

LEGAL SERVICES CORPORATION  
BOARD OF DIRECTORS  
MEETING

March 26, 1990

The Old Colony Inn  
625 First Street  
Alexandria, Virginia 22314

Board Members Present:

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

Staff Present:

Terrance J. Wear, President  
Timothy Shea, General Counsel  
Maureen Bozell, Secretary  
David Richardson, Comptroller

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

(9:07)

1  
2  
3 CHAIRMAN WITTGRAF: Ladies and gentlemen, before we  
4 begin this morning, it is my pleasure to call upon Father Jack  
5 Bederson.

6 FATHER BEDERSON: (Invocation).

7 CHAIRMAN WITTGRAF: As I think most of you realize, we  
8 have a very full day scheduled. We don't want to do a  
9 disservice to anybody by causing anyone to have less time than  
10 they believe is allotted to them. It is already nine or ten  
11 minutes after 9 o'clock.

12 I have just a couple of comments I wish to make, and I  
13 can assure everybody that we if start, let's say 15 minutes  
14 late, that the whole schedule will move back 15 minutes so that  
15 no one is any worse off in terms of the time allotted to him,  
16 her or them.

17 Let me begin by saying that on behalf of the Board, I  
18 thank you for joining us today. We indicated in our board  
19 meeting before many of you, on February 12th, we are a new  
20 board. We are sincerely interested in learning both about where  
21 the Legal Services Corporation has been and, in the judgment of  
22 several of you, where the Legal Services Corporation, its funds,

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1 and its grantees, should be going.

2 As we progress today, we're going to shift the  
3 structuring just a little bit, particularly in the areas of the  
4 child support, the drug and the agriculture issues, asking the  
5 two different panels of presenters to appear together.

6 It seems to me that for the members of our Board, we  
7 can learn more, learn better, if there is an interchange between  
8 people who apparently have opposing or different ideas in those  
9 issue areas. So, if those of you who are affected in those  
10 three areas in the presentations in those areas, can plan  
11 accordingly, we would appreciate it very much.

12 Also, as you have noted, the blocks are essentially  
13 one-hour blocks of time with panels or presenters from two  
14 different perspectives, or more perspectives, I hope there are  
15 more than just two in some instances. I think that some of the  
16 board members, if not all of the board members, will have some  
17 questions they would like to address to the different  
18 presenters.

19 So, I would suggest, if at all possible, looking at an  
20 hour block of time, that the presenters try, or if they are just  
21 in a half-hour block of time, try to complete their  
22 presentations is something less than the allotted time, so that

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1 there is time available for any questions or any comments from  
2 board members.

3 It is not going to be possible, I'm afraid, for any of  
4 you to ask questions of one another. I am afraid on this  
5 occasion the questions, and the questioning, and the commenting  
6 will have to be limited either to the members of the board,  
7 here, or the presenters themselves, at a given point in time, in  
8 case there is any interaction or response in a particular area.

9 We are going to have to stay strictly with the clock,  
10 to treat everyone equally. Please don't take it personally, but  
11 if you find, as many of us do, that we talk on beyond our  
12 allotted time, that I may cut you off. As I say, just accept  
13 that as part of the way that we have to get through the day, and  
14 not as any offense either to you personally or to the point of  
15 view that you are representing today.

16 One final comment before we begin, I think some of you  
17 know, if you don't let me take this opportunity to mention to  
18 you that our president Terrance J. Wear, has in the last few  
19 days, submitted to our Board, his letter of resignation, with  
20 his resignation being effective June 30 of this year.

21 I anticipate that the Board will act on his letter  
22 tomorrow, but with that in mind, I think we, as a board, will be

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1 very receptive to your ideas regarding a new president. An  
2 ideal president should include certain characteristics, perhaps,  
3 and your thoughts regarding those characteristics will be  
4 appreciated.

5 I would also make this point, and one that we will try  
6 to make time and again to you, if any of you have people as the  
7 presidential search process begins, who should be included in  
8 that process, please do not hesitate to suggest to us, as board  
9 members, or to the executive office of the corporation, names of  
10 people whose applications for the presidency should be sought.  
11 Or, please do not hesitate to encourage to make applications  
12 themselves.

13 I think it is fair to say that this board does not  
14 have any candidate or any slate of candidates in mind to succeed  
15 the outgoing president, that we are very much open-minded, and  
16 we very much need your assistance in our search.

17 Having said those things, and with the hour  
18 approaching 9:15, let me ask the first panel to come forward,  
19 please.

20 PRESENTATION OF JOHN CURTIN

21 MR. CURTIN: Thank you for the opportunity to address  
22 you. Some of you I already know and others of you, I hope to

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1 meet over the next few years. My name is John Curtin. I'm the  
2 president-elect of the American Bar Association.

3 I have the privilege of addressing you this morning  
4 about the American Bar Association's views on some of the issues  
5 that you will be facing over the next few years. I have a  
6 written statement. I am not going to read from that statement.  
7 I'm going to outline some of the points that I think may be most  
8 helpful to you.

9 If I have some time, I will talk a little bit about  
10 monitoring, which is in my written statement, but I don't plan  
11 on spending an extensive amount of time on that subject in my  
12 oral remarks.

13 At the outset I should perhaps say that I have been  
14 involved with various legal services issues on this board since  
15 approximately 1980, and over that time period there has been a  
16 considerable amount of tension, and a considerable amount of  
17 controversy, and a considerable amount of what I might call  
18 divisiveness.

19 I regret that. I regret the times when it reached the  
20 level of acrimony. I hope that this board will take the  
21 opportunity of putting some of that history behind and working  
22 with the groups that so desperately want to provide legal

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1 services to the poor, in the most effective and efficient  
2 manner. You have that opportunity. I am sure you will accept  
3 that opportunity.

4 My first point is that I would hope you adopt a long-  
5 range plan. Having just been through the process as president-  
6 elect and chairing a committee of the American Bar Association,  
7 which created a mission statement, adopted certain goals,  
8 decided on certain priorities, and made judgments as to  
9 strategies to achieve those priorities, I hope that the board  
10 will also focus on such a need.

11 It is important to avoid a lack of direction, to avoid  
12 the potential for conflict. We need a plan which will create a  
13 support base which is wide in nature, rather than narrow.  
14 Obviously the starting point of the plan is the statute, to  
15 provide equal access to the system of justice in our nation for  
16 individuals who seek redress of grievances.

17 Equal access would be your mission, I would hope, and  
18 your goals and your priorities should be directed towards  
19 achieving equal access.

20 Goals and timetables need to be adopted fairly soon.  
21 Issues such as whether or not you will adopt what has been, at  
22 least an original approach, and has been urged on prior boards,

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1 the concept of at least two legal services lawyers for every  
2 10,000 poor people. This is something that I hope you will  
3 address soon, and will consider carefully.

4 Secondly, funding. We have been involved in  
5 suggesting levels of funding to the board and to the Congress of  
6 the United States for a considerable period of time. It is no  
7 secret that after sequestration of the funds, pursuant to Gramm-  
8 Rudman, the level of funding is approximately \$5 million less  
9 than peak funding of \$321 million which occurred back in 1981.

10 Given your own battles with purchasing power, you are,  
11 I'm sure, aware that that number, as a matter of purchasing  
12 power, is quite substantially below what its equivalent was in  
13 1981. It would take, I'm told, approximately \$477 million to  
14 have the equivalent purchasing power that \$321 million had in  
15 1981.

16 Obviously, there have been changes and an even higher  
17 amount of funding would be necessary in order to deal with  
18 problems such as an increase in the poor, changes in the support  
19 structure, that sort of thing.

20 The need for legal services had increased as the  
21 number of poor has increased. Most of you are aware, I am sure,  
22 of a number of legal need studies that have occurred. I suppose

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1 you should think about how, if you are going to have a program  
2 for serving the poor, that it would be usefully to see what  
3 their needs are, at least at the outset.

4 Most of the studies, including one in my own state of  
5 Massachusetts, and a Maryland study, come up with numbers that  
6 indicate between 15 and 20 percent of the legal needs of the  
7 poor are being served. Whatever the precise is, it is clear  
8 that despite the best efforts of an awful lot of people, their  
9 legal needs are not being served.

10 So, as a result of a variety of practical  
11 considerations, the American Bar Association, despite the fact  
12 that this would not even reach the purchasing power level of  
13 1981, recommends a funding level of \$401.1 million, which is a  
14 little bit -- it is fairly close to the approximate amount that  
15 was targeted by the authorizing committee of Congress.

16 The deceptively exact nature of that number is reached  
17 by applying inflation figures to the 1984 level, and coming up  
18 with that number. It is not going to be enough to assure  
19 minimum access, but given the practical budgetary constraints,  
20 we think it is a number that should be pushed hard for by this  
21 board.

22 A third point. The basic premise of the system of

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1 staff legal services, from the outset of the provision of that  
2 form of service, has been local control by local programs.

3           The basic issue of whether we would have national  
4 association directing on a national basis was decided a long  
5 time ago. The local program control has been a central  
6 principle of providing services throughout this country.

7           The majority of the boards, as you are undoubtedly  
8 aware of, are mainstream state and local bar representatives who  
9 are active in their communities, who are aware of the conditions  
10 within their communities. They know best, because they are part  
11 of the community, what the needs are of the community.

12           It is hardly debateable that the needs of Cody,  
13 Wyoming, are different than the needs of Boston, Massachusetts.  
14 To oppose similar case loads or artificial national standards on  
15 programs throughout the country ignores the diversity of local  
16 needs. The south Bronx is not New Mexico.

17           So I would urge you to give careful consideration to  
18 the concept of earmarking. Earmarking, in our view, is  
19 inefficient and inappropriate. There is only a finite number of  
20 dollars available for representation. If you oppose national  
21 standards or have specific earmarking, then you will force some  
22 programs to spend some of their money on representation which

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1 they don't need, and to preclude them from spending money on  
2 programs that they do need.

3           Taking the child support, which I know is something  
4 that is in front of you, you know that nationally from 1982 to  
5 '89, the cases handled increased by some 27 percent. You also  
6 know that the state governments spent about \$365 million, the  
7 federal government spends about \$800 million on child support  
8 enforcement. Those are very substantial numbers. That does not  
9 mean that enough is being done.

10           My suggestion to you is that should not tie the hands  
11 of local boards, to require that they spend some of their finite  
12 resources in a particular manner such as on child support.

13           The same thing would be true of some of the issues  
14 raised by drug control problems. If the concept is  
15 understandable at all, which is frankly somewhat difficult in  
16 terms of accused relationships, and terms which would require a  
17 considerable amount of interpretation. It's still an attempt to  
18 force a local group to pick a particular way of spending their  
19 money, and they may or may not have need for it.

20           The urban communities may have an entirely different  
21 problem with drug issues than the rural communities. Similarly,  
22 the same point is true, I think, with respect to noncorporation

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1 funds. That is, why tie the hands of those on the local level  
2 who, because of the scarcity of resources, are out trying to  
3 raise money from a variety of sources?

4 Why should they be told by this group that another  
5 donor who may have different interests and different needs,  
6 should be tied with -- hands should be tied with respect to the  
7 use of the money?

8 Accounting systems are in place around the country. I  
9 was a member of a state legal services board, just like you. We  
10 were able to determine the segregation of the funds. I see no  
11 reason why it shouldn't be true of federal accounting problems.

12 Competitive bidding is another issue. There is a  
13 risk, a risk that efficiency and cost, not quality, will become  
14 a criterion. There is a risk that it will wipe out what is  
15 clearly an effective system of staff offices and specialized  
16 back-up systems, and result in a hodge podge of inexperienced  
17 providers.

18 Those of us who have been involved in pro bono  
19 programs know our dependency on that staff programs for things  
20 like intake, for support, for specialized information, for  
21 training and the need for evaluation. So, I would suggest to  
22 you that as in the criminal indigent defense system where this

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1 has been tried and where studies have indicated it has been  
2 unsuccessful, you should look at that data before you move to  
3 that kind or program.

4 So I see the red light has gone on. We have a red  
5 light system in the house of delegates in the American Bar  
6 Association. So let me just close by saying that the board and  
7 the staff have been, unfortunately to use a phrase, at war with  
8 themselves, with the organized bar, with staff people, with  
9 providers of legal services.

10 I welcome the fact that this board is having these  
11 hearings and is looking with an open mind at various issues. I  
12 hope that this board will be able to bring together the  
13 disparate elements that really want to provide legal services to  
14 the poor with a new enthusiasm and a new goal and a new effort  
15 to try as efficiently and effectively, and as happily as  
16 possible in the future.

17 MR. COLLINS: Mr. Chairman?

18 CHAIRMAN WITTGRAF: Mr. Collins?

19 MR. COLLINS: Is it in order for me to ask a question?

20 CHAIRMAN WITTGRAF: I think at this point, if we  
21 could, I'd rather let the panel finish, Mr. Collins.

22 MR. COLLINS: Well I reserve my right to ask some

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1 questions at the end of this. I, myself, think it would be much  
2 more appropriate if we ask questions after each speaker. If  
3 that's what you choose, then we'll be patient.

