact is that redistricting cases,  
6 virtually all of them, challenge the structure of local  
7 elected editors.     Often these are the best way to improve the  
8 services provided by local governments to poor communities.  
9 They involve day-to-day legal problems with the poor just like  
10 other kinds of cases.     The redistricting provisions come from  
11 the Voting Rights Act.

12           What we are talking about here is denying to the  
13 poor the use of the Voting Rights Act.     These cases are not  
14 inherently political or partisan.     The cases in which legal  
15 services are involved -- 99 percent of them involve local  
16 governmental entities.

17           Finally, national civil rights organizations do not  
18 have the resources to bring these cases involving local  
19 communities and do not participate in these cases involving  
20 local communities.     It is only legal services that is  
21 available to those.

22           Second, the provision involves protection against

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1 theft control. We make quite clear that we have no opposition  
2 to any of the provisions in this that involve federal criminal  
3 statutes or federal civil statutes involving fraud. But, and  
4 this is very important, our objection goes to the fact that  
5 some of the civil provisions, especially the False Claims Act  
6 provision and a qui tam provisions under the False Claim Act  
7 would create a private right of action. It would  
8 fundamentally alter or conflict with existing provisions of  
9 the act.

10 LSC, they, as extensive and comprehensive authority  
11 to investigate and remedy instances of fraud, it does not need  
12 additional civil provisions to do so.

13 Solicitation. Solicitation has been, in my view,  
14 the provisions on solicitation have been totally  
15 misrepresented to you and I want to try to clear this up as  
16 best I can. What this would do, what the bill would do is it  
17 would impose a 1970 code provision on recipients, except it  
18 would only impose several sections of that 1970 code provision  
19 on recipients. It would not impose the sections that, in  
20 fact, were designed to address the problems of legal services.

21 But most importantly, this provision as written in  
22 this bill, is not in effect in any jurisdiction in the

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1 country. Yet, Ms. Pullen's comments, the LSC analysis that  
2 was done in July, some information that was presented by the  
3 sponsors indicated that the model rules of professional  
4 responsibility were not in effect in any jurisdiction.

5 The key provision to the model rules of professional  
6 responsibility, Rule 7.3, on solicitation are in effect today  
7 in 35 jurisdictions and will be in effect probably in all of  
8 them within another year or so. The change that was made in  
9 1989 has nothing to do with the fundamental issue that's posed  
10 by this regulation.

11 That change had nothing to do with whether there  
12 could be restrictions on solicitation by legal services'  
13 lawyers that went to those lawyers who were not involved in  
14 cases for pecuniary gain. That is the key problem in this  
15 provision. Moreover, there is not one documented instance  
16 where a legal services' attorney has made solicitations to  
17 migrant farm workers or anyone else promising money in  
18 exchange for their participation of legal actions.

19 You have not heard a specific example of that  
20 presented to you. I have never found a specific example in  
21 any of the debates or in any of the information that I've seen  
22 over the years. I suggest that it doesn't exist.

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1           Finally, the Frank bill is, in fact, early Shirley  
2 Tuplin's solicitation. Ken only quoted one part of it. The  
3 Frank bill, the third provision of the restriction on  
4 solicitation in the Frank bill, says that you cannot solicit  
5 if the solicitation is made in order to urge the client to  
6 initiate litigation without a proper actual basis for the  
7 complaint.

8           Section 5 is the agricultural provision. You've  
9 heard much about them in the past. I just want to make a  
10 couple of comments about it. First of all, the charge is that  
11 litigation involving farm workers is unique and there are  
12 special problems associated with that. Well, that may be  
13 true.

14           Indeed, Congress has recognized these special  
15 problems in adopting the Agricultural Workers Protection Act.  
16 What this bill does is try to go far beyond that, impose  
17 additional restrictions Congress never previously imposed and  
18 impose them solely on migrant farm workers.

19           I suggest there is no justification to place on  
20 migrant farm workers special burdens which do not apply to any  
21 other group of clients. I suggest that you've heard nothing  
22 in terms of specific examples that suggests a need for this

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1 provision.

2           There are claims to have been made that migrant farm  
3 workers bring frivolous, nuisance suits without improper  
4 factual allegations. In fact, legal services attorneys have  
5 won virtually all of their cases. Moreover, no Rule 11 action  
6 has ever been successful in the migrant farm workers case. No  
7 action under the AWPA, which has specific provisions on prior  
8 negotiation requirements, has ever been successful.

9           Finally, there is the argument that exhaustion of  
10 administrative remedy or use of ADR is common and ought to be  
11 applied here. First of all, exhaustion of administrative  
12 remedy is not required in most cases involving poor people.  
13 In fact, most cases brought in federal court and in 1983 have  
14 no such exhaustion requirements. Most cases brought in state  
15 court, affirmative cases, have no such exhaustion requirement.  
16 The argument that exhaustion rule in most situations is  
17 absolutely wrong.

18           Secondly, ADR mechanisms for this purpose do not  
19 exist. They don't exist anywhere. I've talked to one of the  
20 leading proponents of ADR in the Center for Dispute Settlement  
21 and she says there is no state that has in effect today an ADR  
22 mechanism that would serve the purposes of agriculture.

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1 Under McCollum-Stenholm, LSC then would have to  
2 create 50 or whatever many jurisdictions there are, 55  
3 probably including D.C. and the Virgin Islands, et cetera,  
4 would have to create ADR mechanisms in order for this to be  
5 effective. In fact, LSC would be inappropriate to do so  
6 because it would not be viewed as neutral.

7 Section 6 involves lobbying and rulemaking. I just  
8 want to say a couple of things about it that may not be  
9 obvious to you. This bill fundamentally alters the status quo  
10 that was adopted by Congress in 1984. This bill bans,  
11 completely bans, without exception, administrative rulemaking.  
12 Never before has Congress or anyone else proposed banning  
13 administrative rulemaking completely.

14 Third, what this bill does is ban any effort to  
15 communicate to a member of Congress through a state or  
16 legislative body where most communications go on about a  
17 client problem on behalf of a client. This bill bans it  
18 completely with not only LSC funds but with private funds in  
19 IOLTA.

20 So what this bill does is it prohibits any effort to  
21 represent a client before a legislative body even if it's just  
22 informing the legislative body of a client's particular

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1 problem. It prohibits any advocacy, administrative rulemaking  
2 which is a common practice of private attorneys, a common  
3 practice of legal service attorneys, a common practice of  
4 every attorney that practices before administrative agencies.

5 Finally, there is some notion floating around, and  
6 Ken Boehm said it, that the Frank bill permits grassroots  
7 lobbying. From my reading of the Frank bill, it does not. If  
8 there's any doubt about that it should be clarified. It does  
9 not prohibit grassroots lobbying.

10 We are not suggesting that there should be  
11 grassroots lobbying; quite the contrary. We agree there  
12 should be a complete ban on grassroots lobbying. I think the  
13 Frank bill does that.

14 Timekeeping, much could be said about timekeeping.  
15 I want to make only one point here. That is that this  
16 provision would require far more extensive timekeeping than is  
17 currently required of most private attorneys. I want to make  
18 one other point.

19 Other federal grantees, nonprofit organizations,  
20 attorney generals, state and local government funded attorneys  
21 and publicly funded providers of legal services do not keep  
22 time by functional activity or differentiate among funding

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1 sources when funds can be used interchangeably.

2           This bill imposes a unique timekeeping requirement  
3 that would only apply to legal services. The arguments and  
4 the suggestions that have been made and some of the literature  
5 is not accurate.

6           The board authority, you've heard much about the  
7 board authority. I'm not going to go over it other than to  
8 say this would interfere in the independent professional  
9 judgment of program staff. There are at least two ABA formal  
10 opinions that prohibit boards from getting involved in  
11 individual case selection.

12           Finally, although there are some arguments about  
13 that, that there is no relationship between the board members  
14 and the clients served by the program. There is no  
15 relationship, attorney-client relationship. The relationship  
16 under ABA and state bar is between the staff of the program  
17 and the attorneys not the board of the program and the  
18 attorneys.

19           Non-LSC funds, you've heard a lot about non-LSC  
20 funds. the heart of many respects of this bill is to impose  
21 restrictions on all non-LSC funds. You've heard from LeAnna,  
22 serious consequences that were imposed on her program. You've

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1 heard from the bar about their perception of this. I want to  
2 make clear that this provision would completely change the  
3 rules on the use of public, IOLTA and even some private funds.

4           What you would be doing is restricting all sources  
5 of funds by whatever limitations are imposed on the LSC funds,  
6 depriving private and public providers of having the same  
7 opportunity as Congress to determine what their funds should  
8 be used for.

9           Drug-related representation, Section 10, we've heard  
10 long debates about this. I'm not going to say much more about  
11 it other than what is posed here constantly in the literature  
12 that you've received is that somehow -- let me just read it,  
13 in fact.

14           Legal services attorneys are hindering drug efforts.  
15 Legal services attorneys are threatening the safety of  
16 innocent poor tenants instead of helping them rid their  
17 neighborhoods of drug-related activity. Well, ultimately,  
18 what is involved here is whether you're going to deprive a  
19 tenant of the right of representation when an allegation is  
20 made, an allegation that may be without any basis, an  
21 allegation is made of drug-related activities.

22           It may not even be drug-related activity that

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1 effects what that tenant has done or even a family member of  
2 that tenant has done. It may be drug-related activity by  
3 someone fully outside the family that is alleged to have  
4 occurred in that tenant's apartment.

5 The choice is not between representing tenants  
6 against drug-related activity or helping tenants rid their  
7 neighborhoods of drug-related activities. That is a false  
8 dichotomy. It is a balance between individual rights and  
9 community needs. That balance must best be struck when local  
10 conditions and local needs are taken into account by local  
11 boards of directors.

12 Competition, a number of things have been said about  
13 competition. Again, I won't go into any great length on this.  
14 I want to point out that the Frank bill does far more than  
15 just suggest a study. It suggests that the Corporation run  
16 demonstration projects on competition, and that those projects  
17 be thoroughly evaluated, and that the results of those  
18 projects be communicated to Congress, and that based on the  
19 study and demonstration projects, the Corporation implement  
20 competition. It's not some weak study kind of arrangement  
21 that's being proposed there.

22 Now, there's a number of arguments been made about

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1 competition. I just want to respond to two of them. One of  
2 them is this. Almost every other federal grant program,  
3 indeed the board book says every federal grant program, is  
4 competitively bid. That is just not true. It is not true.

5           Approximately 85 percent of federal grants are  
6 distributed to state and local governments, to designated  
7 private entities on the basis of formula allocation. Of the  
8 remaining 15 percent, many programs such as Head Start, which  
9 are originally awarded on the basis of competition like LSC  
10 grants were, are annually renewed as long as the recipient  
11 continues to qualify.

12           It is not the rule, it is not the practice to use  
13 competition in most federal grant agencies. The experiments  
14 that we've had in competition that is mostly directly  
15 analogous involves competitive bid contracts to legal services  
16 in the area of indigent criminal defense. Virtually, all of  
17 the research in that area, most of which has never been  
18 presented to you, shows that this effort was an unmitigated  
19 disaster.