4 CHAIRMAN WITTGRAF: Thank you, Mr. Collins.

5 PRESENTATION OF F. WILLIAM MCCALPIN

6 MR. MCCALPIN: Thank you, Mr. Chairman, ladies and  
7 gentlemen. I am F. William McCalpin. I appear before you today  
8 as the incumbent president of the National Legal Aid and  
9 Defender Association.

10 Our association, founded in 1911, includes as members,  
11 and I represent here today, 741 civil legal aid programs; 379  
12 defender programs who represent indigents accused of crimes; 191  
13 associate programs which provide the service on less than a  
14 full-time basis, and just over 1,000 individual members, 80  
15 percent of whom are lawyers in the United States.

16 We provide our members information, training,  
17 technical and management assistance and, perhaps, most important  
18 malpractice insurance at what is said to be the lowest available  
19 rate in the United States for that kind of protection. We  
20 provide these services to our members as they provide high  
21 quality legal services to the indigent.

22 As you will hear today, we are clearly not the only

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1 entity in the field serving those needs, but perhaps I can bring  
2 to you a perspective which was somewhat different, somewhat  
3 unique from others who will appear before you, because I was  
4 once privileged to sit where you sit today.

5 I was confirmed as a member of your board in May,  
6 1979, elected chairman in 1980, and served until December 31,  
7 1981. From that perspective I had intended to touch briefly,  
8 unfortunately, four points, but your chairman's announcement at  
9 the beginning of this session prompts me to try to squeeze in a  
10 fifth comment, if I may.

11 The first has to do with your role in making the  
12 policy of the Legal Services Corporation. That is your right,  
13 your prerogative, your privilege, your obligation. I suggest to  
14 you that in doing it, you insist that your staff bring to you  
15 fully developed proposals for your action, proposals which, of  
16 course, comply with the act and the regulations.

17 We are familiar in this day and age with impact  
18 statements, environmental and other matters. I suggest to you  
19 it is equally important that they provide you with information  
20 of the impact of the action you may take on the persons affected  
21 by your action; that they give you some idea of the cost benefit  
22 ratio with respect to the actions which are proposed to you and

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1 which you will take.

2 The only way I submit that you can effectively  
3 accomplish this is to require the staff to consult in advance  
4 with the people who will be affected by your actions, so that  
5 you will have a clear understanding when you act of the effect  
6 of the actions which you take.

7 Second, Jack didn't have time to touch on monitoring  
8 and evaluation, let me do so. As you will understand,  
9 evaluation is required by section 1007 D of the Legal Services  
10 Corporation Act. I hope that you will return to the era when  
11 evaluation and monitoring was therapeutic and not punitive.

12 I hope that you will insist on evaluators who know  
13 something about legal services, to look at the product and the  
14 process of the programs in the field and not simply persons who  
15 are accountants looking at numbers.

16 The legislative history of the act indicates that  
17 Congress intended the Corporation and the grantees to agree on  
18 the evaluators and monitors. I submit to you that has not been  
19 done in the recent past, and to return to the era which Jack  
20 Curtin hopes we will all return. I think that that will be an  
21 important step.

22 Third, let me touch from a different perspective on

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1 the concept of local decision making. This comes about in areas  
2 not only in substantive law, as Jack referred to, but also in  
3 the delivery mechanism to be employed. I submit to you that  
4 that is another important aspect of local decisionmaking.  
5 Whether it shall be entirely a staff operation, entirely a  
6 private bar adjudicate-type operation, or a mix of those  
7 elements. The bar, which is the majority of local board along  
8 with the clients, are uniquely qualified to make those  
9 decisions.

10 I submit to you also that the idea of local  
11 decisionmaking is tied to the requirement of section 1007 A  
12 (2)(c) of the act that recipients who are local programs  
13 establish priorities. There is that requirement in the act.

14 We have all heard charges that these programs are  
15 engaged on a wide scale in social engineering and that they are  
16 not meeting the real needs of the clients. I have two responses  
17 to those charges. First, visit the local programs. Go out  
18 yourselves and see what, in fact, those people are doing. They  
19 will welcome you.

20 I can say to you that the Tucson program was greatly  
21 pleased and flattered that Mr. Erlenborn took the opportunity  
22 when he was in that area two weeks ago to go see that program,

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1 and they profited greatly and their morale was greatly improved  
2 to know that a member of your board was interested enough to  
3 come in and see what, in fact, they were doing.

4           Hopefully, he will have obtained some information  
5 about what they are doing as a result of that visit. My second  
6 response is I hope that you will facilitate the client input in  
7 the local decisionmaking. Ten years ago we funded a National  
8 Clients Council, which supported the activities of clients in  
9 the local programs around the country.

10           Some years ago that operation was defunded by a  
11 predecessor board. I hope that you will reexamine that action  
12 to permit participation by clients in a local priority setting  
13 and to give clients some assistance and support as they  
14 constitute one third of the boards of local organizations.

15           In my experience clients, poor people, are responsible  
16 and reasonable. They have needs for and views concerning legal  
17 services, the importance of which are not readily perceived by  
18 middle class lawyers. They do contribute to the deliberation  
19 and the decision making process. I urge you to make it possible  
20 for that to happen again, and thereby to perfect local priority  
21 setting process and remove any claim that the legal  
22 representation is based on left wing socialists or other radical

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1 ideology.

2 My fourth point, what was to be my last one, relates  
3 to the nature and scope of the program and the service to be  
4 provided. I submit to you it is a gross distortion of the  
5 program and the statute to say that the intent of this program  
6 was to provide traditional one on one representation. It was  
7 best said, I think, the nature of the program, by President  
8 Richard Nixon in submitting his first proposal for the creation  
9 of this corporation to the Congress in 1971.

10 He said, "Much of the litigation initiated by Legal  
11 Services has placed it in direct conflict with local and state  
12 governments. The program is concerned with social issues and is  
13 thus subject to unusually strong political pressures. However,  
14 if we are to preserve the strength of the program, we must make  
15 it immune to political pressures and make it a permanent part of  
16 our justice system."

17 That is the basis of the concept and notion of this  
18 organization. The 1977 amendments, which are the last time  
19 Congress really authorized, acted in a legislative manner  
20 authorizing this corporation, make clear the purpose stated in  
21 the very first paragraphs of the act to continue the present  
22 vital Legal Services program as it then existed in 1974.

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1           That meant that the program was intended to assist in  
2 improving opportunities for low-income persons consistent with  
3 the purposes of the Economic Opportunity Act of 1964, and the  
4 Congress so said in the legislative history of the 1977  
5 amendments. The precise objection of the minority at that time  
6 was that the program was not limited to old line legal aid.

7           There is clearly no support in the act or the  
8 legislative history for the notion that representation of poor  
9 persons was intended to be limited to traditional one on one  
10 representation. From the very beginning it has been recognized  
11 by the President of the United States that such representation  
12 involves social issues, concerns state and local government and  
13 has political repercussions.

14           From the very beginning the Legal Services Corporation  
15 Act was intended to continue what it, itself, termed the vital  
16 legal services program of the OEO. That legal services program  
17 provided the kind of representation that President Nixon  
18 described and did indeed produce political repercussions.

19           Your corporation, our corporation, was created to bear  
20 the brunt of those political repercussions. I urge you not to  
21 let your vision of the scope of the Legal Services program be  
22 constricted by an erroneous statement as to the purpose of the

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1 act as laid out in its terms and legislative history.

2 Let me say just one final word about the search. I  
3 commend to you the statements of the House of Representatives to  
4 Clark Durant in 1987, and again in 1988, when Congress set out  
5 the criteria for the president in your search.

6 I would add to that only that you would hope that you  
7 would find someone who is experienced in this field. No  
8 responsible director would want to select the president of a  
9 \$300 to \$400 million a year corporation who has no knowledge of  
10 the operation of that entity.

11 My time is running out. I appreciate this opportunity  
12 to be back with you. Thank you very much for listening to me.  
13 We in NLADA are available and anxious and willing to cooperate  
14 with you or the programs we represent. We believe you are  
15 committed to the principle of equal justice.

16 We will disagree from time to time on specific issues,  
17 but as long as the result is an advance toward the goal of equal  
18 access to justice, there are no losers, We're all ahead. It is  
19 in that spirit which we will operate with you in the years  
20 ahead. Thank you very much.

21 CHAIRMAN WITTGRAF: Thank you Mr. McCalpin. Mr.  
22 Whitehurst and Mr. Rhudy, according to my watch you have about

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1 four minutes between the two of you or four the two of you.

2 I said a half hour ago I was going to be an SOB, and  
3 I'm going to try to be an SOB.

4 MR. WHITEHURST: I thought we had an hour.

5 CHAIRMAN WITTGRAF: You're correct.

6 MR. CURTIN: Don't be quite an SOB.

7 CHAIRMAN WITTGRAF: I am. It's a new format in which  
8 I'm to be labelled as such. Mr. Whitehurst, go ahead, please.

9 MR. WHITEHURST: Do I have my full time, Mr. Chairman?

10 CHAIRMAN WITTGRAF: I believe so. We're looking -- I  
11 was trying to whittle you down even more than I should have.  
12 We're looking at shooting toward 10:15, yes, sir. As suggested  
13 already by Mayor Collins, he and I anticipate perhaps other  
14 members of the board will have some questions or comments, try  
15 to bear that in mind.

16 PRESENTATION OF WILLIAM WHITEHURST

17 MR. WHITEHURST: I'll try to give you some time back.  
18 My name is Bill Whitehurst. I am the past president of the  
19 51,000 member state bar of Texas. I'm an attorney with the law  
20 firm of Kidd, Whitehurst, Harkins and Watson in Austin, Texas,  
21 and a co-founder of the National Organization of Bar Leaders for  
22 the Preservation of Legal Services for the Poor.

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1           My remarks, I believe are appropriate to start the day  
2 with, because the issue before us in this symposium today is  
3 issues facing the Legal Services program. I think it's  
4 important before we discuss issues that we discuss attitude.

5           The reason I am before you today, the reason for Bar  
6 Leaders for the Preservation of Legal Services for the Poor, was  
7 because of an attitude that we observed when I attended a board  
8 meeting, my first back in 1985, when I welcomed the board to  
9 Texas as a representative of our bar.

10           I was very concerned about what I saw in that meeting,  
11 not the particular issues that were being discussed, but the  
12 attitude with which they were being approached. I ask you to  
13 consider the attitude with which you approach the issues you're  
14 going to hear about today and the work of your term.

15           What I saw was a board majority and a staff who had an  
16 agenda, who came ready with an agenda, unfortunately that agenda  
17 was a negative one, it was a mean-spirited one, it was a  
18 destructive versus constructive agenda.

19           I hope that as you approach the different issues today  
20 that you will not come with a set agenda, that you will be open  
21 minded. It disturbed me at that meeting, the first one I  
22 attended, to someone who was naive and who was not familiar with

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1 what was going on in the inner circles of Legal Services, that  
2 the Legal Services lawyer was clearly the enemy at that meeting.

3 We have seen that continue and it needs to change.  
4 You have the opportunity to change that approach, that attitude,  
5 and I ask you to consider that. It's important, indeed it is  
6 critical, that we have a fresh start, that we have a positive  
7 attitude. We all know it makes a difference in the result with  
8 the way you approach the problem.

9 I believe we can approach these issues in a very  
10 constructive manner, in a very positive manner, and reach the  
11 right results. I assure you if we do otherwise, it will  
12 continue on the course that has been set by the board before  
13 you, and that is destructive, it is not productive, it is not  
14 constructive. It is one of babble instead of unification.

15 The second thing that I would like to mention this  
16 morning is that it's important that this corporation, the staff  
17 and the board maintain a balance, that a balance be presented in  
18 all that it does. It's important that the reputation of this  
19 board is that it is fair and that it is balanced.

20 Let me give you an example of that. We had an  
21 unfortunate incident in Texas where a young man who was the head  
22 of a program was indicted -- he wasn't indicted, actually, he

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1 plead guilty to a misappropriation of funds. It was a black eye  
2 on Legal Services. It was one that no one tries to justify.  
3 What came out of it was a press release by the Legal Services  
4 Corporation staff, it was an unfortunate press release. In many  
5 ways it was cruel.

6 What we did was we spread around and advertised a  
7 black mark on this corporation, on the Legal Services delivery  
8 programs. What that press release didn't say, and I urge each  
9 of you to go back and I want you to read that press release,  
10 because I'd never seen a press release come from Legal Services  
11 Corporation that said anything good about the programs.

12 What that press release didn't say was that before  
13 that incident in the history of record keeping in the state of  
14 Texas, not one Legal Services lawyer had ever had a grievance  
15 filed against them, much less adjudicated, not even filed. That  
16 was not said in the press release.