20           With costs rising sharply after the initial bidding  
21 of quality, quality declined precipitously, frequently below  
22 the constitutionally required standards. Three state Supreme

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1 Courts upheld it unconstitutional. So we urge that if we're  
2 going to move forward in competition, that it be done on the  
3 basis of study and demonstration, taking into account the  
4 quality factors and a number of other factors.

5 Attorney accountability, you've heard much about  
6 that. I don't think there's more to be said on it here other  
7 than the LSC Act as currently written specifically says that  
8 the Legal Services Corporation should not be interfering in  
9 the discipline of attorneys. But that is a job for state  
10 bars. This still would fundamentally alter that.

11 Attorneys fees, also much has been said earlier  
12 about that. I want to be clear. This provision would  
13 completely negate the civil rights attorneys fees awarded  
14 which is a key part of the civil rights enforcement structure  
15 in this country.

16 Secondly, the Supreme Court of the United States--  
17 all other courts have consistently upheld the proposition that  
18 legal services attorneys should be treated in the same manner  
19 as private attorneys with regard to fee awards.

20 Finally, the argument is made that fee awards given  
21 primarily to reimburse the plaintiffs. Well, that is not the  
22 only reason that fee awards are given. As the legislative

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1 history to the Civil Rights Attorneys Fees Act shows, as well  
2 as most other fee-shifting statutes, they are also awarded to  
3 punish those who violate the law, to deter legal actions, to  
4 encourage enforcement of the law and to increase resources  
5 available to vindicate the statutory and the constitutional  
6 right of those who cannot otherwise afford to do so.

7           Class action, let me be clear with this stuff. This  
8 changes the status quo completely. Today, under the rider and  
9 under the LSC act, boards of directors set broad policies.  
10 The project director has to make findings, report class  
11 actions against governments. There has to be negotiations  
12 first as an attempt to work out things before a class action  
13 is brought. Only if that fails can a class action be brought.

14           What his does is say that the Board of Directors of  
15 the program has to make the decision about class action. As  
16 pointed out by my two colleagues, that raises fundamental  
17 practical problems. It also raises fundamental ethics  
18 problems because under the ABA, boards of directors cannot be  
19 involved in individual cases.

20           Aliens, Section 16, we haven't heard much about  
21 this. I just want to make a couple of things quite clear. If  
22 this was adopted, it would restrict not only LSC ,funds which

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1 are restricted today, but it would affect private and IOLTA  
2 funds, too. So this goes far beyond the current situation.

3           Moreover, what this provision does is it denies to  
4 many people who are legally in the United States  
5 representation -- I'm not talking about people who aren't here  
6 illegally -- this provision denies to many people who are here  
7 legally representation because you can't represent them unless  
8 it falls into four categories.

9           Training, Section 17, I just want to point out one  
10 little thing about this. If this became a law, you could not  
11 run training programs for clients. This is quite clear if  
12 this became the law. Today, you can use private funds and  
13 IOLTA funds to run training programs for clients. You cannot  
14 use LSC funds. If this became the law, you couldn't use any  
15 funds to run the training programs for clients.

16           Copayments, Section 18, what this does is not only  
17 require a study but it requires the LSC to use demonstration  
18 projects. Then based on that, LSC should go ahead and  
19 implement it.

20           I think this is an area that before moving in that  
21 direction needs careful thought and study without any  
22 requirement, undertake a demonstration project, although that

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1 may be useful at some point, I think what you will find when  
2 you look at copayment experience is a few circumstances where  
3 it's been used in civil legal services for the poor.

4 Copayments have not eliminated or reduced frivolous  
5 cases. They don't ration services in a rational way. They  
6 ration services arbitrarily without relationship to legal need  
7 of priority problems. The cost of administration have far  
8 outweighed the income that has been received.

9 Finally, the arguments in behalf of copayments are  
10 based primarily around experience in health care. I just want  
11 to point out that the experience in Medicaid does not support  
12 the imposition on legal services. Experience in Medicaid  
13 indicate that copayments have been used solely to save money.

14 It has not deterred unnecessary utilization; quite  
15 the contrary. What has happened in Medicaid is that necessary  
16 utilization is not provided early on resulting in far more  
17 expensive costs later on when someone had to be hospitalized.

18 I've covered most of the provisions in here. I left  
19 out a couple because I went through this quickly. I think  
20 when you look at the record factually and you look at the  
21 record, these provisions just against the principal, the  
22 conclusions that I would suggest to you is best stated by the

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1 letter you received from the president of the American Bar  
2 Association.

3           Here's his final paragraph: H.R. 5336, which is  
4 McCollum-Staggers-Stenholm, does not help the poor of this  
5 nation. Rather, it creates a second-class system of justice  
6 for the poor, makes it harder for poor people to assert the  
7 rights, decreases the resources available to provide legal  
8 services, and permits the continued abuse of some of the most  
9 vulnerable members of our society.

10           I think if you look carefully at these provisions,  
11 read them carefully and think about them carefully, you will  
12 see that that statement in conclusion is accurate.

13           Thank you very much.

14           CHAIRMAN WITTGRAF: Thank you, Mr. Houseman. You  
15 all covered a great deal of material, catching a number of  
16 different areas. If you don't mind responding to any  
17 questions or comments that any board members might have at  
18 this point, I think it would be helpful.

19           I'll begin with Mr. Dana.

20           MR. DANA: I'll pass for now.

21           CHAIRMAN WITTGRAF: Mr. Hall?

22           MR. HALL: Pass.

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1 CHAIRMAN WITTGRAF: Ms. Love?

2 MS. LOVE: The Frank bill permits abortions; am I  
3 right?

4 MR. BOEHM: That's correct.

5 MS. LOVE: No further questions.

6 CHAIRMAN WITTGRAF: Ms. Pullen?

7 MS. PULLEN: I just have a question of Ms. Gipson.  
8 I appreciated your explanation about how the model works in  
9 your particular program. How many board meetings do you have  
10 a year?

11 MS. GIPSON: Approximately eight. We used to meet  
12 once a month, but we have a real hard time getting a quorum in  
13 July and August. We also have a real hard time getting a  
14 quorum in December. So we pretty much don't meet during those  
15 three months unless it's absolutely necessary.

16 MS. PULLEN: What is the average attendance at your  
17 board meeting when you do meet?

18 MS. GIPSON: Out of 20 members, we usually have  
19 between 8 and 10 members appear and different ones at  
20 different times. Again, many of the attorney board members  
21 are caught in court and cannot always be at the board  
22 meetings.

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1 MS. PULLEN: Are the board meetings during the day  
2 time?

3 MS. GIPSON: Yes. Every year we survey the board,  
4 you know, giving them a variety of options in the sense of  
5 having morning meetings, noon meetings or evening meetings.  
6 At least in the six years that I've been there we've always  
7 met the fourth Tuesday of every month at 12:15.

8 MS. PULLEN: Do you tend to have the same people  
9 being the ones who attend or is it --

10 MS. GIPSON: I would say among the client board  
11 members we usually have a fairly regular attendance.

12 MS. PULLEN: There are seven of those?

13 MS. GIPSON: There are seven of those. The attorney  
14 board members, it just depends on what case they are on that  
15 particular day, whether they are in court or not. So we get a  
16 much greater turnover in terms of regular attendance. Our  
17 officers almost always manage to attend.

18 MS. PULLEN: There are 12 attorney members; right?

19 MS. GIPSON: Twelve attorney members. Then we have  
20 one who falls outside and can be anything. At the present  
21 time, it happens to be an attorney that is appointed. We also  
22 have a local legal aid society in our city. We have a

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1 representative appointed from that organization to sit on our  
2 board.

3 MS. PULLEN: What is the average number of your  
4 attorney board members attending at any given meeting?

5 MS. GIPSON: I would have to guess at that.

6 MS. PULLEN: If you have seven client eligibles and  
7 they usually come, and you have about eight to ten on an  
8 average --

9 MS. GIPSON: I'm just going to say it just varies.  
10 There are times when we have five, six, seven attorney board  
11 members. There are times when we only have two or three.

12 MS. PULLEN: Thank you.

13 CHAIRMAN WITTGRAF: Ms. Wolbeck?

14 MS. WOLBECK: I have 150 questions at least. Just a  
15 couple of things. Like I said, I don't know which ones of  
16 these are the most important. Mr. Boehm, I think in Section  
17 13 on the attorneys fees, do you understand why McCollum-  
18 Staggers-Stenholm wants that provision? Can you explain that  
19 a little bit?

20 MR. BOEHM: Section 13?

21 MS. WOLBECK: Yes, on the attorneys fees.

22 MR. BOEHM: On limiting the --

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1 MS. WOLBECK: Right. The purpose for that?

2 MR. BOEHM: Part of the reason for limiting  
3 attorneys fees back to the program is the fact that the  
4 program attorneys are themselves tax funded attorneys. In the  
5 same sense as prosecutors are tax funded. A loser, say a  
6 criminal cases, is certainly not expected to pay for  
7 prosecution. By the same token, the purpose of Congress  
8 funding legal services program is to fund the attorneys that  
9 are to make their money that way as opposed to the other way.

10 There are other quality reasons you can go into.  
11 One is what should the criteria be for picking cases? Should  
12 it be the amount of money involved that could come back to the  
13 program or should it be providing justice where it's most  
14 needed for poor people?

15 Once money comes into the question, there may be a  
16 temptation for local legal services program to say weighing  
17 two different cases of four individuals, pick the case where  
18 they are more likely to get attorneys fees over picking the  
19 case where they are less likely to get attorneys fees.

20 So the whole selection process may be skewed by  
21 whether or not there are attorneys fees involved. If you have  
22 the provisions, that would not be a factor.

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1           MR. HOUSEMAN:    Could I respond just a second, one  
2 point at least?    There's no evidence whatsoever that legal  
3 services programs have used the provision of attorney fees in  
4 the selection of cases.    We went through this in a rulemaking  
5 procedure a year and a half ago when a proposal was made to  
6 change a fee-generating case regulation.

7           There was no example provided to staff or anyone  
8 else where a program ever used that criteria.    So I think as  
9 theoretical as it may be, it's absolutely without any factual  
10 basis whatsoever.

11           Secondly, let me just reiterate one point I made  
12 earlier which is that the Civil Rights Attorneys Fees Act and  
13 other attorneys fees acts in this country, this would change  
14 those.    Those provide that plaintiffs who do prevail get  
15 attorneys fees regardless of who represents them.

16           The general rule in this country is each party pay  
17 its own cost.    But in certain cases, the plaintiffs are  
18 entitled to attorneys fees if they prevail.    Just like in some  
19 of those same statutes, if the defendant prevails, they are  
20 entitled to attorneys fees.

21           It applies to legal services as well as anybody  
22 else.    The consequence of this is to negate the civil rights

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1 attorneys fees awards act and other civil rights legislation  
2 that involves --

3 MS. WOLBECK: Do you have anything else, Ken?

4 MR. BOEHM: I just think it's a common sense  
5 observation; that if money is involved, then it's a factor. I  
6 mean, how do you approve or disapprove that? That's also  
7 theoretical. I'm not sure what you do to do that. But I  
8 think clearly if programs are always strapped for money, and  
9 that's clearly the cases, if you're turning away individuals,  
10 the prospect of a pot of money if you handle one case over  
11 another has to be enticing. Human nature being what it is, I  
12 think that's a fair comment.

13 MS. FORREST: Let me also respond as an attorney  
14 that takes pro bono cases on a regular basis outside of cases  
15 to the Legal Services Corporation. There are many attorneys  
16 in this state that do. I can't think of an attorney I know  
17 that takes a pro bono case based on whether they are going to  
18 get fees at the end of the case or not. I certainly have  
19 never done it.

20 I've never known an attorney that's done it. I  
21 would defer to Alan's statement since he has more information  
22 than I do about whether there's ever been any evidence of that

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1 with a recipient. It certainly is not true of private  
2 attorneys. I can't imaging that that would be true under  
3 these particular programs. It's not the motivation for taking  
4 a pro bono case.

5 CHAIRMAN WITTGRAF: Ms. Wolbeck, did you want to  
6 follow?

7 MS. WOLBECK: No.

8 CHAIRMAN WITTGRAF: Ms. Pullen?

9 MS. PULLEN: I just want to follow up to that.

10 CHAIRMAN WITTGRAF: Okay. Ms. Pullen?

11 MS. PULLEN: Ken, isn't one of the purposes anyway  
12 of providing for attorneys fees in civil right cases to make  
13 sure the plaintiff has an opportunity to have an attorney?

14 MR. BOEHM: That's correct.

15 MS. PULLEN: In LCS situations, isn't that already  
16 provided for by totally funded --

17 MR. BOEHM: That's not only exactly correct, but  
18 that's straight from the legislative history.

19 MS. PULLEN: Does this bill have any impact on the  
20 Civil Rights Act?

21 MR. BOEHM: No, none whatsoever.

22 MS. PULLEN: Thank you.

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1           MR. HOUSEMAN: Wait a minute. That's not true.  
2 This bill negates the civil rights attorneys fees awards act  
3 for legal services. That's what it does. Secondly, that is  
4 not the only purpose. I said this earlier. I'll repeat it  
5 again. The legislative history that the civil rights  
6 attorneys fees awarded makes clear that attorneys fees are  
7 awarded not just to reimburse the plaintiffs, but to punish  
8 those who violate the law, to deter legal actions, to  
9 encourage enforcement of the law and to increase resources  
10 available to vindicate the statutory and constitutional rights  
11 of those that are protected.

12           Those are purposes that are stated exclusively in  
13 the legislative history in the findings and purposes of the  
14 Civil Rights Attorneys Fees Act and most of the other fee-  
15 shifting statutes that exist.

16           CHAIRMAN WITTGRAF: Mr. Hall?

17           MR. HALL: Thank you, Mr. Chairman. I took part in  
18 the fee-generating regulations about a year and a half ago.  
19 It seemed like, for what it's worth, not at all possibly of  
20 the over 300 recipients. Weren't there like 20 or 30 that had  
21 consistently had a tremendous amount of income from fee-  
22 generated cases year after year after year?

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1           It was a fairly large amount of income, hundreds of  
2 thousands of dollars consistently; whereas, most programs  
3 didn't. I think as part of that regulation, we didn't take  
4 the money away from the poor but redistributed it. You could  
5 keep a hundred grand of your attorneys fees and then 75  
6 percent went to the lower per capita or something like that.

7           CHAIRMAN WITTGRAF: That's the proposed regulation  
8 that is not in effect.

9           Ms. Wolbeck?

10          MS. WOLBECK: I have a lot of questions about  
11 everything, but this is one of them.

12          CHAIRMAN WITTGRAF: I wouldn't discourage you at  
13 least from asking some of them.

14          MS. WOLBECK: Well, I don't know. Well, I guess in  
15 the attorney accountability, Section 12, doesn't the state  
16 take care of some of that?

17          MR. BOEHM: Yes. Part of the rationale there is  
18 that if there is a situation in a given program where an  
19 attorney does something that's wrong -- right now the range of  
20 options that the Corporation has in dealing with that  
21 situation are somewhat limited.

22          They cannot do anything under the current act

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1 against the individual attorney regardless of what the offense  
2 is in the sense that say an attorney embezzles or does  
3 something else that's notorious, vis a vis his relationship  
4 with his client or the organization. Right now the  
5 Corporation has a limited range of options.

6 Under this, they could go after the one attorney  
7 without going after the program if the program is otherwise  
8 doing good things. The analogy that is being done is if you  
9 have a Pete Rose who has a gambling problem, you don't  
10 disenfranchise the whole baseball club. You go after Pete  
11 Rose. This gives the Corporation the ability to fine tune  
12 what it wants to recommend in a situation like that. You  
13 know, otherwise it would not be available. I think that's the  
14 rationale for doing it. The rationale is, why should the  
15 program suffer for some individual?

16 CHAIRMAN WITTGRAF: Ms. Wolbeck, may I? Mr. Boehm,  
17 I certainly agree with you that because of one rotten apple,  
18 you certainly would not want a grantee to suffer. Talking  
19 about available options, I guess it simply occurs to me that  
20 the first available and most readily available option would be  
21 for the Legal Services Corporation, if it became aware of such  
22 a problem, to report that problem and that person to the

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1 appropriate seat of authority.

2           With the structure that does exist, each case will  
3 be different, but a structure that does exist in every state.  
4 Wouldn't that be the way to deal with the problem? Then  
5 obviously if you have the possibility of criminal sanctions  
6 that would be referred by the state authority to the local  
7 prosecuting attorney or to the local federal U.S. district  
8 attorney if necessary.

9           MR. BOEHM: No. I agree. In fact, this does not  
10 preclude that at all.

11           CHAIRMAN WITTGRAF: I'm not saying that it precludes  
12 it. I'm just wondering if there is even a need for it, I  
13 guess is my question.

14           MR. BOEHM: Well, it allows for something to be done  
15 in a situation where it couldn't be done now. I mean, if that  
16 proves more beneficial, you could certainly do it. It doesn't  
17 preclude it at all.

18           CHAIRMAN WITTGRAF: Ms. Wolbeck?

19           MR. HOUSEMAN: Could I just say one thing on that,  
20 which is that there's a range of sanctions that's available to  
21 the Corporation besides the funding of programs. One of them  
22 is, which we never hear talked about, this Part 1630 of your

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1 regulations which allows the Corporation to question costs and  
2 to recover costs if there is a legal action that is done by  
3 the program or failure of the program over a period of time,  
4 enforce the law or to carry out high-quality legal services.

5           You have other sanctions besides just the funding or  
6 terminating the program. Ultimately, this question comes down  
7 to you're going to interfere with the state bar and in the  
8 first instance the judgment of how to deal with these things  
9 is up to the local programs.

10           CHAIRMAN WITTGRAF: Ms. Wolbeck?

11           MS. WOLBECK: That's all.

12           CHAIRMAN WITTGRAF: Are you sure? That's short of  
13 150.

14           Mr. Dana?

15           MR. DANA: I'll pass.

16           MR. HALL: I don't have any questions.

17           CHAIRMAN WITTGRAF: Thank you all very much. It's  
18 the Chair's understanding that Ms. Pullen has a resolution in  
19 this area. Do all the members of the board have copies of  
20 this?

21           MR. DANA: No.

22           CHAIRMAN WITTGRAF: Ms. Pullen?

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## 1 RESOLUTION OF PENNY PULLEN

2 MS. PULLEN: Mr. Chairman, this is a somewhat  
3 changed version of the resolution that the board had seen  
4 before. It states support for statutory reform of the federal  
5 legal services program. It states specific goals that I  
6 believe a majority of this board desires, and goes on to  
7 endorse the Legal Services Reform Act of 1990 in order to  
8 achieve those goals.

9 The overall goal is to focus our limited resources  
10 provided to us by the Congress from the taxpayers on the  
11 recognized needs of indigent clients. I don't know whether  
12 you want me to read the resolution or simply to offer it, but  
13 it is before us at this time.

14 CHAIRMAN WITTFGRAF: I have not seen the report or  
15 had an opportunity to read it. Perhaps it would be best if  
16 you would just read it, please.

17 MS. PULLEN: I'll be happy to. Thank you.

18 "WHEREAS, the board of Directors of the Legal  
19 Services Corporation, LSC, supports statutory reform of the  
20 federal legal services program, having adopted a resolution  
21 expressing such support on June 25, 1990; and,

22 WHEREAS the board believes such reform should focus

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1 the limited resources and trust it to the corporation on the  
2 recognized needs of indigent clients and should prevent the  
3 questionable activities of some legal services programs; and,

4           WHEREAS, the board desires enactment of statutory  
5 provisions to retain existing restrictions barring use of LSC  
6 funds and private funds for abortion-related litigation and to  
7 extend those restrictions expressly to the use of Interest on  
8 Lawyers' Trust Accounts for abortion-related litigation; and,

9           WHEREAS, the board further believes statutory  
10 provisions should be enacted to extend similar restrictions  
11 barring LSC programs from engaging in redistricting-related  
12 litigation; and,

13           WHEREAS, the board seeks legislation to bar LSC  
14 programs from participating in cases on behalf of those  
15 involved in drug-related criminal activity; and,

16           WHEREAS, the board believes lobbying at any level of  
17 government should be barred as an inappropriate activity for  
18 LSC-funded lawyers and a diversion from their mission of  
19 providing day-to-day legal services to indigent Americans;  
20 and,

21           WHEREAS, the board believes the Congress should  
22 enact statutory provisions to apply to the lawyers in LSC

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1 programs the same prohibitions on client solicitation as apply  
2 to lawyers in private practice; and,

3           WHEREAS, timekeeping is required in order to ensure  
4 the delivery of legitimate legal services to indigent people  
5 and to properly effect compliance with the statutory and  
6 regulatory provisions applying to LSC programs; and,

7           WHEREAS, the Board believes that the delivery of  
8 services would be improved by institution of competition for  
9 grants and contracts; and,

10           WHEREAS, reform legislation addressing the concerns  
11 stated above has been introduced as The Legal Service Reform  
12 Act of 1990 by members of Congress, led by the Honorable Bill  
13 McCollum, Harley Staggers, and Charles Stenholm; now,  
14 therefore, be it

15           RESOLVED, by the Board of Directors of the Legal  
16 Services Corporation, that we urge the Congress to bring  
17 needed reform to the federal legal services program by  
18 enacting The Legal Services Reform Act of 1990; and, be it  
19 further,

20           RESOLVED, that the board authorizes the LSC staff:  
21 to provide technical assistance and support to members of  
22 Congress and their staff; to convey the support of the board

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1 for the Legal Services Reform Act of 1990; and to inform  
2 members of Congress about the implications of these and other  
3 proposed statutory provisions concerning the federal legal  
4 services program.