17 That's what I talk about balance. It would be just as  
18 cruel if the state bar of Texas would have put out a press  
19 release about the prior president who was arrested for  
20 shoplifting, an unfortunate thing, a sad thing, a black mark on  
21 the Corporation, but one that needs to be treated with balance  
22 and sensitivity.

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1 I want to hear press releases about our Legal Services  
2 lawyers who are presidents of their local bar associations,  
3 about the two who serve on the board who have been recognized  
4 nationally for their work with the elderly, about the lawyers--  
5 the Legal Services lawyers who successfully prosecuted the  
6 Zebly case before the Supreme Court, the Zebly case and were  
7 successful, about the Legal Services lawyer in Texas who was  
8 thought so highly of that was elected a judge.

9 I'm tired of hearing about the Peace Convoy case in  
10 the Texas Rural Legal Aid group, because it's the wrong focus.  
11 It must be balanced. What we don't hear when we hear about that  
12 is the fact that that same group between 1986, and '89, has  
13 handled over 45,800 cases. That those have been spread between  
14 consumer employment and family law, housing and income  
15 maintenance.

16 That of the 29 cases that have been filed that have  
17 anything to do with civil rights, they make up .06 percent of  
18 those cases. That of the 29 cases, they have every one, except  
19 two that are pending, been successful. So I ask for us to look  
20 at the balance and that things be put in proper perspective.

21 I hope that you will bear in mind that you have real  
22 people out there in the field who are real professionals, who

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1 have families, who have concerns about their careers, stability,  
2 security is important. I ask that you take that into  
3 consideration when you face the issues and make decisions on  
4 programs for the field programs.

5 I will distribute after this some packets which I hope  
6 you will take the time to look to see what good things are being  
7 done out in the field. I am a past bar president, I am not a  
8 Legal Services lawyer. We have 11 programs in Texas.

9 I am here to tell you today that your people in the  
10 field are doing wonderful things, wonderful things,  
11 accomplishing great things, and they're doing it in a very  
12 professional, a very competent manner.

13 Not that I agree with everything they do, not that I  
14 agree with every case they take or every case they prosecute,  
15 but I will tell you from a state which has a large number of  
16 needs in the legal services area, you have right to be proud of  
17 the service being rendered by lawyers who are under paid, under  
18 staffed and ill equipped, many times.

19 I do join in with the urging of you to visit these  
20 programs. I did it when I was running for president of the  
21 state bar and I was impressed, I was very impressed with the  
22 dedication. These are not wide-eyed liberals seeking social

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1 causes, these are people who are in the trenches, day in and day  
2 out, performing legal services as was intended and is a part of  
3 our system of justice.

4 If anything, it gives you a love for the need for  
5 minimum access if not equal access, is visiting the programs and  
6 getting to know the lawyers who deliver your legal services to  
7 your programs.

8 The third area that I want to mention is independence  
9 by the field. I was in the Air Force as a JAG officer. I can  
10 remember well when I was the prosecutor how well I was treated  
11 when I came to the base. I also remember when I was the defense  
12 lawyer how poorly I was treated. I was segregated. As long as  
13 I was the prosecutor, I could go to the Officer's Club with the  
14 base commander and the head of the legal office.

15 When I was the circuit defense counsel, I was over  
16 here by myself. That is the nature of our legal system. I felt  
17 like I did just as good a job in both cases, in both positions.  
18 it is not always popular, we deal with unpopular causes.

19 One thing that is critical in our legal system, is  
20 that we have independence of the counsel. Many of the reforms  
21 that you will be considering jeopardize that independence. I  
22 hope you will consider that. Consider why certain groups are

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1 here to talk about successes that Legal Services is having in  
2 the agriculture business, migrant worker reforms, things of that  
3 area. It is critical, certainly in Texas, that they have  
4 independence.

5           As a bar president, I am concerned for the lawyers who  
6 are bringing frivolous lawsuits. I am concerned whether they  
7 are harassing, whether they are incompetent, whether they are  
8 unethical. I ask you to shift your focus to those kinds of  
9 things that we traditionally grade lawyers on in their  
10 performance, not the cause, not the issues, but the manner in  
11 which it is being carried out as a lawyer in our society.

12           I will tell you that if you do that, because we have  
13 done that in Texas, you will find that they have a wonderful  
14 report card, an excellent report card, one that you can be proud  
15 of and one that I hope you will take an interest in sustaining.

16           Finally, let me say that the bar leaders of this  
17 United States are anxious to work with you. We have been  
18 wanting to do that for a very long time. We're here, we have  
19 resources, we can work together. I am convinced that what I'm  
20 seeing going on in the world today can happen.

21           If East Germany and West Germany can get together,  
22 surely the bar leaders of this country and those who are

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1 interested in our legal profession can get together with this  
2 board and your staff to do good things for good people for  
3 righteous and just causes. Thank you very much,.

4 CHAIRMAN WITTGRAF: Thank you Mr. Whitehurst. Mr.  
5 Rhudy.

6 PRESENTATION OF ROBERT RHUDY

7 MR. RHUDY: I'm Bob Rhudy. I'm the vice president of  
8 the National Association of IOLTA Programs. I'm speaking to you  
9 today on behalf of that organization. Patricia Horan, who is  
10 the president of the Texas IOLTA program was not able to be here  
11 today. We thank you very much for this opportunity to come  
12 before you and talk about a program that was created by the bar  
13 leaders across this country to help supplement funding for the  
14 Legal Services Corporation civil legal services to the poor.

15 Let me briefly describe what the National Association  
16 of IOLTA Programs is. I'll summarize very briefly some of the  
17 major parts that were raised in my written statement that's been  
18 presented to you, then I'd like an opportunity to make a few  
19 recommendations for your consideration.

20 The National Association of IOLTA Programs represents  
21 the now 51 Interest on Lawyer Trust Account boards and staffs  
22 and programs throughout the United States, and also several of

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1 the IOLTA programs that are in Canada.

2 Some of my written remarks to some of the major points  
3 that are raised include a description of the IOLTA programs  
4 today, the growth and funding in IOLTA, the use of funds  
5 currently and how IOLTA funds are controlled throughout the  
6 United States.

7 Let me first describe what IOLTA is. The Interest on  
8 Lawyer Trust Account program was discovered in Canada by  
9 visiting bar leaders and judges from the United States back in  
10 1978. Attorneys routinely received client funds to be held in  
11 trust for future use in real estate transactions, in tort cases  
12 and in other matters.

13 The amount of funds is large or if the funds are to be  
14 held for a long period of time, the attorney customarily places  
15 those funds in an interest-bearing account so that their client  
16 can gain the benefit of this interest.

17 However, in the case of amounts that are held for very  
18 short periods of times are small in amounts. These funds were,  
19 in the past, placed in non-interest-bearing accounts.

20 Under the Interest on Lawyer Trust Account program,  
21 these funds can be placed in interest-bearing accounts,  
22 typically NOW accounts with the banks and savings and loans, and

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1 these institutions are directed by court rule or legislation to  
2 allocate the interest raised from those funds, net services  
3 charges, to programs created by courts and legislatures to  
4 receive the funds as private foundations, public foundations,  
5 and make those funds available for public purposes, primarily  
6 civil legal services to the poor.

7 The program first was created in Canada in the early  
8 '70s, and was brought to Florida by Judge England in 1978, and  
9 first became an effective program in Florida in 1981.

10 Currently there are, as of last week, 51 Interest on  
11 Lawyer Trust Account programs in the United States. Indiana and  
12 the Indiana Legislature and governor last week signed into law a  
13 new IOLTA program.

14 These, as I indicated throughout the United States are  
15 creations primarily of bar leadership, working with your courts  
16 and legislatures, legal service programs to encourage this new  
17 funding source to supplement funds that were diminished for  
18 legal services, particularly for the Legal Services Corporation  
19 in the early '80s.

20 Seven programs have been created by legislatures, 44  
21 programs have been created by supreme courts, 17 of the programs  
22 are voluntary, the creating instrument is either legislation or

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1 a court rule, permits attorneys to use such Interest on Lawyer  
2 Trust Account programs.

3           Seventeen of the programs are now -- I'm sorry, 15 of  
4 the programs are opt out, and attorneys are required to  
5 participate unless they elect by some act by some notice to the  
6 administering body not to participate, and 19 programs are now  
7 mandatory. The trend is to convert to mandatory programs. As  
8 you can understand, it generates substantially more funding than  
9 a voluntary program does.

10           The level of participation of voluntary programs,  
11 however, varies a great deal from 15 to 20 percent to over 80  
12 percent in some states.

13           The American Bar Association in 1988, adopted  
14 resolution 101, encouraging states, through their bar  
15 leaderships, to either create mandatory or comprehensive so-  
16 called IOLTA programs, are to divert programs that are already  
17 in existence to such more effective funding sources. Since  
18 1988, 19 programs have converted to a more effective funding  
19 source, either opt out or mandatory.

20           Let me give you some idea of the level of funding  
21 that's generated by the programs. Over \$200 million since 1981,  
22 has been generated by the Interest on Lawyer Trust Account

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1 Program in the United States. Not all of that funding is used  
2 for civil legal services for the poor. These programs are all  
3 very unique, very individual, controlled by local boards of  
4 directors appointed by the bar foundations appointed by the  
5 governor of the state, as in the case of Maryland, and affirmed  
6 by the senate, appointed by the supreme court authority.

7 The instrument creating such programs indicates what  
8 uses the funds can be made of them. The uses that are permitted  
9 by the Internal Revenue Service include legal services to the  
10 poor, administration of justice, law-related education and  
11 similar types of activities.

12 Eighty-nine percent of the funding that's been raised  
13 in IOLTA from the outset that has been used, has gone to civil  
14 legal services to the poor because of the perceived overwhelming  
15 need for such funding throughout the United States. Eighty-  
16 five percent of these funds have been allocated to programs that  
17 you also fund, Legal Services Corporation grantees. Fifteen  
18 percent of the total Legal Services funding has gone to other  
19 organizations.

20 However, the local decisions made by these  
21 organizations throughout the United States, I think, speaks well  
22 of your grantees and the esteem that they are held in the local

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1 states by these local boards of directors.

2 In 1988, your grantees received approximately \$29.9  
3 million in supplemental funding from IOLTA programs throughout  
4 the United States. in 1989, it is estimated that approximately  
5 \$32.3 million. In 1990, we estimate between \$50 and \$60 million  
6 in IOLTA funds will for legal services to the poor to your  
7 grantees.

8 The funding has grown fairly substantially, particular  
9 in the past few years. Total IOLTA funding last year, in 1989,  
10 was approximately \$58 million, in 1990, we estimate the funding  
11 will be \$105 million. That's because, primarily, of the new  
12 states coming on line now throughout the United States, and the  
13 states converting to a mandatory or a very effective opt out  
14 program.

15 IOLTA throughout the United States, wherever its  
16 found, is very diverse, it's locally controlled. Of the boards  
17 that control the programs 31 of them are bar foundations, the  
18 remainder are either, as in Iowa, an extension of the local  
19 supreme court or, as in Maryland, an independent organization  
20 created by legislation with a board specifically appointed by  
21 the government to control the program.

22 The uses of the funds vary, as I indicated. The

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1 amount of controls on the programs vary. In some states the  
2 funds have board controls, then the Legal Services Corporation  
3 Act in terms of the uses and types of activities that are  
4 permitted. In other states the controls are not as strict as  
5 the Legal Services Corporation Act.

6 Each of the programs, however, makes plan  
7 determinations in terms of what activities can be funded with  
8 the created instrument, who will receive those funds. In some  
9 states your programs, Legal Service Corporation grantees,  
10 receive 100 percent of the funds made available for legal  
11 services, in other states 50 percent. The range, as I said  
12 across the nation is over 85 percent of such funds.

13 The local programs also monitor and evaluate how their  
14 funds are used to assure that the Legal Services programs are  
15 using them in an effective and efficient manner and to carry out  
16 the purpose for which the grants were made.

17 Since 1981, IOLTA has become a very substantial  
18 supplemental source of funding for civil legal services  
19 throughout the United States. At this point it is the second  
20 largest source of funding, collectively, throughout the United  
21 States after Legal Services Corporations dollars for these  
22 activities.

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1 IOLTA is still expanding, and mostly through Legal  
2 Services, but there are fluctuations in its funding. Business  
3 cycles, particularly real estate cycles and real estate sales are  
4 down, the amount of dollars going into IOLTA accounts are down,  
5 interest rates sometimes are down. In some states, Texas not  
6 long ago, we saw some drops in funding, in the northeast as real  
7 estate is down right now, we start to see some drops of funding  
8 in IOLTA.

9 Banking practices vary. There is a concern that more  
10 banks may go to a subaccounting approach, which could diminish  
11 the amount of funding available for Legal Services. There could  
12 be changes, as Legal Services amounts have grown substantially,  
13 in what the funds can be used for.