5 M O T I O N

6 I move adoption.

7 CHAIRMAN WITTGRAF: Is there a second?

8 MR. HALL: Second.

9 CHAIRMAN WITTGRAF: Seconded. The resolution has  
10 been moved and seconded. Discussion?

11 MR. DANA: Mr. Chairman?

12 CHAIRMAN WITTGRAF: Mr. Dana?

13 MR. DANA: I think probably everybody in this room  
14 knows how I intend to vote on this resolution. I will not  
15 repeat the arguments that I have made to my board members in  
16 writing, but I do want to briefly tell you of a couple of the  
17 reasons why, in my view, this legislation is reprehensible at  
18 best.

19 Even if this bill were to pass both the House and  
20 Senate and be signed by the President of the United States,  
21 the American lawyers, the American Bar, IOLTA commissions  
22 across this country and fair and appropriate people would do

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1 their level best to create organizations which now already  
2 exist to provide the legal services that are being denied  
3 before by this legislation, including tenants facing eviction,  
4 before being gerrymandered out of power, legislative and  
5 administrative efficacy, and those seeking legal counsel with  
6 respect to abortion.

7 But scarce resources will have been diverted from  
8 the provision of legal services for the poor by creating new  
9 organizations with new administrations and new support staff  
10 in order to do what is being done now by our legal services  
11 programs.

12 But, frankly, that over and over again, the is  
13 destruction, or the taking of scarce resources from legal  
14 services for the poor is what this bill is all about. It  
15 drains from the system those scarce resources. It does it in  
16 a variety of ways.

17 Section III, Private Right of Action, will generate  
18 a whole series of lawsuits over the lawsuit. The solicitation  
19 section in Section IV will require two lawyers to provide what  
20 is now provided by one. Section V's, Agricultural Provisions,  
21 require the corporation to establish ABR panels and create a  
22 brand new federal lawsuit before a lawsuit can be commenced

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1 where the secrecy of the particular plaintiffs is required.

2 Section VII's timekeeping section will inevitably  
3 take lawyer time and resources away from the poor. Section XI  
4 competition requirement will require funds to duplicate the  
5 administration and support staff of existing corporations.  
6 Section XII's lawyer accountability provisions will divert  
7 program resources to defend the lawyers that the corporation  
8 wants to fire.

9 Section XIII's attorney's fees provision will deny  
10 the programs the fees they are currently awarded and require  
11 the program and this corporation to set aside resources to pay  
12 fees to successful and unsuccessful defendants. This is not a  
13 closed case. This is a terrible piece of legislation. It  
14 seems designed to destroy legal services for the poor not  
15 reform it.

16 If legislation rather than people could be called  
17 evil, this legislation would certainly qualify. Within legal  
18 services, we have several thousand points of light, to coin a  
19 phrase. They are trying to fulfill this nation's  
20 responsibility and promise of justice for all. After all is  
21 said and done, the issue on this bill is the question of  
22 whether you are for light or darkness.

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1           Mr. Chairman, I intend to vote against it. I hope  
2 that my fellow board members see it as I do and as the  
3 panelists so ably presented it this afternoon.

4           CHAIRMAN WITTGRAF: Further discussion?

5           MS. PULLEN: Mr. Chairman?

6           CHAIRMAN WITTGRAF: Ms. Pullen?

7           MS. PULLEN: Simply to say that I admire Mr. Dana,  
8 but I disagree.

9           CHAIRMAN WITTGRAF: Further discussion?

10           (No response.)

11           CHAIRMAN WITTGRAF: As some of you may know, there's  
12 a provision in our bylaws for the participation of board  
13 members who are not physically in attendance to be able to  
14 vote on matters.

15           We are going to take a five-minute recess at this  
16 point to determine the availability of any of our board  
17 members who aren't here and to determine beyond their  
18 availability of whether or not they are prepared to vote on  
19 this resolution at this time.

20           So we will be in recess for approximately five  
21 minutes.

22           (A brief recess was taken.)

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1           CHAIRMAN WITTGRAF: Ladies and gentlemen, it is time  
2 to resume our deliberations. We are prepared to proceed. By  
3 way of background, for some of our guests, I might say  
4 something on behalf of those board members who aren't able to  
5 be here and thereby explain a little bit of this telephone  
6 voting business.

7           We are, at the moment, technically ten recess  
8 appointees and are functioning in that capacity. Actually,  
9 there is an eleventh individual, a man named Tom Rath who has  
10 been nominated but is not a recess appointee because there was  
11 never a recess during which he could be appointed.

12           In fact, Mr. Rath had hoped to be with us this  
13 weekend but has been involved as one of the several people who  
14 has been helping Judge Seuter through the nomination process  
15 on the way to becoming Justice Seuter. So Mr. Rath has been  
16 actually occupied in Washington while the rest of us came  
17 west.

18           The vice chairman of the board, Guy Molinari from  
19 New York, who had planned to be with us, had reinjured a leg  
20 or reinflamed the longstanding leg injury, not able to travel  
21 and is not able to be contacted this afternoon. We are a bit  
22 of an accident-prone bunch.

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1           Mr. Guinot of the greater Washington area, another  
2 one of our board members, did last weekend slip and fall and  
3 break his leg, I believe, in three places, and just underwent  
4 surgery Friday evening for that break, and just returned home  
5 today from the hospital, and is not able to join us either in  
6 person or by telephone. In fact, he's still recovering from  
7 the effects of his anesthesia.

8           Mr. Suarez had been planning to be with us, Mr.  
9 Suarez from Florida, but at the last minute was unable to  
10 travel and we're not able to reach him this afternoon.  
11 Finally, John Collins of Massachusetts was not able to travel  
12 because of some physical therapy that he's been undergoing,  
13 but has been reached by us and will actually be joining us for  
14 any vote or votes we take in regard to this matter this  
15 afternoon.

16           So that gives you, by way of background, an  
17 accounting of our physical whereabouts. Otherwise, you see  
18 six of us who are recess appointees functioning as the quorum  
19 of the board at this time.

20           Is there further discussion on the resolution before  
21 the board then by any members of the board?

22           (No response.)

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1           CHAIRMAN WITTGRAF: Hearing none, the Chair, before  
2 calling for a vote, will take the liberty of making a couple  
3 of comments regarding his own position on this matter. I  
4 might note that the Chair, particularly in light of the  
5 telephonic involvement of Mr. Collins, will just go ahead at  
6 the outset and ask for a roll call vote so that it will be  
7 clear who is voting and how so.

8           We did, as Ms. Pullen indicates in her resolution in  
9 the first paragraph, as a board, on June 25th at a regular  
10 meeting, adopt a resolution expressing concern for and support  
11 for reform measures. I, for one, voted for that resolution.

12           Since June 25th, quite a bit has evolved, as had  
13 been suggested by many of the speakers this afternoon in the  
14 area of reform. In fact, I guess, in my naively hopeful view,  
15 I had thought that some of the members in the House in  
16 particular who were actively involved in this area had gotten  
17 somewhat closer together in their proposals than apparently  
18 they have.

19           In fact, as things began to unfold, then, in August,  
20 and as eventually the House Judiciary Subcommittee acted, it  
21 took a proposal quite different from what many of us had been  
22 contemplating, or at least what I had been contemplating.

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1 Just as then in response to that, Congressman McCollum,  
2 Staggers and Stenholm, and in particular Congressman Staggers,  
3 on that subcommittee, came out with a draft that was also  
4 quite beyond anything that I had been aware was under  
5 contemplation.

6 So I was disappointed personally to see that the two  
7 sides were really farther apart than I had really thought or  
8 hoped rather than as close together as I had thought perhaps  
9 they were.

10 As I think Mr. Boehm indicated in addressing us  
11 earlier, it's unlikely that anything further will be done on  
12 reauthorization. There's a possibility perhaps that in the  
13 appropriation's process in the House, a so-called reform  
14 proposal will be offered much as it was in October of 1989.  
15 Only time will tell, depending on the agenda of the Congress.

16 There are some things in the so-called Legal  
17 Services Reform Act of 1990 which happened to appeal to me  
18 personally. I'm quite interested in competitive bidding. I  
19 happen to have a personal view that we need probably fewer  
20 grantees to allow better utilization of the funds that are  
21 available.

22 I see competitive bidding not so much as a way of

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1 subsidizing the private bar but rather as a way of bringing  
2 about fewer grantees and greater efficiency and greater  
3 economies. I'm also very concerned about keeping legal  
4 services attorneys out of partisan, and particularly  
5 congressional, and also state legislative redistricting.

6 We passed a resolution at our last board meeting on  
7 August 9th suggesting that the effort in the Frank or the  
8 Judiciary Subcommittee proposal enabling the involvement of  
9 legal services attorneys in abortion. We expect opposition to  
10 that I think unanimously.

11 That's a view that I happen to share, as I did a  
12 month ago, because of the fact that with the very limited  
13 resources we have and many people who are involved in this  
14 country on both sides of the choice-life fight in litigation,  
15 in policymaking and otherwise, our legal services attorneys  
16 don't need to be involved.

17 But there are also an awful lot parts of The Legal  
18 Services Reform Act of 1990 that I disagree with. For that  
19 reason -- it would be many of the ones that have been touched  
20 on and I won't belabor the point. But for that reason, I'm  
21 going to vote against the resolution.

22 I have one other concern that goes beyond that.

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1 That is that as we are a new board, we've been in limbo now  
2 for some nine months as recess appointees. We're quite  
3 certain that the matter of confirmation won't come up until  
4 some time next year. We really have little authority. The  
5 most important thing we could have done we have done. That  
6 is, we've designated the president elect. I think we all feel  
7 good that we've accomplished that.

8 We also made a budget recommendation to the Congress  
9 which perhaps may have had a little bit of bearing on the work  
10 that's gone on to date in the Senate Appropriation  
11 Subcommittee. But beyond that, there's very little we can do.  
12 Specifically, our hands are tied in the area of drafting,  
13 adopting and implementing regulations, the one area where we  
14 as a board, beyond electing a president and beyond making  
15 appropriations recommendations, really could do something in  
16 my view.

17 I think that what we did on June 25th in expressing  
18 our concern in support of a reform was enough. I don't think  
19 as board members who meet eight, nine, ten times a year that  
20 we're in a position to weigh in to the particulars, let alone  
21 the vagaries of the legislative debate, be it the  
22 reauthorization debate or the appropriations debate.

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1 I happen to think that we as a board will undermine  
2 our credibility by weighing in, by adopting a resolution such  
3 as this. I think that we need to be working to enhance our  
4 credibility so that we can get back the regulation-making  
5 authority that's been taken away from us for the time being.  
6 Whether it's in the area of competition, timekeeping or  
7 anything else, that we can really be about the work of the  
8 board of the Legal Services Corporation.

9 I think we'll undermine our credibility if we adopt  
10 this resolution. I think we'll put off the day when we regain  
11 our regulatory authority. For that reason, in addition to the  
12 fact that I disagree with a number of the proposals contained  
13 in the package, I'm going to vote no.

14 Further discussion?

15 (No response.)

16 CHAIRMAN WITTGRAF: Hearing none, we'll proceed to a  
17 vote. Excuse me. Ms. Love?

18 MS. LOVE: Most of Ms. Pullen's resolution I can go  
19 along with. It's a very confusing thing to me, being a new  
20 board member. But the part involving the drugs and the  
21 tenants -- victim of tenants -- I am a worrying mother.  
22 Suppose one of my children come in with some drugs and they

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1 want to kick me out and I'm not aware of this action.