14 Legislatures may look at these dollars and decide to  
15 use them for other activities. There's competition for such  
16 dollars. IOLTA has been a very good investment. It was one  
17 that was stimulated and supported early on by the American Bar  
18 Association, by the Ford Foundation and the Legal Services  
19 Corporation.

20 You made grants to several state programs to help  
21 IOLTA get up and running. You were active very early. It's  
22 something you may want to consider again in terms a of small

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1 amount of seed grants, \$25,000 to \$50,000 in matching grants in  
2 some new states that are just underway, West Virginia, Indiana,  
3 Wyoming and Montana, because the investments have come back very  
4 substantial.

5 I urge you to recognize and encourage the diversity of  
6 the local programs and honor their decisionmaking, and not try  
7 to control how they use their IOLTA funds for priorities as they  
8 see it in their states.

9 There is legislation introduced last year in the House  
10 of Representatives to say that IOLTA dollars could not be used  
11 in the various states by programs for purposes that were  
12 prohibited by the Legal Services Corporation Act. That's  
13 contrary to the policy I think you'd like to see.

14 A number of Legal Services IOLTA programs have also  
15 participate in legal needs studies. It's been our finding that  
16 Maryland, New York, Illinois, other states, Massachusetts, that  
17 have done such studies, that IOLTA funds and Legal Service  
18 Corporation funds, state and local funds, still are not adequate  
19 to come close to meeting the need for civil legal services in  
20 the United States. I encourage you to take that into  
21 consideration when you go to Congress and ask for appropriations  
22 for such funds.

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1           Finally, we look forward to working with. We wish you  
2 best wishes in your new position. I think IOLTA will be a  
3 continuing contributor to Legal Services. I hope that we work  
4 together and share our experiences. Thank you.

5           CHAIRMAN WITTGRAF: Thank you, Mr. Rhudy. Gentleman.  
6 Mr. Collins.

7           MR. COLLINS: Mr. Chairman, at the outset I'd like to  
8 make clear my admiration for Mr. Curtin, the president-elect of  
9 the bar association. Nonetheless, I have several questions that  
10 I might ask.

11           Over the last eight years, Mr. Curtin the Congress has  
12 made it increasingly clear the prohibition of the expenditure of  
13 LSC money to aid pro-abortion activities. Recently the ABA made  
14 its position clear on the so-called right to life issue. You  
15 have attempted to differentiate your position publicly from that  
16 of the ABA.

17           Would you now tell us, please, whether or not the ABA  
18 will support the legislation which would continue to limit the  
19 use of taxpayers' funds to promote pro-abortion legislation and  
20 litigation?

21           MR. CURTIN: Well, the ABA has a position that was  
22 taken at the last meeting, which deals with the government

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1 interference with a woman's right to choose. As you have  
2 indicated, I have publicly supported the view that the ABA  
3 should not take such a position. I have spoken out before  
4 women's lawyer caucuses, I have spoken out on the floor of the  
5 House, and have made it clear that I will raise that issue again  
6 when the matter comes before the assembly and the house of  
7 delegates.

8 It is currently a position of the American Bar  
9 Association, and it may continue to be a position of the  
10 American Bar Association. If the American Bar Association has a  
11 position of that type, it will take whatever action seems  
12 appropriate, given its own setting of priorities and its own  
13 determination of where its available resources can best be  
14 spent.

15 The association has had a long-standing position that  
16 if there is in a particular jurisdiction a right for a woman to  
17 have an abortion, that that right should not be denied her  
18 because she is poor. I would assume that that position would  
19 continue to be asserted.

20 MR. COLLINS: If I may?

21 CHAIRMAN WITTGRAF: Yes, sir.

22 MR. COLLINS: When Jack Kemp sought to, as Secretary

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1 of HUD, take steps to streamline the process by which drug and  
2 crack dealers could be evicted from federal housing projects, a  
3 Legal Services grantee opposed that attempt.

4           Would you favor legislation or regulations to keep  
5 taxpayers' money from being used to hinder the war on drugs?

6           MR. CURTIN: Well, of course, that's a very general  
7 type question, "hinder the war on drugs." The ABA hasn't made a  
8 major effort in this direction. For those of you who were at  
9 our meeting in Los Angeles, were aware that the presidential  
10 program on Sunday was entirely devoted to a full-point  
11 presidential program on how to deal with drugs.

12           The ABA has entered into a partnership with the  
13 American Medical Association. The president of the ABA and the  
14 president of the American Medical Association, even last week,  
15 were in Atlanta in the school system dealing with education.

16           So our concerns are that there be a stop to the  
17 eroding of impact of the use of drugs in our society. We are  
18 planning further efforts, we have a task force now, that is  
19 going to deal with some of the issues created by that. We have  
20 the Dash report, which indicates, however, that the war on drugs  
21 or the prosecutorial efforts with respect to drugs are creating  
22 a crisis in our court system.

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1           The Chief Justice of the United States has indicated  
2 very strongly that in the absence of adequate funding for  
3 defense resources and court systems, that we will sometime soon  
4 in our federal system, and it's clearly true in our state  
5 systems where I've been travelling around, reach a stage where  
6 civil cases are not being tried.

7           So it is a very complex problem. The statutory -- the  
8 language in the amendment, which uses that I have trouble  
9 understanding, seems to combine guilt by indictment and guilt by  
10 association in the same sentence. I do think that that would be  
11 very difficult, a to interpret and b, to enforce.

12           The specific response to your question is that local  
13 programs should be entitled to make judgments about how they're  
14 going to spend their funds. If it appears as if a particular  
15 needs for landlord tenant law is appropriate, then funds should  
16 be expended according to those needs. In many instances the  
17 needs may be as basic as food and shelter. If that's the --

18           MR. COLLINS: Mr. Curtin, that's not the question I  
19 asked you. It was crack dealers were being evicted from public  
20 housing project where decent people live in fear. The question  
21 is whether or not you think it's appropriate that the Legal  
22 Services public funds be used to prevent the eviction of a crack

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1 dealer?

2 MR. CURTIN: Obviously a specific case requires some  
3 specific analysis. If, in fact, we believe in a system of law  
4 in which someone who is charged with something has a right to  
5 have that issue tried, then I can't accept your premise. I  
6 don't have any knowledge of what case you're talking about, I do  
7 believe that a Legal Services program is entitled to make a  
8 judgment as to whether or not the case warrants action by a  
9 defense attorney.

10 There may be some instances in which a case, in my  
11 judgment, should not be taken. That doesn't mean that as a  
12 result of that case you should have general regulations adopted  
13 which would interfere with the local competence of the boards  
14 and of the local Legal Services lawyers.

15 MR. COLLINS: Those being served usually recognized  
16 the fact that crack dealers have enough money to afford  
17 expensive lawyers.

18 CHAIRMAN WITTGRAF: Mr. Erlenborn.

19 MR. ERLENBORN: Thank you, Mr. Chairman. We're very  
20 short on time with this panel. I hope all the members of the  
21 board will have an opportunity to address questions if they have  
22 them. I just have one that I would like to address to the whole

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1 panel, not knowing which one of you would like to respond.

2           The question is, since both Legal Services Corporation  
3 funds, IOLTA funds, I learned today, have limitations, maybe  
4 even some of the private grants, and since money is fungible,  
5 how are we to enforce those limitations and restrictions,  
6 through time keeping of attorneys' time, through segregation for  
7 the funds? Just how are these limitations to be made  
8 enforceable?

9           MR. McCALPIN: Clearly segregation for the funds is  
10 required, it's possible to account for the on that basis and,  
11 indeed, it is my understanding that the local audits of the  
12 programs which are required by the act, do indeed separately  
13 audit private funds and public funds and account for the usage  
14 of each.

15           So that it seems to me that that is a trail which you  
16 could follow to determine whether or not private funds are, in  
17 fact, being used for a prohibitive purpose.

18           MR. RHUDY: The Legal Services Corporation grantee in  
19 Maryland, the Legal Aid Bureau, receives funds from 21 different  
20 funding sources. We are given 10 percent of those funds from  
21 IOLTA. It also receives grants from the state of Maryland for  
22 particular activities as well.

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1           Our restrictions are more restrictive than yours are,  
2 and we're also audited by the legislative auditor to make sure  
3 that any of our grants comply with state statute. The Legal Aid  
4 Bureau is audited by their CPA, it is audited by us, it is  
5 audited by our CPA in some instances, it's monitored and  
6 evaluated by us to make sure that it does not use funds in ways  
7 that are contrary to our restrictions.

8           A number of the other programs that also give it funds  
9 also audit it as well. In some instances the dollars are  
10 allocated to particular staff, and those staff are used only for  
11 certain purposes and not others.

12           I think that restrictions on dollars without saying  
13 the dollars are not a totally restrict a program to say that it  
14 can't receive dollars from any activity other than yours are not  
15 necessary. I think there are adequate audit and evaluation  
16 mechanisms which insure funds are misused.

17           MR. ERLNBORN: Gentlemen, we're going to complete  
18 your panel at this point. On behalf of the Board let me say  
19 that we're all very appreciative of your being here, taking your  
20 time from your schedules to be with us. With you gentleman, as  
21 with those who will follow you today, I think it's fair to say  
22 that on behalf of the Board we hope this time-constrained visit

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1 with you is not an end in itself, but really is only the  
2 beginning of an ongoing relationship.

3 Bearing in mind, however, that all 11 of us, including  
4 Mr. Suarez who is not here at the moment, are only recess  
5 appointees. So our futures may be even less certain than yours.  
6 If we have futures beyond recess appointments, we hope that this  
7 is only the beginning of a relationship and the end itself.  
8 Thank you.

9 MR. WHITEHURST: Where do you want us to file our  
10 written statements?

11 CHAIRMAN WITTGRAF: With Ms. McCollom by the door, or  
12 Ms. Bozell in between yourselves and Mr. McCollom.

13 Would the next panel please come forward and ready  
14 itself for its presentation? In case there is any doubt, the  
15 second panel is Ms. Whitley, Mr. Woodson, Mr. Flaherty, Ms.  
16 Featherstone.

17 MS. WHITLEY: Mr. Chairman, unfortunately Mr. Woodson  
18 and Ms. Featherstone couldn't be with us today.

19 CHAIRMAN WITTGRAF: In which case, you and Mr.  
20 Flaherty have all kinds of time available to you.

21 MS. WHITLEY: Thank you. We'll not take our whole  
22 hour. Do you want to wait a while?

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1 MR. ERLNBORN: I don't think either Mr. Dana or Ms.  
2 Pullen or Mr. Hall intend any disrespect to any of you. I think  
3 it may be just as well if you proceed and hopefully they'll be  
4 with us momentarily, unless you think you and Mr. Flaherty are  
5 going to be so brief it's going to be worth waiting a few  
6 moments.

7 MR. ERLNBORN: Mr. Chairman, let me, before the  
8 witness starts to explain, that I have an appointment outside of  
9 the meeting today, and I may have to leave during your  
10 presentation. That is not meant to be any disrespect to you.  
11 Thank you.

12 MS. WHITLEY: Mr. Erlenborn has heard these problems  
13 before, I might add.

14 PRESENTATION OF ELIZABETH WHITLEY

15 MS. WHITLEY: Mr. Chairman, we'll get started.

16 CHAIRMAN WITTGRAF: Thank you.

17 MS. WHITLEY: I apologize for the other two members of  
18 our panel, but they were unavoidably held up today. Let me  
19 begin.

20 My name is Libby Whitley. I am here today on behalf  
21 of both the American Farm Bureau Federation and the Legal  
22 Services Reform Coalition. I'm the assistant director of the

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1 Farm Bureau's Washington office, and also co-chairman for the  
2 Agriculture Industries of the Legal Services Reform Coalition.

3 I want to welcome each of you to your new  
4 responsibilities. you've got a terrific job ahead of you and I  
5 commend you for getting off to a quick start in reviewing some  
6 of the really important issue that are facing the entire  
7 question of the appropriateness of the federal legal services  
8 program.

9 As many of you know, the American Farm Bureau has  
10 pushed for changes in the Legal Services system for a number of  
11 years. I'm not going to go into a great deal of detail and, in  
12 fact, I'm going to keep my statement this morning fairly short.  
13 We've got a whole panel this afternoon that's going to talk  
14 about the full range of issues and I don't want to steal their  
15 thunder.

16 We've got Keith Eckel coming in from the Pennsylvania  
17 Farmers Association. PFA is the state farm bureau affiliate in  
18 the state of Pennsylvania. Keith is their president, as I said.  
19 We've Bob DeBruyn coming in, he's a farmer from Michigan also  
20 representing both the American Farm Bureau as well as the  
21 National Council of Agricultural Employers, and Carl Vogt, who  
22 is the managing partner here in Washington of the firm of

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1 Fulbright & Jaworski, representing also NCAE.

2 I think that those three gentlemen will more than  
3 adequate illustrate the nature of the problems the growers are  
4 facing right now. What I'd like to do this morning is make a  
5 few general comments to give you an understanding of why the  
6 Farm Bureau cares about this issue.

7 First, before I go into that, I'd like to make it very  
8 clear that we don't have a hidden agenda. When we talk about  
9 reform of the system, we are not talking about repeal of the  
10 system, even though I think some groups would have you believe  
11 that. I wanted to be very clear about that this morning.

12 We believe that there is an appropriate function for  
13 the taxpayers to provide legal services for poor people. We  
14 think it's a fair and honest expenditure of tax dollars. We  
15 would also like to say that we believe that that's only true  
16 when such representation is undertaken with a sense of the  
17 responsibility that is involved.

18 We heard extensively from the previous panel about the  
19 question of balance and we heard from a number of the speakers  
20 about the significant successes of some Legal Services attorneys  
21 and grantee agencies, and we'd like to second that. I'm sure  
22 that there are numbers of attorneys out there, I'd say the vast

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1 majority are doing an excellent job, a very fair job of  
2 representing their clients. We want to be clear about that.

3 I brought with me today copies of the Farm Bureau 1990  
4 policy statement on Legal Services issues, so I'll pass this out  
5 when I finish, which I think should clarify for you our position  
6 on the question of reform.

7 As I say, however, this is not just an issue for us  
8 that's one of good government. We have a very bottom line  
9 interest in the issue. We're a business organization. We are  
10 not a philosophically oriented group. We're not involved with  
11 the question of Legal Services reform because of the abstract  
12 concept of the appropriateness of limited government or other  
13 kinds of philosophical type questions.

14 What we object to are a variety of what we consider to  
15 be inappropriate activities which are directly and very  
16 negatively impacting our growers. The fact is growers are being  
17 sued out of existence in a number of states. We see union  
18 organizing, we see lobbying. These activities may narrowly meet  
19 the letter of the law under the Legal Services Corporation Act,  
20 but they certainly are violating its spirit.

21 I fail to believe that Congress intended the effect  
22 that provision of free providers and migrant workers is having

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1 on the labor-intensive horticultural specialties in the produce  
2 industry. I also should point out, because I'm not sure how  
3 many of you understand the way that agriculture is constructed,  
4 that not all farmers and ranchers have problems with Legal  
5 Services attorneys.

6 Agriculture, like most industries, is not a monolithic  
7 group. For the most part the problems that growers face is in  
8 the labor-intensive fruit and vegetable and horticultural  
9 specialties industries. This would include fruits and  
10 vegetables, hybrid seed growers, tobacco growers, cut flower and  
11 cut greenery growers, cotton ginners and the cane sugar  
12 industry.

13 Again, for those of you not familiar with agriculture  
14 programs, these industries are what we call program crop  
15 industries, that is, they don't enjoy the range of income and  
16 income support programs such as loan guarantees, target prices  
17 and other USDA programs available to groups like the soybean  
18 producers, wheat producers, corn growers and the dairy industry.

19 Program crops, the ones I just mentioned, tend not to  
20 be labor intensive, and these growers in general just don't hire  
21 enough workers to fall under the federal labor laws, which the  
22 growers that are sued find themselves sued under.

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1           The growers with problems have put up with this Legal  
2 Services litigation for years, but it's growing exponentially  
3 today. There is a greater availability of standardized  
4 pleadings, computer software and a number of precedential cases  
5 that are working to our disadvantage. We can't afford to ignore  
6 the problem any more.

7           Keith Eckel will share with you some of the statistics  
8 that we have accumulated, admittedly they're very scanty and not  
9 nationwide, unfortunately.

10           I also want to say that we're not trying to preclude  
11 migrant workers' access to the court system. What we're trying  
12 to do is to seek a system where we can resolve the problems  
13 quickly, rather than the present problems which are court suits  
14 that drag on for years and cost growers into the tens if not  
15 hundreds of thousands of dollars to solve claims that would  
16 really best be solved with a telephone call or through a  
17 negotiated arbitration process.

18           We believe that all lawyers have a responsibility not  
19 to abuse their privileges under the law. This is very  
20 different, we think, from an attorney representing his client  
21 vigorously.

22           The LSC attorneys, not exclusively but in certain

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1 cases show no restraint in this regard and they've demonstrated  
2 that the freedoms and privileges available to the private bar  
3 are not uniformly appropriate in every instance. I'd say the  
4 Legal Services attorneys are not accountable to anyone, and that  
5 includes you as members of the board.

6           There is no oversight controlling the appropriateness  
7 of their activities and their conduct undertaken in migrant  
8 cases in many instances. In short we see serious abuses of  
9 power in these relationships. This is the problem we'd like to  
10 see solved.

11           We believe that the best solution lies in core reforms  
12 embodied by the McCollum-Stenhold amendment package, and these  
13 four time keeping, application of federal wage, fraud and abuse  
14 statutes to the LSC grantees, local control over local grantee  
15 agency boards, and prohibitions on the use of private funds for  
16 activities that are illegal under the act.

17           If you take these together, the four reforms would  
18 give the board substantially greater control over the grantees  
19 and provide a forum for resolving complaints such as we have  
20 today about the appropriateness and nature of the activities.

21           I can't finish without commenting that the McCollum-  
22 Stenholm amendments also contain some very important specific

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1 agricultural provisions. We're very interested in pursuing  
2 those. I'm not going to go into a lot of detail because Carl  
3 Vogt will talk about those this afternoon.

4 I would say that the McCollum-Stenholm amendments are  
5 not extreme. They're common sense, basic, good government  
6 proposals. They're the kind of controls that apply to virtually  
7 every other federal grantee who receives federal tax dollars.  
8 They provide you, the Board, the Congress, the Administration  
9 and the general public at large with ways of dictating the  
10 appropriateness of LSC-funded activities.

11 They're long overdue and where the migrant issues are  
12 concerned, are badly needed. We urge that you vote to endorse  
13 this package at the first opportunity.

14 We look forward to working with all of you over the  
15 next few years. I am confident that you'll be confirmed, I  
16 certainly would like to see that occur. You've got a terrific  
17 challenge ahead of you. We'd like to stay on ready to help you  
18 in any way we can.

19 Thank you for letting me appear today.

20 CHAIRMAN WITGRAF: Thank you, Ms. Whitley. Mr.  
21 Flaherty.

22 PRESENTATION OF PETER FLAHERTY

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1 MS. FLAHERTY: Good morning, Mr. Chairman and Members  
2 of the Board. Let me congratulate you on your appointments by  
3 President Bush and do appreciate very much this opportunity to  
4 testify.

5 I'm chairman of the Conservative Campaign Fund, which  
6 is a political action committee. I'm also co-chair of the Legal  
7 Services Reform Coalition, a group of trade and professional  
8 associations, membership organizations, educational foundations  
9 and individuals. We seek to expand the legal resources  
10 available to the poor through a series of reforms designed to  
11 curb abuses in the present system.

12 It is my strong feeling that as long as the legal  
13 profession is dominated by a highly politicized economic cartel,  
14 the American Bar Association, the Legal Services program must be  
15 strengthened.

16 With all due apologies to the previous panelists, I  
17 would like to start by telling you how I came to be involved in  
18 this issue. I became aware of a particularly troublesome  
19 instance of the use of the LSC funds for political purposes.  
20 You may remember the media coverage during the summer of 1988,  
21 as something called the Veterans' Peace Convoy, organized by a  
22 group of pro-Sandinista activists.

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1           A Nicaragua-bound caravan of 38 vehicles loaded with  
2 humanitarian supplies was stopped at the U.S.-Mexico border at  
3 Laredo, Texas by Customs officials. I do want to spend a moment  
4 or two describing this. I'm not sure that each member of the  
5 board has heard about it in the past. As I say, it's what got  
6 me involved in this issue.

7           Customs sought signed statements from the  
8 participants, promising that the vehicles would be returned to  
9 the United States after they were unloaded in Nicaragua. The  
10 trade embargo against Nicaragua contained an exemption for  
11 humanitarian deliveries, but did not allow the export of trucks  
12 and other vehicles.

13           The activists, who appeared quite middle class in  
14 numerous television interviews, refused. They then challenged  
15 Customs interpretation of the Nicaraguan sanctions regulations,  
16 and proceeded to sue Secretary of State George Shultz, Treasury  
17 Secretary Jim Baker and several other high U.S. government  
18 officials in federal court in the Southern District of Texas.

19           They were represented by attorneys affiliated with  
20 Texas Rural Legal Aid and LSC funds were used in connection to  
21 the lawsuit. Serving as co-counsel was Margaret Radner of the  
22 Center for Constitutional Rights, William Kuntzler's radical

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1 legal institute based in New York.

2           There are indications TRLA may have tried to disguise  
3 the case as just another migrant worker dispute by reporting the  
4 case to LSC as Lopez v. Shultz, with Secretary Shultz's name  
5 spelled wrong. There was no mention of the Veterans' Peace  
6 convoy. Whatever the truth, how could this case become a case  
7 for Legal Services?

8           It is difficult to comprehend how indigent Texas  
9 citizens with legal problems benefit from a lawsuit against key  
10 policy makers on a foreign policy issue. I know that there is a  
11 wide variety of views on the subject of U.S. policy toward  
12 Nicaragua. That is not the issue we are discussing today.

13           We should not, of course, object to citizens  
14 expressing their views on such an issue or engaging in  
15 challenges to our government's policy, but I hope we can all  
16 agree that the use of tax monies for these purposes in this case  
17 was inappropriate.

18           Congressman Barney Frank does. When I described this  
19 incident to a House Judiciary Subcommittee on July 19th of last  
20 year, Frank called this action by Texas Rural Legal Services,  
21 "Stupid," and stated it was, "Not what this program was set up  
22 to do." He also stated it, "was a critical case on a foreign

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1 policy issue, and those people should not have been doing it."

2           Isn't it positively bizarre of the domestic supports  
3 of a hostile foreign regime were able to tap public funds to sue  
4 the U.S. government? I think it requires a rather high degree  
5 of cynicism about assisting the poor for Legal Services  
6 attorneys to have gotten involved in this case.

7           As some of the other witnesses today testified, poor  
8 people with real problems and legitimate cases, for which legal  
9 remedies are available, are regularly turned away from Legal  
10 Services grantees because of a lack of resources. For the  
11 underprivileged in our society, day to day legal problems are  
12 sometimes are questions of survival.

13           For some Legal Services grantees, the day to day  
14 problems of the poor are apparently regarded as annoyances that  
15 get in the way of working on larger ideological, political and  
16 social causes.

17           To directly address the point of one of the previous  
18 panelists, I think it would be a mistake to dismiss the  
19 Veterans' Peace Convoy as an isolated incident of political  
20 activity by an over zealous grantee. Legal Services grantees  
21 played a major role in the redistricting and reapportionment  
22 fights following the 1980 Census.

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1 Unless stopped by this board this year, they will have  
2 a major role this time around as well. Most disturbingly, Legal  
3 Services grantees have been especially active in large states  
4 where the drawing of the lines will determine the composition of  
5 the House of Representatives into the next century.

6 Texas Rural Legal Aid, the same grantee involved with  
7 the Veterans' Peace Convoy episode, purchased special computer  
8 equipment and software to assist in redrawing Texas  
9 congressional district lines following the 1980 Census. In  
10 California, another grantee received a special grant from LSC  
11 for computers and software for reapportionment activities.

12 The main beneficiaries of these activities are the  
13 Democratic Party and liberal candidate for Congress. Although  
14 this is certainly unfair, it is not the reason such activities  
15 are so objectionable. I believe that it's simply inappropriate  
16 to spend tax money for any political purpose. There is no  
17 action more inherently political than the drawing of  
18 congressional district lines.

19 That is why the founding fathers left that task to  
20 state legislatures. Let's let the Democratic and Republican  
21 parties fight it out at the state level without the influence of  
22 federal Legal Services money.

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1           A survey in 1984, of Legal Services programs conducted  
2 at the request of Senator Orrin Hatch, revealed that the  
3 programs had spent more than 28,000 and over \$600,000 in federal  
4 funds on redistricting and reapportionment activity. This must  
5 be considered only the tip of the iceberg. Of the 34 grantees  
6 that reported they had been involved, only 14 provided any  
7 estimates, the rest refused.

8           Since Legal Services lawyers aren't required to keep  
9 time sheets like other members of the legal profession, there is  
10 no way to verify these estimates. Further activities conducted  
11 with private funds often are not reported.

12           I must say I've always found the description of these  
13 private funds somewhat curious. As I understand it much of it  
14 is IOLTA money, which involuntary removed from bank accounts by  
15 state authorities around the country. I don't know what it is,  
16 but I do find the designation as private as somewhat curious.  
17 It's as voluntary in terms of giving as paying the toll when you  
18 go out to Dulles Airport.