2           The abortion I can understand. But the drugs, I'm  
3 highly against drugs. I can't see going against the tenants.  
4 So I'd rather not -- I don't know what to do. There's some of  
5 it I just don't go along with.

6           CHAIRMAN WITTGRAF: Further discussion?

7           MR. HALL: Mr. Chairman?

8           CHAIRMAN WITTGRAF: Mr. Hall?

9           MR. HALL: When we voted on June 25, 1990, to pass  
10 that resolution that supported reform, I know in my mind at  
11 least I was thinking of the reforms that are proposed by  
12 Congressman McCollum and Stenholm. It seems like since that  
13 time there may be confusion as other reforms that have been  
14 proposed by Congressman Frank in particular.

15           There seems to be some idea that we as a board need  
16 to send a message to Congress on how we feel on these  
17 particular items. With so many different types of reforms or  
18 improvements or changes that have been offered, it just seems  
19 like it makes it rather fuzzy on exactly what we meant on June  
20 25th, or at least what I meant.

21           Now there are a lot of parts of this in The Reform  
22 Act of 1990 that I don't agree with, the ones on the

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1 attorney's fees and probably small portions of each one of  
2 these things. But the majority of it I do agree with and it's  
3 things that I would like to see at least looked at and put  
4 into action.

5           There's too many good things and some few bad things  
6 in it. But I'm going to have to take a stand on it one way or  
7 the other and the good outweighs the poor. So I'm going to  
8 vote for it.

9           CHAIRMAN WITTGRAF: Further discussion?

10           Ms. Pullen?

11           MS. PULLEN: Mr. Chairman, I respectfully disagree  
12 that adopting this resolution would undermine our credibility.  
13 I think that for this board to have met over and over and over  
14 again this year, to have heard these issues over and over and  
15 over again, and to be unwilling to say to Congress what we  
16 think and what we mean, I think that undermines our  
17 credibility.

18           It is entirely expected by legislative bodies that  
19 administrative bodies will comment to them on legislation that  
20 affects those administrative bodies. We were appointed to  
21 carry out policy. We were appointed to improve the legal  
22 services program. We were appointed to respect the taxpayers

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1 and to do everything that we can to properly proportion scarce  
2 resources.

3           When legal services programs take on cases like  
4 evictions of drug dealers from public housing units, for  
5 example, that we heard so much about a couple months ago, when  
6 they take those cases on, they're turning away other cases.  
7 And they are, I believe, injecting tremendous controversy into  
8 the legal services program and undermining public support for  
9 the program.

10           Congressmen, including liberal Democrats, have  
11 expressed public shock that some of the programs, some of the  
12 attorneys, being paid for with tax dollars would take those  
13 cases while other cases are crying to be heard and cannot get  
14 into court.

15           The resolution is intended to be specific so that  
16 our intention cannot be misinterpreted as our June 25th  
17 resolution later was misinterpreted. I'm sure that there are  
18 members of the board who would rather not take a position. I  
19 respect their concerns. But it's a question of what direction  
20 we think the Legal Services Corporation should go in. Status  
21 quo is not serving the people that we have been asked to  
22 serve. So I urge adoption of the resolution.

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1           CHAIRMAN WITTGRAF: Ms. Pullen, if I may respond, I  
2 share certainly a number of your premises regarding the  
3 purpose for our being here. I just don't share your  
4 conclusion regarding what this does for our credibility. I'll  
5 make one other point that I didn't make earlier. That is, as  
6 we look at all of the reform proposals contained in particular  
7 in the McCollum-Staggers-Stenholm substitute, I look for  
8 example of two or three or four of those having to do  
9 particularly with alleged abuses in the area of agriculture or  
10 use of the Agricultural Workers Protection Act on behalf of  
11 migrant laborers.

12           Then I read that one of the people who has lobbied  
13 all of us as board members consistently for the last nine  
14 months, Libby Whitley, the Assistant Direction for National  
15 Affairs of the American Farm Bureau Federation, writing to the  
16 state farm bureau federations and saying -- and this is a  
17 quote I'm taking from the Congressional Quarterly. I haven't  
18 seen a memorandum so I apologize to Ms. Whitley if the quote  
19 is inaccurate, but I have seen many things that Ms. Whitley  
20 has written and I know, at least, that she does write a great  
21 number of things.

22           The quote is, "At present, we cannot demonstrate a

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1 widespread pattern of abuse in a systematic fashion." Then  
2 she specifically asks for more specific information by  
3 growers' experiences with farm workers' suits. She also  
4 apparently acknowledged in that letter that the General  
5 Accounting Office is in the process of preparing a study  
6 requested by some of these same members of Congress that will  
7 essentially say there have been no real problems with legal  
8 services' attorneys and migrant labor litigation.

9 I have no doubt in my mind that the motivation  
10 behind several of the sections in the so-called reform act  
11 relates to these alleged abuses. We now have the person who  
12 has been spearheading that lobbying effort acknowledging that  
13 she cannot demonstrate at present why it's abuse in a  
14 systematic fashion.

15 With that in mind, I think we are rushing to  
16 judgement. I think we do undermine our credibility. Again, I  
17 state that I plan to vote no on the motion for the adoption of  
18 the resolution.

19 Further discussion?

20 MS. LOVE: Ms. Pullen?

21 CHAIRMAN WITTGRAF: Ms. Love?

22 MS. LOVE: On the drug part, couldn't it be changed

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1 where it's to say that if you're the innocent party, you  
2 shouldn't be evicted in unknowingly what someone else is doing  
3 instead of just not getting involved period? Some of these  
4 people are very innocent. Now, I go along with the resolution  
5 very much so. But this and evicting people out of their homes  
6 when they really are innocent, I can't see it.

7 MS. PULLEN: Well, thank you.

8 CHAIRMAN WITTGRAF: Ms. Pullen?

9 MS. PULLEN: The phrase is those involved in drug-  
10 related criminal activity and that means those involved in  
11 criminal drug-related criminal activity. It doesn't mean  
12 innocent people.

13 MS. LOVE: Oh, okay.

14 MS. PULLEN: The phrase, as I've stated here, that  
15 is what we are endorsing.

16 MS. LOVE: They can help the ones who are innocent.

17 MS. PULLEN: What I'm asking you to do is to view it  
18 in the terminology that is stated here because that is what it  
19 is that I'm asking you to vote on. See, in this we are  
20 expressing the goal that we are seeking. That is to get them  
21 out of the business of cases involving those involved in drug-  
22 related criminal activity.

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1 MS. LOVE: I'm still asking, the innocent, would  
2 legal services help the innocent?

3 CHAIRMAN WITTGRAF: Ms. Pullen, I hate to presume on  
4 Ms. Love's behalf, but from what I know of the McCollum-  
5 Staggers-Stenholm either amendment or the act that we'll be  
6 asked here to endorse, there would be an absolute prohibition.  
7 There is no room for sorting out those who are wrongfully  
8 accused and are being evicted and those who are not.

9 I share, just as reflected in my vote on the  
10 resolution on June 25th, concerned with eliminating the  
11 involvement of legal services attorneys in matters which in  
12 any way would sustain a drug-related criminal activity in  
13 public housing facilities. I do certainly share Ms. Love's  
14 concern for the protection of the individual rights of the  
15 presumed innocent tenants.

16 I don't think that such representation would be  
17 allowed under the Legal Services Reform Act of 1990 as I read  
18 it. If you believe my reason is incorrect, say so. But,  
19 while I can agree with your paragraph, the fifth paragraph of  
20 the preamble, I can't agree again with the resolution because  
21 it endorses something that goes well beyond the paragraph in  
22 the preamble.

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1 Further discussion?

2 (No response.)

3 CHAIRMAN WITTGRAF: Hearing none, we will move to  
4 vote on the resolution. The resolution before us is the one  
5 as distributed and as read into the record. As I've indicated  
6 already, we do plan to vote by roll call.

7 John Collins, are you with us at this point?

8 MR. COLLINS: (Inaudible comment from the phone.)

9 CHAIRMAN WITTGRAF: Ms. Pullen?

10 MS. PULLEN: Mr. Chairman, perhaps since Mr.  
11 Collins' call was not made at the time the resolution was read  
12 to the board, it would be appropriate to have the resolution  
13 read to him whether by microphone or by Ms. Bozell near the  
14 speaker phone so that everyone knows that he is aware of what  
15 he is voting on.

16 CHAIRMAN WITTGRAF: Ms. Pullen, the motion is before  
17 us as moved and seconded. If you would like to read it again  
18 both for the purposes of the record and for Mr. Collins'  
19 benefit, please do so.

20 MS. PULLEN: Mr. Collins, can you hear me? If you  
21 would listen carefully, I would like to read the resolution  
22 that is pending before we take a vote.

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1 MR. COLLINS: All right.

2 MS. PULLEN: Thank you.

3 "WHEREAS, the board of Directors of the Legal  
4 Services Corporation, LSC, supports statutory reform of the  
5 federal legal services program, having adopted a resolution  
6 expressing such support on June 25, 1990; and,

7 WHEREAS the board believes such reform should focus  
8 the limited resources and trust it to the corporation on the  
9 recognized needs of indigent clients and should prevent the  
10 questionable activities of some legal services programs; and,

11 WHEREAS, the board desires enactment of statutory  
12 provisions to retain existing restrictions barring use of LSC  
13 funds and private funds for abortion-related litigation and to  
14 extend those restrictions expressly to the use of Interest on  
15 Lawyers' Trust Accounts for abortion-related litigation; and,

16 WHEREAS, the board further believes statutory  
17 provisions should be enacted to extend similar restrictions  
18 barring LSC programs from engaging in redistricting-related  
19 litigation; and,

20 WHEREAS, the board seeks legislation to bar LSC  
21 programs from participating in cases on behalf of those  
22 involved in drug-related criminal activity; and,

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1           WHEREAS, the board believes lobbying at any level of  
2 government should be barred as an inappropriate activity for  
3 LSC-funded lawyers and a diversion from their mission of  
4 providing day-to-day legal services to indigent Americans;  
5 and,

6           WHEREAS, the board believes the Congress should  
7 enact statutory provisions to apply to the lawyers in LSC  
8 programs the same prohibitions on client solicitation as apply  
9 to lawyers in private practice; and,

10           WHEREAS, timekeeping is required in order to ensure  
11 the delivery of legitimate legal services to indigent people  
12 and to properly effect compliance with the statutory and  
13 regulatory provisions applying to LSC programs; and,

14           WHEREAS, the Board believes that the delivery of  
15 services would be improved by institution of competition for  
16 grants and contracts; and,

17           WHEREAS, reform legislation addressing the concerns  
18 stated above has been introduced as The Legal Service Reform  
19 Act of 1990 by members of Congress, led by the Honorable Bill  
20 McCollum, Harley Staggers, and Charles Stenholm; now,  
21 therefore, be it

22           RESOLVED, by the Board of Directors of the Legal

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1 Services Corporation, that we urge the Congress to bring  
2 needed reform to the federal legal services program by  
3 enacting The Legal Services Reform Act of 1990; and, be it  
4 further,

5           RESOLVED, that the board authorizes the LSC staff:  
6 to provide technical assistance and support to members of  
7 Congress and their staff; to convey the support of the board  
8 for the Legal Services Reform Act of 1990; and to inform  
9 members of Congress about the implications of these and other  
10 proposed statutory provisions concerning the federal legal  
11 services program."