19           Grantees presumably could allocate hours spent on  
20 redistricting any way they wanted, some obviously did, even  
21 though they were involved on high profiled redistricting  
22 litigation and lobbying, several programs reported no time spent

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1 on these activities.

2 The LSC Board adopted a regulation in April of last  
3 year which prohibits recipients of LSC funds from using funds,  
4 personnel or equipment to influence redistricting. Texas Rural  
5 Legal Aid and three other programs filed suit against LSC on  
6 December 26th of 1989, to stop the regulation.

7 Tax monies will continue to be spent on redistricting  
8 unless this Board adopts additional reforms. A simple  
9 prohibition on redistricting activities is not enough, it will  
10 not solve the problem. The prohibition will only work in tandem  
11 with other reforms.

12 A requirement for time keeping and a prohibition on  
13 activities with private funds that are prohibited with public  
14 funds will help close the loopholes exploited by Legal Services  
15 grantees to evade the will of Congress and this Board.

16 These reforms are contained in the McCollum-Stenholm  
17 amendment, which is supported by the Legal Services Reform  
18 Coalition. We urge the passage of these reforms by Congress  
19 this year and their adoption as regulations by this Board.

20 Before closing let me say that reform is all the rage  
21 these days. I think anyone who is connected to this debate will  
22 claim they are reformer, but I'd like to stress the folly of

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1 piecemeal reform.

2           Several years ago the Congress passed a flat  
3 prohibition on LSC from funding abortion related litigation and  
4 lobbying, to the chagrin, no doubt, of Senator Gorond Humphrey,  
5 the measure's chief sponsor, LSC grantees continue to this day  
6 to engage in a wide variety of abortion-related activities.

7           It is time to make the federal Legal Services program  
8 accountable to Congress, its own Board of Directors and  
9 ultimately to the people it is designed to serve.

10           Let me just finish by saying this. There was a  
11 reference earlier to East and West Germany getting together.  
12 I'd like to make reference to what's happened in Nicaragua, the  
13 issue that, in a strange way, perhaps, led me to be involved in  
14 the Legal Services debate.

15           There were elections in that country, the acrimony in  
16 this country that surrounded the debate over U.S. policy is now  
17 over. Liberal Democrats and conservative Republicans now are  
18 solidly behind the same policy in Nicaragua. I must say, as  
19 someone who worked on it for many years, it feels good.

20           I'd like to suggest that if the Sandinistas, the  
21 contras, the internal opposition and all the Central American  
22 countries are coming together, I hope we can, too. I will make

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1 a commitment to one of the previous panelists that he won't hear  
2 another word about the Veterans' Peace Convoy -- I don't think  
3 this particular episode has many defenders anyway -- if he and  
4 other folks connected this debate will stop challenging the  
5 intentions and sincerity of people like myself.

6 I am a supporter of Legal Services, it comes from my  
7 own contact with the legal system. I had a dispute with a  
8 landlord when I lived in Loudon County, Virginia. I tried to  
9 argue the case in the Circuit Court out there, it was only over  
10 a couple hundred dollars, and the judge said, "Sonny boy, go  
11 home and come back with a lawyer." I ask you that if someone  
12 like myself who has a college education cannot take care of  
13 something as simple as that, how is somebody else.

14 In Fairfax County, Virginia where I live now, we have  
15 a small claims court, but it is only a pilot program. There are  
16 some questions as to whether it will be continued, I certainly  
17 hope it will. I think the poor in this country are entitled to  
18 justice like everyone else. I think it's fair to say that in  
19 certain instances they are denied that justice.

20 Thank you very much.

21 CHAIRMAN WITTGRAF: Thank you, Mr. Flaherty.  
22 Questions? Mr. Dana.

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1           MR. DANA: Thank you. I enjoyed both your remarks.  
2 It's said that this town sort of operates on anecdotes, and  
3 you've given us two or three examples of problems that brought  
4 you into this movement. You've also indicated that there are a  
5 lot of instances in which Legal Services attorneys have brought  
6 inappropriate cases in the agricultural area, political area and  
7 abortion area.

8           Do you have something that would help this Board  
9 member that gives the details of those charges? Is there some  
10 document somewhere that lists the actual abuses that you are  
11 referring to?

12           The reason I say that is in a prior incarnation on  
13 this Board I was treated to the same litany, and they seem to be  
14 the same cases and it was sort of -- some of them went back into  
15 the '60s. They were revealed to us as fresh evidence of  
16 wrongdoing. If, in fact, you have evidence from your  
17 organization, from your members, that put flesh on the charges,  
18 it would be easier for this Board member to evaluate whether the  
19 proposals you are making for curing a problem make sense in view  
20 of the problems that you've discovered.

21           MR. FLAHERTY: Well, Mr. Dana, let me say that in the  
22 case of redistricting, it, of course, only comes around every 10

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1 years. We're currently in the process of a census now. The  
2 report that I made reference to in my testimony was a 1984  
3 report requested by Senator Hatch. As I understand it, it's  
4 about four inches thick. I haven't read the whole thing, but it  
5 lays out in some detail the problems related to redistricting.

6 Now I know in a general sense anecdotes sometimes can  
7 be misleading. I would not put the Veterans' Peace Convoy in  
8 the category of anecdote. I've already offered to make hay of  
9 it any more, but I'd be happy to get further information to you  
10 regarding -- believe me there are fresh horror stories.

11 At the same time, let me say that I believe that they  
12 are atypical, that most Legal Services grantees are doing what  
13 they are supposed to do, and that's help poor people with their  
14 day to day legal problems. By citing this anecdote I don't mean  
15 to imply otherwise. We'd be happy to provide you with some more  
16 information.

17 MS. WHITLEY: On the agricultural issues, Mr. Dana, if  
18 you would, perhaps, reserve your question until you hear the  
19 afternoon panel, I think you'll have a fuller picture of the  
20 nature and extent of the problems that the growers are facing.  
21 We'll certainly be happy to work with you.

22 I don't have nationwide, comprehensive data on numbers

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1 of cases filed against growers, types of settlements, but we do  
2 have some, I think, illustrative data that's going to help you.

3 I'd also say that I agree with Peter. I think most of  
4 the activities undertaken by Legal Services attorneys are very  
5 appropriate for the instance. The fact that there are these  
6 egregious examples, I think, shows that there needs to be  
7 additional oversight. You all need to be able to control the  
8 grantees to prevent that kind of situation from happening.

9 MR. DANA: It's that charge that bothers me. You're  
10 telling us that we need to do something, and I'm asking you what  
11 specifically or give us some examples, if you can. Maybe we'll  
12 get them this afternoon.

13 MS. WHITLEY: Time keeping, application of waste,  
14 fraud and abuse statutes.

15 MR. DANA: I understand what your proposals are, and  
16 I'm learning about them, but those proposals are intended to  
17 address abuses, presumably, and I'm asking you for evidence  
18 about those abuses. You mentioned -- I think you talked about  
19 the wide variety of abortion cases. It's my understanding that  
20 LSC grantees are not supposed to be involved in abortion cases.

21 If, in fact, they are using LSC funds in abortion  
22 cases, I'd like to know about that. My understanding is that

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1 there's just not -- that there aren't that many instances. If  
2 you have evidence that there are, I know members of this panel  
3 would like it.

4 What I'm urging you to do is give us the facts, not  
5 just the rhetoric.

6 MR. FLAHERTY: Sure. Chris Featherstone, who was  
7 supposed to be here but has the flu, was actually going to  
8 address abortion and some of the other social issues. I know  
9 that she's prepared some testimony and we'd be happy to get it  
10 to you. It is my understanding that LSC is involved in abortion  
11 litigation and lobbying right now, despite the prohibition that  
12 was passed by the Congress.

13 MR. DANA: LSC?

14 MR. FLAHERTY: LSC grantees.

15 MR. DANA: With LSC funds?

16 MR. FLAHERTY: Well --

17 MS. WHITLEY: Or private funds.

18 MR. FLAHERTY: We don't know. We don't have time  
19 keeping, there's no accountability, so it's impossible to say.  
20 We do know that the names of Legal Services grantees are  
21 appearing on court papers as plaintiffs and so forth.

22 MR. DANA: That information would be helpful.

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1 CHAIRMAN WITTGRAF: Questions?

2 MR. COLLINS: Do I understand that you are going to  
3 get that material from Ms. Featherstone and give it to us today?

4 MR. FLAHERTY: Either today or within a day or two.

5 MR. COLLINS: Well, after tomorrow it'll be too late.  
6 So if you're going to make anything available, please do it  
7 today.

8 MR. FLAHERTY: Mr. Collins, I'll make sure that takes  
9 place today.

10 CHAIRMAN WITTGRAF: Further questions?

11 MS. PULLEN: Can you share any insight as to why  
12 federal fraud and abuse statutes do not currently apply? How  
13 did that loophole come about?

14 MS. WHITLEY: Ms. Pullen, I'm not the best person to  
15 answer that question, since I'm not an attorney and don't  
16 understand all the technicalities associated with the Legal  
17 Services Corporation Act, which was first passed in '73. It's my  
18 understanding that it was excluded when the act was first  
19 written into law. The kind of laws that govern the performance  
20 of all federal contractors don't apply in the case of Legal  
21 Services grantees, which means they can lie to you with  
22 impunity, in fact.

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1           MR. FLAHERTY: Ms. Pullen, I believe it has to with  
2 the unique structure of LSC. LSC is not a government program,  
3 it is a quasi-independent government corporation, whatever that  
4 is. Due to that, it's not subject to the same waste, fraud and  
5 abuse statutes that other federal programs or contractors would  
6 be subject to.

7           I must say that when I testified before Barney Frank's  
8 Subcommittee, the same hearing that I made reference to earlier,  
9 he waltzed into the room, he was fresh from a hearing in another  
10 room, the HUD hearings, and announced that application for  
11 waste, fraud and abuse statutes to Legal Services grantees was  
12 long overdue and it was something he could support and something  
13 he would support.

14           So I would suggest that given the wide support for  
15 this sort of thing, that it's something hopefully we can get  
16 accomplished this year.

17           CHAIRMAN WITTGRAF: Questions?

18           (No response.)

19           Thank you both very much. As I indicated to the  
20 preceding panel, we hope, as suggested by Mr. Collins in his  
21 request for Ms. Featherstone's testimony, that this is just the  
22 beginning and not the end of our being able to share thoughts

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1 and concerns with you.

2 At this point, the chair suggests that we will take a  
3 10-minute recess in our proceedings until 11:00 a.m.

4 (A brief recess was taken.)

5 CHAIRMAN WITTGRAF: Is Rose Palmer here at this time?

6 (No response.)

7 We may be missing one or two Board members at the  
8 moment, but I think we should proceed anyway. I trust that Mr.  
9 Erlenborn may not be back for a while, Ms. Pullen will join us  
10 briefly. I think we're ready to proceed.

11 PRESENTATION OF PAULA ROBERTS

12 MS. ROBERTS: Members of the Board, I want to thank  
13 you very much for the opportunity to appear before you and  
14 discuss a subject that is near and dear to my heart, child  
15 support enforcement.

16 My name is Paula Roberts. I'm a graduate of Smith  
17 College and Fordham University School of Law. When I graduated  
18 from law school in 1971, I went into Legal Services and I've  
19 remained there for all of my professional life, as I feel very  
20 deeply and very strongly that lawyers have an obligation to  
21 provide legal services to those who cannot afford to purchase  
22 them on their own.

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1 I started in Legal Services in Newark, New Jersey.  
2 While I was there I spent most of my time working on housing  
3 issues and in setting up child care centers for mothers who  
4 wanted to enter work and training programs or had jobs, so that  
5 they had facilities in their neighborhoods that were safe and  
6 secure and yet provided quality care for their children.

7 I was there for six years. I then came to Washington  
8 and worked briefly at the Food Research and Action Center, which  
9 is a Legal Services back-up center that works on food issues.  
10 While I was there I also worked on welfare reform.

11 After that I went to work for the Legal Services  
12 Corporation itself in the Research Institute. It was in that  
13 job that I first became interested in the question of child  
14 support enforcement as a strategy to ameliorate poverty.

15 I have spent the last 10 years of my life doing  
16 literally nothing by trying to convince people of the importance  
17 of child support enforcement and its place in any comprehensive  
18 look that we have at how we can do something about the poverty  
19 of women and children in this country.

20 For the last eight years, I have worked at the Center  
21 for Law and Social Policy. The center functions much like a  
22 Legal Services back-up center, although it receives no Legal

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1 Services Corporation funding.

2 In the eight years that I have worked on child  
3 support issues at the center, I have written over 20 articles  
4 for Clearinghouse Review. I must say Clearinghouse Review,  
5 which, as you know, is a law review-type publication which goes  
6 to every Legal Services program in the country, has been  
7 abundantly interested in child support as an issue and has been  
8 extremely supportive of getting articles on child support out to  
9 the larger Legal Services community, because it, too, recognizes  
10 the importance of the issue.