12           That is the resolution.

13           CHAIRMAN WITTGRAF: Mr. Collins, are you prepared to  
14 vote?

15           MR. COLLINS: I am prepared to vote.

16           CHAIRMAN WITTGRAF: Okay. You're first. How do you  
17 vote; yes or no?

18           MR. COLLINS: I vote yes.

19           CHAIRMAN WITTGRAF: Thank you. Mr. Dana?

20           MR. DANA: No.

21           CHAIRMAN WITTGRAF: Mr. Hall?

22           MR. HALL: Yes.

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1 CHAIRMAN WITTGRAF: Ms. Love?

2 MS. LOVE: I'm still undecided. I'm sorry.

3 CHAIRMAN WITTGRAF: Ms. Pullen?

4 MS. PULLEN: Yes.

5 CHAIRMAN WITTGRAF: Mr. Wittgraf votes no. Ms.  
6 Wolbeck?

7 MS. WOLBECK: I have to vote yes.

8 CHAIRMAN WITTGRAF: The Chair's understanding is  
9 that there are four votes yes, two votes no, one vote  
10 undecided and three members not voting. That being the case,  
11 the motion is passed. The resolution is adopted.

12 Further discussion on Agenda Item No. 6?

13 (No response.)

14 CHAIRMAN WITTGRAF: We're prepared then to move to  
15 Agenda Item No. 7. Mr. Richardson?

16 REPORT ON BUDGETARY MATTERS

17 MR. RICHARDSON: Mr. Chairman?

18 CHAIRMAN WITTGRAF: Looking at Agenda Item No. 7, we  
19 do have a number of materials that have been provided to us  
20 already. Perhaps you could summarize Agenda Items A and B  
21 before move to C.

22 MR. RICHARDSON: First of all, I'll give you a quick

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1 overview of where we stand in the first 10 months of operation  
2 in fiscal year 1990. The budget that we are operating under  
3 is \$320 million. At the present time, we have -- when I  
4 speak, I'm only going to speak in terms of millions and  
5 thousands of dollars. I'll drop the down to the minute dollar  
6 off so that we can continue on.

7           The budget as adopted is \$320,593,000. The budget  
8 for the delivery of legal services for the field programs is  
9 \$292,207,000. Through the first 10 months, we have contracted  
10 with their grantees for a total of \$283,670,000. The  
11 remaining of those funds, approximately \$8.5 million, is the  
12 remaining funds that are available for those grantees that are  
13 on month-to-month funding.

14           There is an amount which will be carried over. We  
15 are reviewing that at this time, but that's approximately  
16 \$400,000. The caption 2 on page 37, Support for the Delivery  
17 of Legal Services, the budget is \$17,725,000. We contracted  
18 and spent to date \$17,474,000. The \$250,000 that you see  
19 there is remaining funds.

20           There is a portion of that that will go to month-to-  
21 month grantees. There is also a portion, \$9,900, that will go  
22 for training that was held at Drake. That was held just in

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1 the last couple of weeks.

2 Of course, the big point of concern in our  
3 particular budget is caption 3, Corporation Management  
4 Administration. That is dealing with the operation of  
5 headquarters. It is in two parts, the first being management  
6 and administration. The budget there is \$10,563,000. To date  
7 we have spent 77.45 percent of the budget or \$8,181,000.

8 The additional \$97,000 that is in that caption is  
9 for meritorious grant awards. All that money has been  
10 designated for programs; \$87,000 of it has already been paid  
11 out. That leaves another \$10,000 that is awaiting  
12 distribution of an insurance settlement of a program in South  
13 Carolina. As soon as that is done, there will be a  
14 determination as to where those monies will be spent.

15 Before I go on to the next section, I know that's a  
16 real quick overview, but if you have any questions, I'd be  
17 glad to address them. There's a further breakdown on page 40  
18 that will show, for instance, a breakdown within our budget  
19 category. That is as far as personnel compensation, temporary  
20 employee pay, personnel benefits. I could read each of those  
21 lines, but if you'd like to look at them and you have any  
22 questions, I'd be glad to answer them at this time.

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1           Also, on page 41 it gives you how much money has  
2 been spent per division. It goes in the same budget category,  
3 items that we've been discussing and that I just spoke of.  
4 You'll note, for instance, the Board of Directors through the  
5 July period spent \$137,000; executive office, \$359,000; the  
6 inspector general office was \$152,000; the general counsel to  
7 date is \$101,000; Office of Policy Development, \$420,000;  
8 Office of Human Resources, \$439,000; Office of Financial  
9 Administrative Services, \$1,969,000; Monitoring we spent  
10 \$3,276,000 to date; the Office of Field Services, \$624,000.  
11 With that, those will total your \$8,181,000 that has been  
12 spent in the headquarters operations to date.

13           I realize that is a lot of information to digest  
14 very quickly. I will put forth my offer to each of you again.  
15 I try to send this budget information to you regularly. If at  
16 any time you have any questions, feel free to give me a call.  
17 We'll respond either through the telephone or in writing to  
18 you.

19           CHAIRMAN WITTGRAF: Mr. Richardson, looking at the  
20 FY 1991 budget request --

21           MR. RICHARDSON: You're in the BPAR as far as  
22 developing the '92 budget mark.

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1           CHAIRMAN WITTGRAF: Yes. Although, my question is  
2 going to be a little bit broader. If, as we discussed earlier  
3 and discussed last month -- most of the grantees are on a  
4 calendar basis.

5           MR. RICHARDSON: That is correct, sir.

6           CHAIRMAN WITTGRAF: So, in na sense, the money they  
7 are getting is three months behind the money that everyone  
8 else is getting?

9           MR. RICHARDSON: Yes, sir.

10          CHAIRMAN WITTGRAF: So that sequestration on October  
11 1st should it happen to some extent, would have no immediate  
12 effect on any one of them but only would be effective for  
13 whatever amount, 10, 20, 30, 32, 33 percent on January 1,  
14 1991.

15          MR. RICHARDSON: That is correct, sir.

16          CHAIRMAN WITTGRAF: Then you've mentioned when you  
17 discussed the handout you provided us with earlier that there  
18 were some slight differences in percentage increases for  
19 different components of the Legal Services Corporation's  
20 appropriation.

21                 What, if any, bearing will that have on the greater  
22 or lesser impact of sequestration on legal services programs

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1 or grantees?

2 MR. RICHARDSON: Okay. The original information  
3 that you were sent approximately three weeks ago showed the  
4 sequestration figure on the \$316,525,000 figure. The  
5 sequestration, if it goes into effect without this  
6 appropriation being passed, that would be pretty accurate as  
7 to what it will be. It will be approximately \$223 million.  
8 That's at the 32.8 percent level. We've been told it could go  
9 higher. Of course, we hope for the budget reconciliation  
10 where it will not.

11 Let's say, for instance, that it does go into effect  
12 and this Senate subcommittee figure is passed, the  
13 sequestration will then be based on the \$329 million not \$316.  
14 That will put our budget at approximately \$230,000. What type  
15 of impact that would have on the program?

16 There is a funding formula that will come out of  
17 subcommittee. At present time, the minimum funding level is  
18 \$8.98 per grantee. There are some grantees that are funded  
19 over that. Until we get the subcommittee or the appropriation  
20 language to find out what the new bottom level is, it will be  
21 hard to say how much it will effect each grantee.

22 CHAIRMAN WITTGRAF: When you referred to the

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1 percentages earlier varying somewhat then, could you review  
2 again where they were greater or lesser? Have you calculated  
3 that?

4 MR. RICHARDSON: I have not to the most part. The  
5 bigger increase was in the basic field programs. That was  
6 approximately 4.2 percent. The rest of them were about 4  
7 percent. So that effectively, sequestration would be slightly  
8 less burdensome there at whatever level it occurred?

9 MR. RICHARDSON: Yes, sir.

10 CHAIRMAN WITTGRAF: Where were the percentages  
11 lower; do you remember?

12 MR. RICHARDSON: It seems like it was the the  
13 Clearinghouse. They were about 3.9, right at 4 percent for  
14 the most part.

15 Since we're now speaking about the appropriation for  
16 '91, again I'll review in that the president, in his budget  
17 recommendation, has asked for basically a freeze budget at the  
18 \$316,525,000. Of course, this board requested the  
19 \$343,000,000. In going into the other section, Section III, a  
20 lot of this information is what I have based -- trying to put  
21 together budget marks and suggestions that we could go back to  
22 OMB with.

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1           OMB has been in contact with me in the last two  
2 weeks in regards to the '92 budget mark as to be given to  
3 them. They want us to make sure that it's characterized.  
4 This is a draft budget mark. They don't want to infringe upon  
5 our -- they won't infringe upon our authority to submit our  
6 budget directly to Congress. This is only like a benchmark  
7 for them in consideration in their budget preparation.

8           CHAIRMAN WITTGRAF: At this point, to begin any  
9 discussion of the 1992 budget mark will be probably pointless  
10 until we know how we're going to come out for 1991; would it  
11 not?

12           MR. RICHARDSON: It would other than the president  
13 and OMB is only looking at where you as the board feel like  
14 you're going with the appropriations request. You could do a  
15 couple of different things. You could say we requested  
16 \$343,000,000 for FY 91. We've not taken any action for '92.  
17 You could leave it at that. You could endorse one of the  
18 other figures.

19           None of these are binding as far as that total  
20 budget preparation. We will be expected to comeback with our  
21 hearings, receiving information from PAG, ABA and other  
22 members. We will also develop our budget. It's a nonbinding

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1 budget mark in essence.

2 CHAIRMAN WITTGRAF: When is that requested?

3 MR. RICHARDSON: It's actually requested. It's due  
4 in the budget preparations before October 15th. The call that  
5 I received Thursday of last week is they would like to have it  
6 early this week, if they could get it.

7 CHAIRMAN WITTGRAF: As you know, we haven't had any  
8 discussion as a board let alone received any information in  
9 particular as a board. Looking at October 1 a year from now,  
10 the FY 1992 budget, for us to do anything would not be based  
11 on much at all at this point. But it is necessary, you think,  
12 that we give them a number with which to work?

13 MR. RICHARDSON: Unfortunately, it's the time frame  
14 that we're working with.

15 CHAIRMAN WITTGRAF: Unless there is objection or  
16 thinking to the contrary, my suggestion to Mr. Richardson is  
17 that we stay with the \$343,000,000 figure and use that as the  
18 so-called budget mark figure that is requested by the Office  
19 of Management and Budget at this time.

20 (No response.)

21 CHAIRMAN WITTGRAF: Can you proceed on that basis  
22 then?

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1 MR. RICHARDSON: I will do that; yes, sir.