11 Clearinghouse has also published two books on child  
12 support during that period of time, again emphasizing and  
13 distributing those to every Legal Services program in the  
14 country so that the tools are out there for local programs to  
15 work on child support issues when they choose to do.

16 In that same period of time I have gone to over 20  
17 states to train local Legal Services program staff, pro bono  
18 lawyers and members of the private bar on child support  
19 enforcement issues for low-income families. I get requests all  
20 the time to come and do this.

21 I probably take four to five phone calls a day from  
22 local Legal Services programs about child support issues and get

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1 two to five letters every day.

2 I say all of this to impress upon you that it is not  
3 true that Legal Services programs are not involved in,  
4 interested in, or committed to child support enforcement as an  
5 end to poverty strategy. In fact, I think this is probably the  
6 fastest growing area of Legal Services practice in the last  
7 decade, and there is considerable interest and involvement in  
8 child support enforcement amount local program people.

9 I believe that, however, this work has to be put in a  
10 context. There are, I think, three important things to remember  
11 about child support enforcement put in the larger context. The  
12 first is that only half of all poor children actually live in  
13 single-parent families. Slightly more than half live in two-  
14 parent families.

15 So child support enforcement is not an issue for over  
16 half of the poor children in this country. Even if we had a  
17 perfect child support enforcement system, it would not touch the  
18 poverty of those children.

19 Secondly, the fathers of most poor children are not  
20 themselves wealthy. They generally have more income than the  
21 mothers in single-parent families, and they certainly should be  
22 contributing to the support of their children, but it is a

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1 simple, basic fact that even if we could provide child support  
2 enforcement services for every child in America, and got the  
3 maximum amount out of their absent parent that we could, we  
4 would still not have a significant anti-poverty effect from  
5 child support enforcement alone.

6 We would make things considerably better, but child  
7 support enforcement alone will lift very few children out of  
8 poverty. Thus, the families affected by child support  
9 enforcement also need other kinds of help.

10 They need employment and training programs, they need  
11 access to jobs that don't discriminate on the basis of race or  
12 sex. They need decent wages, they need health insurance, for a  
13 while they may be subsidized child care. They may need housing  
14 assistance.

15 They may need many of the kinds of services that are  
16 available, but which people frequently have difficulty accessing  
17 unless they have some help from a Legal Services program in  
18 doing it. So, again, we have to look at this in the context of  
19 the lives of the people being affected.

20 Third, and I think very critically, there are out  
21 there in the world in every single state agencies which are now  
22 funded to provide child support enforcement services for low-

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1 income families. This year they are funded to the tune of \$1.16  
2 billion. They are located throughout the country so that they  
3 have both funds to provide services and they probably have a  
4 good many more offices out there a good deal more accessible to  
5 low-income people than Legal Services programs do.

6 These local 4D offices, we'll call them because  
7 they're authorized by Title 4D of the Social Security Act, are  
8 authorized to provide four different types of services to low-  
9 income families. Location of absent parents, frequently that is  
10 the problem. We don't know where the absent parent is, or where  
11 he or she works, what assets they may have, et cetera.

12 Paternity. If the paternity of a child has not been  
13 established, these 4D programs are fully authorized to pursue  
14 paternity. They have the funds to do genetic testing, they have  
15 the funds to bring people into court.

16 The third is to establish the court orders. Sometimes  
17 this occurs in conjunction with the paternity proceeding,  
18 sometimes it occurs because the parent has deserted the family  
19 and no support order has ever been entered.

20 Finally, they have authority to enforce support  
21 orders. They have at their disposal a variety of mechanisms  
22 under the Federal law which has been amended in 1984, and 1988,

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1 including using automatic income withholding, requiring the  
2 posting of bonds, reports to credit agencies.

3           These are all mechanisms that are available through  
4 the 4-D System.

5           How do you get into this system? If you are a  
6 recipient of AFDC or Medicaid, you are automatically in the 4-D  
7 System. You don't have a choice.

8           In fact, as an eligibility condition for receiving  
9 AFDC or Medicaid, you must assign to the State your right to  
10 collect child support or spousal support, and you must cooperate  
11 with the State in securing that support.

12           In many states, that law has been interpreted to mean  
13 that no other attorney can be involved in child support issues  
14 on behalf of that family. For instance, in the State of  
15 Missouri, there is a statute which says private attorneys -- and  
16 that includes Legal Service Program attorneys -- cannot handle  
17 these cases.

18           They must be handled by the 4-D attorneys.

19           In California, there is a legal position to the same  
20 effect. In Mississippi, there is a state regulation to that  
21 effect. But, each state deals with it differently.

22           In some states, Legal Services Programs may be

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1 involved in providing child support services, in addition to the  
2 4-D ones and there is no problem. But in many states, they are  
3 simply not able to do that in accordance with their state's  
4 practice.

5 How else do you get into the system? Well, anyone  
6 else who wants or needs child support enforcement services can  
7 go to a 4-D office, file an application and pay a small  
8 application fee.

9 They are then a 4-D case and entitled to the same  
10 services that all other people who come in through the Public  
11 Assistance System. So that this is not an inaccessible system.

12 It is one that is user-friendly in the sense that you  
13 can get in fairly easily.

14 What, then, is the role of Legal Services in all of  
15 this? Well, clearly a Legal Services Program sitting in an  
16 local area looks to see whether there is a 4-D agency which is  
17 providing these services. If it is, then it would be a waste of  
18 that program's resources to be doing individual child support  
19 enforcement cases because someone else is already doing it.

20 I hope Steve Goldsmith is here in a bit because he  
21 runs one of the best programs in the country. Frankly, if I  
22 were in a Legal Services offices in Indianapolis, I wouldn't put

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1 resources into this. They do a wonderful job.

2           There are many other states that do a very good job in  
3 this area.

4           There are also a number of states that do a terrible  
5 job. That is a reality. And, therefore, what most Legal  
6 Services Programs have done is to look at the resources of the  
7 4-D System and decide that the best way to serve the largest  
8 number of clients is to try to get that state's 4-D System to  
9 perform the functions it is supposed to perform.

10           There are to my knowledge at the moment eleven  
11 lawsuits in different states around the country that have been  
12 brought by local Legal Services Programs, trying to improve  
13 their 4-D Systems by requiring those systems to meet their  
14 obligations under Federal and state law; to provide sufficient  
15 staff to handle the cases; to provide the resources for  
16 investigations that are necessary; and, to begin to get those  
17 systems functioning better than they are.

18           In the states where that strategy has been tried, the  
19 systems have improved greatly. Overall, if you look at the  
20 numbers over the last six years, a dramatic increase in 4-D  
21 services has occurred both for Public Assistance and on Public  
22 Assistance families.

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1           In other words, I think it is fair to say that there  
2 is interest in Legal Services Programs in this issue; there is a  
3 strategy to address this and provide services to the largest  
4 number of people by trying to work to make the 4-D System itself  
5 respond because that is where the resources are.

6           And, there is a commitment to seeing this as part of  
7 an anti-poverty strategy. With that, I want to turn over to  
8 Carl Owens, who can talk about how a local program has dealt  
9 with this issue from their perspective.

10           CHAIRMAN WITTGRAF: Thank you, Ms. Roberts.

11           MR. OWENS: Thank you, Mr. Chairman, Members of the  
12 Board. My name is Carl Owens and I am senior attorney with the  
13 Legal Aid Society in Cincinnati, Ohio, where I serve as Team  
14 Leader of the Public Benefits Group.

15           I am a native of Covington, Kentucky. I grew up in a  
16 fairly conventional Midwestern family. I am a graduate of  
17 Harvard College, and Boston University Law School.

18           When I got out of law school in 1977, I went to work  
19 with the Office of Kentucky Legal Services Programs, in  
20 Lexington, Kentucky, which is a state-support program there, and  
21 served as director of that program for four years.

22           Following that experience, I had a couple of years in

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1 private practice, which weren't as happy as I would have liked  
2 them to have been, and then I decided that I needed to get back  
3 into the Legal Services world, and I did so with the Cincinnati  
4 Program, where I have been for the last five years. Very  
5 happily, I might add.

6 The Legal Aid Society of Cincinnati is a very highly  
7 structured and well managed program, we believe. We take  
8 priority setting very seriously.

9 We devote a substantial amount of time and resources  
10 to it. We involve a significant number of clients and ex-  
11 clients, as well as Board Members and the Staff, other  
12 professionals, service providers in the community.

13 We factor in our own perspectives, based on our  
14 day-to-day representation of clients. We then develop work  
15 plans which our various teams in the program operate under for  
16 the ensuing three years.

17 We employ a variety of internal management mechanisms,  
18 and systems, including primarily our Legal Work Committee, which  
19 is comprised of all of our senior attorneys, which meets monthly  
20 to review our progress in major cases and projects to ensure  
21 that the work plan is being carried out.

22 So this is a proven system, produces good results, we

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1 believe. We have a lot of confidence in it.

2 In our most recent priority-setting process, 1987, the  
3 issue of child support enforcement was identified as a high  
4 priority in several respects.

5 First, as the need for aggressive advocacy vis a vis  
6 the operation of the State 4-D System, and as well, the carrying  
7 out of child support enforcement responsibilities by independent  
8 county agencies, which they were delegated by state law.

9 Secondly, as part of an overall strategy, to reduce or  
10 eliminate barriers that our clients routinely experienced in  
11 attempting to pursue self-sufficiency through employment.

12 In the ensuing work plan that developed after that  
13 priority-setting process, then the child support priority was  
14 addressed in at least two ways. First, our Family Law Team was  
15 charged to provide representation for clients seeking to improve  
16 the child support collection procedures of the Domestic  
17 Relations and Juvenile Courts, and of the County Departments of  
18 Human Services.

19 Secondly, a special project, what we called the  
20 Transition Project, was established which included members of  
21 both our Public Benefits and Employment Team, to address in a  
22 variety of ways the barriers that clients experience in becoming

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1 and remaining employed.

2 This project was charged to seek, among a variety  
3 other things, substantial increases in state funding for child  
4 support enforcement activities.

5 Now these priorities have played out in a variety of  
6 ways and I would like to briefly describe several of them to  
7 you. We have filed major lawsuits on behalf of eligible clients  
8 against all three of the county child support enforcement  
9 agencies in our service area with very significant results.

10 In Pittman versus Taft, which was filed in Federal  
11 Court against Hamilton County, where Cincinnati is located, we  
12 obtained a consent decree in which the county agreed to hire all  
13 of the additional staff that had been recommended by Coopers &  
14 Lybrand.

15 We had convinced the county to hire Coopers & Lybrand  
16 to conduct management audits, and as a result of those audits,  
17 they recommended an overall increase in 60 percent of new staff,  
18 with 100 percent increase in their enforcement staff.

19 In actual numbers, this meant an increase from 190 to  
20 150 people to eliminate a backlog of 40,000 cases with court  
21 orders, and another 37,000 cases without court orders by June of  
22 1992.

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1           Hamilton County has a total case load of roughly  
2 80,000 4-D cases and 50,000 non-4-D cases. The consent decree  
3 was filed with the court and Legal Aid continues to monitor  
4 compliance on a quarterly basis.

5           We were awarded \$27,000 in attorneys' fees in that  
6 case.

7           The second case, Overby v. McBride, also filed in  
8 Federal Court, against Claremont County, one of our smaller  
9 counties, similar results were achieved. We had also persuaded  
10 them to employ Coopers & Lybrand, and similarly, a consent  
11 decree was entered in that case reflecting their agreement to  
12 increase their staff by over 100 percent -- 13 to 30 persons.

13           They also agreed to specific time lines for taking  
14 action in open cases, and provided for working off the backlog  
15 of some 13,000 cases in 18 months. Again, quarterly monitoring  
16 continues and we were awarded \$35,000 in attorneys' fees in that  
17 case.

18           Finally, Corelly v. Hauser, filed in yet a third  
19 county, Brown County, is still pending. Corelly includes claims  
20 against the state 4-D Agency, as well as the county, for the  
21 state's failure to carry out its responsibilities under Federal  
22 and state law, to ensure that an effective child support

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1 enforcement operation is in place throughout the state, as well  
2 as for its failure to ensure that the various county agencies  
3 are adequately performing their responsibilities.

4 We survived motions to dismiss in that case and have a  
5 motion for partial summary judgment pending.

6 Our motion is based in part on a Federal audit which  
7 shows that Ohio's compliance with Federal requirements was so  
8 lacking that they had lodged over \$5 million in sanctions  
9 against the State, and, as well, on the State's own audits of  
10 the larger counties which shows a tragic pattern of failure on  
11 the part of the counties to come even close to meet established  
12 parameters in various critical actions as a part of the program.

13 In our judgment, the State's failure to ensure an  
14 adequate 4-D system is beyond dispute. A critical need is to  
15 fashion and then implement effective remedies, including  
16 adequate funding and appropriate management strategies to enable  
17 it to accomplish its mission under Federal and state law.