2 CHAIRMAN WITTGRAF: Thank you. Is there further  
3 discussion regarding the budget?

4 MR. DANA: Mr. Chairman?

5 CHAIRMAN WITTGRAF: Mr. Dana?

6 MR. DANA: A situation has arisen both here at the  
7 Corporation and out in the field dealing with the prospect of  
8 sequestration. What management has done in anticipation of  
9 the sequestration is to defer capital -- well, you heard  
10 Emilia earlier today talk about all of the things we have done  
11 from the hiring freezes, et cetera, to dampen the impact of  
12 sequestration when it arises.

13 The field, as the Chairman has indicated, will have  
14 a delayed impact. That will occur on January 1, 1991, if  
15 there is sequestration. The issue is what do they do in  
16 anticipation? The natural thing to do is to do exactly as the  
17 Corporation has done; to not hire more people, to squirrel  
18 away as much as possible so that they can dampen the impact of  
19 what could potentially be a massive cut in funding starting on  
20 January 1. The only problem with that is that under our  
21 regulations, they are not permitted to carry over into next  
22 year an amount in excess of 10 percent of their appropriation

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1 unless this board gives a waiver up to -- we or the  
2 Corporation actually has authority to give a waiver up to 25  
3 percent.

4 In view of the prospect of sequestration, I have  
5 with the assistance of able counsel and staff and fellow board  
6 members prepared a resolution which I would ask the Chair's  
7 permission to read and hopefully have acted upon.

8 CHAIRMAN WITTGRAF: Mr. Dana?

9 RESOLUTION OF HOWARD DANA

10 MR. DANA: WHEREAS, the LSC regulations governing  
11 fund balances that may be retained from year to year; 45 CFR  
12 Part 1628, permits LSC recipients to retain no more than 10  
13 percent of their annualized support and gives the Corporation  
14 the discretion to permit retention of up to 25 percent under  
15 certain limited circumstances; and,

16 WHEREAS, prudence dictates that the Corporation and  
17 its recipients now prepare for the prospect of significant  
18 reductions in funding in 1991 as a result of sequestration.

19 M O T I O N

20 Now, therefore, be it resolved that the board hereby  
21 finds that the prospects to the sequestration constitutes  
22 extraordinary circumstances that warrant waiver under Part

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1 1628; and that the staff shall approve fund balance waivers  
2 for such programs that may seek to adopt appropriate budgetary  
3 measures to prepare for this contingency.

4 CHAIRMAN WITTGRAF: Is there a second?

5 MR. HALL: Mr. Chairman, I think it's a matter that  
6 should be discussed. I'll second it for that purpose.

7 CHAIRMAN WITTGRAF: The resolution read by Mr. Dana  
8 has been moved by him and seconded by Mr. Hall. Discussion?

9 MR. HALL: Mr. Chairman?

10 CHAIRMAN WITTGRAF: Mr. Hall?

11 MR. HALL: I would first ask probably Mr.  
12 Richardson, who would be the one to know, what effect would  
13 this have on the M&A Corporation; any? I mean, this is  
14 carryover funds, if I understood it. When Congress sets our  
15 M&A they have some dependence that we'll have a carryover that  
16 we'll add into the M&As. Will they set it lower than what we  
17 show that we need?

18 MR. RICHARDSON: Yes, sir. It will not have an  
19 immediate effect on our budget. This year we have -- and I'll  
20 look the exact figure up -- we have receive grant recoveries  
21 in the amount of \$518,000. That amount will be reduced next  
22 year, of course, with this.

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1           But as far as immediate for what effect it has on  
2 the -- it won't have an effect until '92. Then it would have  
3 an effect on the M&A and they would make that much less in  
4 funds before carrying on the Corporation's business.

5           MR. HALL: Well, it's going to do a terrific amount  
6 of good to protect the recipients and to let them deal with  
7 the sequestration. Is it going to devastate our M&A that much  
8 not to do this? I mean, it is something that we can live  
9 with; is it not?

10           MR. RICHARDSON: I feel it is something we can live  
11 with. We have talked about this in the Corporation in the last  
12 two weeks to a degree. Of course, Congress bases the amount  
13 of money that is appropriated from M&A based on our carryover.  
14 Of course, we report that to them as we did in this office,  
15 each office. Next year they will ask us for an approximation,  
16 projection of carry over. At that point, it will be less. If  
17 they act as they have in the past, then it could create  
18 increased funding for M&A.

19           MR. HALL: So what you're saying again is that in  
20 the past we've known we've had so much carryover so they set  
21 our budget at a lower mark because we have that much extra.  
22 If they know we don't have that much extra, they may set our

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1 budget at a higher mark.

2 MR. RICHARDSON: They could, yes.

3 MR. HALL: Mr Chairman, from reading the resolution,  
4 I understand that the extraordinary circumstances would be the  
5 possibility or prospect of sequestration and not the actual  
6 act itself. So that were the funds not to be cut, the  
7 recipient would still be allowed to keep the 25 percent of the  
8 carryover. I guess what I'm really asking is a clarification  
9 on that from Howard. That's my understanding of it, Howard.

10 MR. DANA: That's correct. The reason for it is  
11 that without this authorization programs will spend in order  
12 to help the poor within their area right up to the 10 percent  
13 restriction and it may be over it. What we want them to do  
14 and encourage them to do is defer expenses, if they can, in  
15 order to mitigate the impact that this is going to have on  
16 January 1.

17 If Congress, in a session that they might hold  
18 between Thanksgiving and Christmas, as they have -- we've  
19 heard that's a possibility; they did that in 1982. If they  
20 were to restore funding and the programs had sequestered or  
21 had deferred spending everything they could in order to  
22 provide for an eventuality that, as happens, didn't occur,

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1 what we don't want them to do is rush out and in the last two  
2 weeks of December spend 15 percent of their budget because  
3 they would otherwise have to send it back to the Corporation.  
4

5 We would want them to retain it and hopefully make  
6 up for the lack of service that they have cut back on in the  
7 weeks prior to that event. It seems to me that if we don't  
8 make the prospect of sequestration the triggering event, and  
9 we make sequestration the triggering event, we could really  
10 induce some rather unfortunate expenditure of funds in order  
11 for people to not to have to give up resources that they have  
12 deferred.

13 So that's the reason for making that the triggering  
14 event rather than the sequestration.

15 MR. HALL: Is it like a one-time only, like the  
16 following year it would drop back to a 10 percent?

17 MR. DANA: Yes. This is just -- I mean, assuming  
18 we're here and we have this situation again, this is a logical  
19 motion. But this motion would be understood to apply only to  
20 this fall.

21 CHAIRMAN WITTGRAF: Mr. Hall?

22 MR. HALL: I was just going to say I would get

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1 somebody to put a pencil to it and see what the figures are.  
2 I guess it doesn't matter if Mr. Richardson feels that it  
3 isn't going to effect the running of the Corporation adversely  
4 or any other function we have to a great degree.

5 MR. RICHARDSON: It is really undetermined at this  
6 point. We're basing everything on subjecture and the different  
7 scenarios. You were asking if -- we do submit the carryover  
8 projection to Congress. If we submit that the carryover is  
9 reduced next year \$500,000, they could fund us more.  
10 Conversely, they may not.

11 I really can't tell you at this point as far as  
12 putting some information together, we really don't know what  
13 type of money we could get back until we get the audit reports  
14 in in March and April to find out how much money we are  
15 talking about.

16 CHAIRMAN WITTGRAF: Mr. Dana, if I understand  
17 sequestration correctly, we're only a matter of a week or so  
18 away. With that in mind, I guess I have a question similar to  
19 Mr. Hall's. Would there be any problem with making this  
20 effective upon sequestration?

21 MR. HALL: It being only a week away.

22 CHAIRMAN WITTGRAF: It, sequestration, being only a

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1 week away; right.

2 MR. DANA: In the abstract, no. The difficult is  
3 that Congress is -- those in Congress talking about a short-  
4 term CR that would get us to, I think, October 15th. So they  
5 could put off the fateful day for two more weeks in order to  
6 achieve a compromise.

7 I guess I would -- really, the imminent prospect is  
8 some kind of severe cut that causes the problem. If that were  
9 to be removed sufficiently in advance of year end so as to  
10 permit a rational expenditure of any squirreled away funds,  
11 that might be a way to deal with it.

12 So if you were thinking of putting in a triggering  
13 mechanism, I would add language such as the following:  
14 "Notwithstanding the above, if it is determined that  
15 sequestration will not occur, and that determination is made  
16 on or before November 1, 1990, "this motion shall be null and  
17 void."

18 That way if Congress solves their problem between  
19 now and November 1, programs that have begun to squirrel away  
20 will be able to deliberately and appropriately spend their  
21 fund balances down to the permitted 10 percent. They'll have  
22 two months to do it in.

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1           Otherwise, the concern is that sequestration may be  
2 a dark cloud out there and no one will squirrel anything away.  
3 No one will behave as they would normally for fear that they  
4 would be just building up a fund balance that they would have  
5 to return to the negotiation.

6           CHAIRMAN WITTGRAF: Your suggestion seems to make  
7 some sense. I wondered, too, if there ought to be some  
8 definition of sequestration, keeping in mind that we had  
9 sequestration this year of some 4 percent which hardly counts  
10 compared with the sequestration threats that are before us  
11 today, a trigger both in terms of time and in terms of extent.

12           MR. DANA: Part of our problem is that we are faced  
13 with the prospect of no meeting in October. So while we all  
14 would anticipate greater clarity by them, we hope not to  
15 convene. So I'm drafting something that hopefully will cover  
16 that. I'd be happy to amend it in such a way as to deal with  
17 your concern.

18           I candidly do not anticipate that programs are going  
19 to be squirreling away large sums of money. I don't think  
20 they exist out there if there's no real reason to do so. So I  
21 think it's possible that this is a possibility that is not  
22 likely to occur, given the need for legal services in the

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1 field. But if the Chairman would like, I would be prepared if  
2 the seconder would to add that caveat to the end of the  
3 motion.

4 CHAIRMAN WITTGRAF: Yes. In the meantime, Ms.  
5 DiSanto, I think, has some comments.

6 MS. DiSANTO: Yes. Just picking up on the two  
7 points actually just made by Mr. Dana and Mr. Wittgraf, two  
8 points just for consideration for the board, there's no  
9 question that 1628 allows the Corporation discretion to allow  
10 them to keep up to the 25 percent of their funds.

11 Two points that we might want to consider: first of  
12 all, a triggering level, whether there is a certain level of  
13 sequestration at which the discretion which would be across  
14 the board or up to the 25 percent level when you come in to  
15 play; secondly, is that the action taken -- whether or not we  
16 should examine what type of action will be taken by a program  
17 in order to attain a particular fund balance.

18 As you mentioned, Mr. Dana, the Corporation has  
19 suspended hiring, notified temporary employees that their  
20 contract would end, eliminated per capital expense, things of  
21 that nature. How would the Corporation look upon a program,  
22 for instance, going from a five-day work-week to a four-day

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1 work week? Would that be an acceptable action in order to  
2 attain a higher level unbalance?

3 MR. HALL: Mr. Chairman?

4 CHAIRMAN WITTGRAF: Mr. Hall?

5 MR. HALL: I think you would have to leave that up  
6 to the good judgment of the recipients. I mean, we certainly  
7 are not in a position to tell them how to go about saving for  
8 this.

9 I didn't mean to cut in on you, Howard. It was your  
10 answer.

11 MR. DANA: That is my answer. Thank you.

12 CHAIRMAN WITTGRAF: Further discussion?

13 (No response.)

14 CHAIRMAN WITTGRAF: Mr. Dana, perhaps you could read  
15 again with what I take to be a friendly amendment for which  
16 I'll ask unanimous consent.

17 (No response.)

18 CHAIRMAN WITTGRAF: Hearing no objection, I'll  
19 assume that the amendment is incorporated into the or the  
20 motion. If you could share that with us again before we vote,  
21 I think that would be helpful for all.

22 MR. DANA: Yes. The language that would be added at

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1 the end is, notwithstanding the above, if it is determined by  
2 November 1, 1990, that there will be no sequestration, this  
3 motion shall be of no force and effect."

4 CHAIRMAN WITTGRAF: Further discussion?

5 MR. HALL: Mr. Chairman?

6 CHAIRMAN WITTGRAF: Mr. Hall?

7 MR. HALL: Instead of saying determine that there  
8 will be no sequestration, is that the place where you put in  
9 the number, 25 percent or 50 percent or 33 percent?

10 MR. DANA: If you were to design something, you  
11 could do it in there. My concern is that if we have a 10  
12 percent sequestration or a 12 percent sequestration, in  
13 programs you were able to increase their fund balances  
14 accordingly so as to account for that, you would get up to the  
15 20 percent. It is only, in effect, a -- any kind of  
16 sequestration in excess of -- well, any sequestration you  
17 would permit -- would justify a -- I just thought of a way to  
18 deal with this.

19 CHAIRMAN WITTGRAF: It seems to the Chair, at least,  
20 that something like a 5 percent threshold anyway would be  
21 appropriate.

22 MR. DANA: The idea might well be that if there is a

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1 sequestration amount arrived at that is less than 15 percent,  
2 that the fund balance be permitted to rise to the level of the  
3 sequestration over and above 10 percent. Did anybody follow  
4 that? I've got a suggestion that might respond to your  
5 concern.

6 CHAIRMAN WITTGRAF: Mr. Dana?

7 MR. DANA: If, during October, it is determined that  
8 there is going to be a sequestration level of less than 15  
9 percent, then the 25 percent figure that this motion  
10 authorizes could be reduced by the extent to which the  
11 sequestration level is less than 15 percent.

12 So that, by way of example, if the sequestration  
13 level turns out to be 10 percent, and you know it by November  
14 1, then fund balances could rise to 20 percent. If the  
15 sequestration level turns out to be 14 percent, then fund  
16 balances could rise to 24 percent.

17 Does that make some rough justice sense?

18 CHAIRMAN WITTGRAF: Is that a one-to-one ratio?

19 MR. DANA: It is. In other words, if we know by  
20 November 1 that the sequestration level is 15 percent or  
21 greater, then the 25 percent becomes the ceiling. If it's  
22 less than 15 percent, then the ceiling permitted by this

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1 resolution would be reduced by the amount below 15 percent  
2 that the sequestration level is.

3 CHAIRMAN WITTGRAF: I'm only a little concerned that  
4 you're able to put this into written form. I think there is  
5 some support for your motion. Perhaps if you and Mr. Hall  
6 could work on drafting it, we have, before we recess for the  
7 day, another client board member from northern Indiana Legal  
8 Services, Rosie Newsome, who has asked to have a few minutes  
9 to address us.

10 Ms. Newsome, if you would like to do so at this  
11 time, this would be a good opportunity in light of this other  
12 matter we're wrestling with. Would you introduce yourself  
13 again beyond what I've said?

14 PRESENTATION OF ROSIE NEWSOME

15 MS. NEWSOME: Yes. My name is Rosie Newsome. I am  
16 a client board member. I am from northern Indiana Legal  
17 Services, South Bend, Indiana.

18 CHAIRMAN WITTGRAF: Excuse me, Ms. Newsome. How  
19 large a geographic area are you serving?

20 MS. NEWSOME: We have a 14-county area.

21 CHAIRMAN WITTGRAF: South Bend and where else?

22 MS. NEWSOME: Indiana. We have South Bend;

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1 Lafayette, Indiana. We have Alcar County. We have Ostar  
2 County. We have Mcgranger. We have --

3 CHAIRMAN WITTGRAF: That's good. I just wanted the  
4 board members to have a sense of which part of the state.

5 MS. NEWSOME: We do have -- it's the northern part.  
6 I would just like to say I'm very disappointed today. I live  
7 in South Bend housing, which is a public housing complex. I'm  
8 a mother of 14 kids. I'm the grandmother of 11. I'm a great  
9 grandmother of 12. I don't very well see how this board, some  
10 of this board could sit here and say that a parent should be  
11 evicted for what a child do.

12 Cocaine has no name other than the word cocaine. It  
13 has no color, no creed, no age, not one thing does it have.  
14 But it is somebody out there that is giving it to our kids,  
15 not just mine, not just Hispanics, not just the poor. It is  
16 rich as well. You might be able, the rich, to go and get  
17 another; the poor can't.

18 Now you're saying you're representing the poor.  
19 You're making a statement that a mother has no right to be  
20 represented if her son or her daughter is accused, not found  
21 guilty, accused of handling or being caught dealing with  
22 someone with drugs.

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1 I know you did not listen to the Rabbi. You didn't  
2 hear him. If you didn't hear him, I'm not expecting you to  
3 hear me. I had no intention of saying anything because I just  
4 knew wherever you was chosen from to come and sit on this  
5 board, you had poor people and needy people at heart.

6 I want to thank you for what you did because I had  
7 an opportunity today to see something that a lot of poor  
8 people didn't see. I see who accepted it and I see who did  
9 not accept it. But I want you to think about it and pray  
10 about it when you go home. You have put those people in the  
11 street with the homeless people, people that are innocent,  
12 people that has no control.

13 I'm sitting here right now when I left my FCC  
14 meeting trying to seek information that would help 75 people  
15 that I did not want to cause any conflict on my program of  
16 standing a chance of losing their funds to represent them,  
17 thinking I could get information here.

18 But instead I find that it has been endorsed firmly  
19 that this should happen to these people. We have people that  
20 have been evicted from their home with no warning that had  
21 nobody to defend them. I'm going to try and defend them. I'm  
22 going before the judge with them because I know they have a

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1 right to be represented, but the same thing you say they don't  
2 have that right.

3           You need to think about it and put yourself in that  
4 predicament. I didn't see anybody up there say today or say  
5 to these people that's here to beg you to think about these  
6 poor people that we're all here to represent. I didn't hear  
7 any of you say anything about the president should be removed  
8 because his son has committed a crime. Nobody said it. But  
9 there's money. That's not the poor.

10           I just want you to think about what you've done.  
11 I've been asked to cut short because I could go so far. There  
12 will be another time. I have come before two of the members  
13 that's here and I will be back again before this part of the  
14 board. But I want you to think about it and pray on it when  
15 you get home because you have made a lot of innocent people  
16 homeless for no reason.

17           Thank you. If you have any questions to ask me, I'm  
18 here.

19           CHAIRMAN WITTGRAF: Thank you, Ms. Newsome. Did  
20 anyone have any questions at this time for Ms. Newsome?

21           (No response.)

22           CHAIRMAN WITTGRAF: Thank you very much.

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1 MS. NEWSOME: Thank you.

2 CHAIRMAN WITTGRAF: I'll give Mr. Dana just a couple  
3 more minutes. In the meantime, let me express on behalf of  
4 the board thanks to a man who I think is hiding in the back  
5 there, Jonathan Asher, who has had the dubious distinction of  
6 being stuck with an awful lot of the planning and preparation  
7 for our being in his neighborhood today and tomorrow.

8 Mr. Asher, if you haven't met him already, you will  
9 meet him tonight and tomorrow. He's the program director for  
10 Legal Aid Society of metropolitan Denver. Not only has he  
11 provided wonderful weather, but he has provided what is going  
12 to be a productive two days for us, I think. We're looking  
13 forward particularly to tomorrow. We do thank you very much.

14 Ironically, you once encouraged me to have us come  
15 to Denver. Little did you know that it would happen.

16 Mr. Dana, I have one other possibility. We will  
17 simply recess until tomorrow morning. We have a little bit of  
18 business in open session as well as a little bit of business  
19 in closed session. Are we being unfair to you?

20 MR. DANA: I hope not. Let me try it and see if  
21 this does it.

22 CHAIRMAN WITTGRAF: Mr. Dana?

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1           MR. DANA:     Notwithstanding the above, if it is  
2 determined by November 1, 1990, that there will be no  
3 sequestration, this motion shall be of no force and effect.  
4 If prior to November 1, if it comes known that there will be a  
5 sequestration amount of less than 15 percent, then the 25  
6 percent fund balance authorized by this resolution shall be  
7 reduced by the percentage amount that the sequestration level  
8 is less than 15 percent.     (By way of example, if the  
9 sequestration level is determined to be 13 percent, then this  
10 resolution shall authorize a fund balance of 23 percent.)

11           CHAIRMAN WITTGRAF:   And that would follow after the  
12 preamble and the resolution portion that you read previously.  
13 I'm not recalling it well enough at this point, nor are my  
14 notes nearly good enough, is there anything in the early part  
15 of the resolution that this is a mandatory requirement or  
16 rather that it's a voluntary option that's available to  
17 grantees?

18           MR. DANA:     It's is clearly a voluntary -- to build  
19 up a fund balance is entirely voluntary.     This will permit  
20 them the option of building a fund balance above 15 percent,  
21 10 percent.

22           CHAIRMAN WITTGRAF:   Mr. Dana, I think with all due

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1 respect to you and certainly not intending any criticism,  
2 perhaps it would be best if we put that in some form that  
3 everyone would have an opportunity to review and then that we  
4 would move the final consideration in the morning when we  
5 reconvene.

6 MR. DANA: We will be reconvening in public?

7 CHAIRMAN WITTGRAF: Yes. We would have to at a  
8 minimum to go into closed session. But we will for the  
9 purpose of completing consideration of your resolution.

10 MR. DANA: Fine.

11 CHAIRMAN WITTGRAF: At this time, our meeting of the  
12 Board of Directors of the Legal Services Corporation will be  
13 recessed until 8:30 a.m., Monday, September 24, 1990, either  
14 in this Sage Room or, if this is not available to us which it  
15 may not be, in another room in the hotel.

16 For purposes of our guests, as suggested already by  
17 Mr. Dana's and my colloquy, the only order of business that  
18 we're intending in open session is a completion of our  
19 consideration of the resolution that we've had under  
20 discussion the last few minutes.

21 When we completed that, we will, then, I anticipate,  
22 be going into closed session until approximately 9:00 to 9:30

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