18 Ohio has a total case load of 691,775 4-D cases.  
19 Many, if not most of those cases, are going to be affected by  
20 the outcome of that litigation.

21 I might also add here, several years ago we handled a  
22 case, Maston v. Fellerhoff, United States District Court,

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1 wherein we succeeded in obtaining the right of indigent obligors  
2 to have appointed counsel in cases where they brought in for  
3 contempt.

4 In that case, we were able to expand the pool of  
5 resources with which low-income persons could secure legal  
6 representation.

7 Now, in addition to this child support enforcement  
8 litigation, we have also been involved in some other work I  
9 would like to mention briefly. In *Mosley v. Bowen*, a suit filed  
10 against the county, state and Federal Government, we sought to  
11 establish the right of our client who wasn't an FDC recipient,  
12 to receive a \$50 pass-through payment, mandated by the Omnibus  
13 Budget Reconciliation Act of 1984, for every month for which  
14 child support payments were timely made on her behalf.

15 We succeeded in that case in obtaining injunctive and  
16 monetary relief in the United States District Court; that case  
17 is now pending in the Sixth Circuit Court of Appeals.

18 In another instance, we threatened litigation on  
19 behalf of an employed client, a former AFDC recipient, who lost  
20 one entire month's worth of support -- almost \$300 -- because of  
21 the State's collection and distribution procedures.

22 Litigation proved unnecessary in that case because the

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1 State immediately entered into negotiations, which resulted in a  
2 proposed amended State regulation to resolve the problem. The  
3 State Plan Amendment to implement that regulation is now pending  
4 before HHS for approval.

5 In conjunction with the transition project that I  
6 mentioned earlier, we have, on behalf of a number of eligible  
7 clients, who specifically authorized us to do so, sought  
8 increases in the state funding to assist both the State 4-D  
9 Agency and local county agencies in their operations.

10 I might add we do that with IOLTA funds which are  
11 unencumbered in Ohio.

12 Our efforts, along with those of other advocates have  
13 resulted in the State 4-D Agency obtaining a five-fold increase  
14 in its appropriation from the State; from \$2 million to \$10  
15 million a year for distribution to counties to use as matching  
16 funds for Federal dollars to enhance their child support  
17 enforcement activities.

18 Finally, in terms of on-going individual cases, the  
19 single largest case category in Cincinnati Legal Aid is in the  
20 domestic area. Over 800 cases last year.

21 Because our strict priorities in that area, almost all  
22 of those cases involve children; almost all of them involve,

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1 among other things, the seeking and obtaining of child support  
2 orders. So we tend to be involved in that area, as well.

3 My point is, this brief review of our work provides  
4 tangible evidence -- more than tangible evidence that Cincinnati  
5 Legal Aid Society takes the child support priority very  
6 seriously.

7 It also demonstrates, we believe, the value of local  
8 priority setting and local decision making to determine not only  
9 what the priority should be, but how they should be pursued.

10 The unique circumstances of the program in the service  
11 area, including the strengths and expertise of staff, specific  
12 configuration of governmental bodies with responsibilities,  
13 other resources in the community, as well as competing  
14 priorities specific to the area, all, in our judgment, have to  
15 be taken into consideration when setting priorities and  
16 allocating resources to them.

17 This is best done, we believe, at the local level. In  
18 closing, I would like to offer just a few comments on the  
19 proposal by Representatives McCollum and Stenholm, to earmark a  
20 rather substantial amount of the LSC appropriation for  
21 individual child support enforcement cases.

22 First, we have reviewed the February 21 memorandum

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1 prepared by Alan Houseman, alluded to earlier on behalf of the  
2 Project Advisory Group, and NLADA, and without reiterating its  
3 arguments, we simply state that our program subscribes to them  
4 wholeheartedly.

5           Secondly, as I am sure I have demonstrated here, we  
6 believe that our approach to this critical area is both  
7 appropriate and cost-effective and extremely beneficial to large  
8 number of clients and potential clients.

9           As I indicated, almost 700,000 child support cases in  
10 Ohio could be affected.

11           Finally, we believe that our approach is consistent  
12 with the style of Legal Services involvement and all other  
13 critical areas of public benefits and entitlement.

14           Simply put, we do not believe it is our job to do the  
15 work of publicly funded agencies for them. We do not, for  
16 example, do this in the area of subsidized housing or public  
17 benefits, other high priority areas for work in our program.

18           This is not to say that we do not handle individual  
19 evictions or welfare terminations; we do. We handle many of  
20 them. But our overall mission, as we understand it and attempt  
21 to implement it is to not only represent clients individually,  
22 and aggressively and intelligently. This must include calling

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1 these agencies which are charged and funded far more generously  
2 than us, to deliver services to low-income people, and our  
3 charge then is to, in addition to representation of individual  
4 clients on individual matters, to hold those agencies  
5 accountable for what they are supposed to do.

6 This is what we do in these other areas, and we  
7 strongly believe that this is an appropriate strategy for the  
8 child support enforcement area, as well.

9 I appreciate this opportunity this morning to speak to  
10 you on behalf of our program and our clients. We believe we  
11 provide aggressive and high quality legal representations to our  
12 clients on priorities that they help establish. We are proud of  
13 that.

14 We would encourage any of you who might be so inclined  
15 to want to visit a local program, to look in greater depth at  
16 how they function; to come and visit us. We would be happy to  
17 accommodate you.

18 We think that such visits could be extremely  
19 beneficial to you in preparing for your work important work and  
20 we would be happy to do that with you.

21 Thank you for the opportunity speak. I would be happy  
22 to answer any questions.

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1           CHAIRMAN WITTGRAF: Thank you, Mr. Owens. I believe  
2 before we move to any questions directed towards you and Ms.  
3 Roberts, we will ask Mr. Goldsmith to come forward, and Ms.  
4 Palmer we will give a chance to catch her breath.

5           We will ask Mr. Goldsmith if he would like to make his  
6 remarks first, and then for us, as Board Members, to have the  
7 opportunity to express our direct questions or concerns to the  
8 four of you as an entire panel.

9           I don't know that your views or concerns are  
10 necessarily at odds this morning. We will go forward on the  
11 assumption that they are not.

12           Mr. Goldsmith?

13           MR. GOLDSMITH: I heard my program complimented, so I  
14 have an immediate urge to agree with what the previous speaker  
15 said.

16           CHAIRMAN WITTGRAF: I would assume that would have  
17 made you that much warier -- but, maybe not.

18           MR. GOLDSMITH: Some of my remarks will be moderated a  
19 little bit.

20           Let me just briefly state that I am the District  
21 Attorney in Indianapolis and I operate under a 4-D contract as  
22 has been described before in your documents, and presentations.

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1 Basically, I contract with the State of Indiana to provide 4-D  
2 enforcement. That is done by District Attorneys probably in  
3 two-thirds of the states, and by welfare attorneys in another  
4 third of the states.

5 We, in Indianapolis, run a relatively cost-effective  
6 operation. My collections in the time I have been District  
7 Attorney has increased from \$900,000 a year to \$30 million a  
8 year, and we are one of the most cost-effective urban child  
9 support enforcement communities.

10 Having said all that, I would also say we find, at  
11 best, mediocre services in that, to the poor women, and working  
12 poor women who are the "clients" at my office. Our caseload now  
13 is approximately 40,000 cases and we do that with six lawyers.

14 Obviously, if you divide the minutes in a work year,  
15 the personal service available is relatively slim.

16 My thesis, here today, as I thought about your issue I  
17 got more confused, the deeper I got into it. I have been  
18 running around the country for maybe a half a dozen years trying  
19 to encourage District Attorneys and welfare attorneys and  
20 governors and legislatures to invest more money and resource in  
21 child support enforcement.

22 I guess I am here today consistent with that. There

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1 is an enormous unmet need for legal services for the poor and  
2 working poor, custodial parents, who, in my community,  
3 essentially, are all women. There may be a handful of men.

4 If we look at this carefully, working towards a kind  
5 of quick proposal, let me offer a couple of observations.

6 First of all, I do not represent these women. No one  
7 represents these women, by ethical guidelines, but statute. I  
8 represent the State of Indiana for the sole purpose of  
9 collecting child support.

10 Now, often, that is consistent with the Mom's needs,  
11 but we are not her lawyers, and we have only child support  
12 collection and enforcement authority, and award-setting  
13 authority in the very narrowest sense.

14 There is no comprehensive legal service available for  
15 the poor Mom, and by that we will use AFDC as the standard, or  
16 the working poor Mom. So her custody issues, her visitation  
17 issues, her medical bill issues, her housing issues, her  
18 battering issues, if she is beat up by her boyfriend or her  
19 spouse, all of those things essentially go without  
20 representation.

21 And, if the Dad has a clever-enough lawyer, he will  
22 bring a visitation allegation as a shield to our support

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1 enforcement weapons, and she will have no representation at all.

2 So, I am proud of our collection efforts. I am not  
3 particularly proud of our legal representation on behalf of the  
4 Moms, and frankly, if you get into the ethical issues, it  
5 becomes even more complicated.

6 At 40,000 clients over here, and I prosecute several  
7 hundred thousand clients -- several hundred thousand defenders  
8 over there, and they pretend that I represent the state so I  
9 don't have these ethical conflicts with people I am prosecuting,  
10 like for speeding tickets, or battery, or whatever so.

11 The point is, I represent the State. I don't  
12 represent the Mom.

13 I think the best evidence of this situation is that if  
14 you are an upper middle class Mom, or a middle class Mom, you  
15 don't come to me. You go to a private lawyer. They bring you  
16 over to my office to sign you up for our enforcement services  
17 because we can garnish wages more effectively; we can intercept  
18 incoming checks and other things, but he will continue to  
19 represent the middle class Mom.

20 The poor Mom can't pay for that particular service.

21 I am not here as a Legal Service Corporation's expert,  
22 so I don't have any observations about the earmarking issue. I

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1 am here as an advocate for poor and working poor Moms, and  
2 illegal representation.

3 I think that is better defined as Family Law issues  
4 rather than child support enforcement issues. We do have a  
5 unique opportunity in 4-D offices to provide the narrow child  
6 support enforcement activities.

7 We don't have the ability to provide legal  
8 representations. So, my presentations are more on behalf of  
9 whether Legal Service organizations nationally will enter Family  
10 Law issues more aggressively, as contrasted just to the narrow  
11 piece of child support enforcement.

12 Just a minute of rebuttal and then a proposal. I  
13 greet with mixed emotions the previous presentation. There is  
14 no doubt that when the state or local communities are sued  
15 successfully by Legal Services that more money is invested in  
16 our programs.

17 It becomes a little bit confusing to thank those  
18 people who are suing you as partners in the program, however.  
19 That is how most of the accomplishments have been done.

20 So, we recognize these unmet needs, although we, I  
21 think, would like to have Legal Service offices as allies, in  
22 the full sense of the word.

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1           Now a couple of other comments. As I thought through  
2 this, I don't know that we have to draw these very difficult  
3 barriers -- kind of either-or-questions. That is to say I see  
4 no reason why a poor Mom, or working poor Mom, represented by  
5 Legal Services offices around the country could not also sign up  
6 for 4-D, as the middle class Mom has the right to do now, and we  
7 will handle her administrative intercept questions and tax  
8 collection questions, and the other issues.

9           Secondly, and I know this is a radical proposal, but  
10 frankly, if I were a state director -- a State 4-D Director--  
11 and my Legal Service office was interested in offering family  
12 law services, I am not so sure but that I wouldn't eagerly look  
13 for a contractual relationship.

14           There is nothing to say that a Legal Service  
15 representation can't be a 4-D representation. Obviously, if you  
16 continue to sue us, it presents a difficult problem. But absent  
17 that -- I mean, there could be an arrangement.

18           In fact, there could be a reimbursement to a Legal  
19 Service office for the percentage of their time that they spend  
20 on these issues.

21           Thirdly, as one of the speakers mentioned before, I  
22 have five branch offices, street-level offices in my community

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1 and my Legal Service organization doesn't. I would be delighted  
2 to have a Legal Service lawyer in my office. I will give them  
3 free rent, free space, free telephones. All I want is the  
4 authority when the Mom says "I have a visitation issue; I have a  
5 housing issue; I have a food stamp issue", to say -- walk down  
6 the hall and talk to somebody who is available to be your  
7 lawyer, rather than -- that is too bad; we are not by law to  
8 furnish those services.

9 I think that there are a number of highly creative and  
10 imaginative coordinated legal representation issues that can be  
11 provided, and they can be provided, in part, perhaps in the most  
12 aggressive way through 4-D funding in the Legal Service  
13 Corporation areas; they can be done through joint programs; they  
14 can be done through joint referrals. They can be done in a  
15 number of ways.

16 As proud as I am about our successes in Indianapolis,  
17 going from \$900,000 to \$30 million, it is agonizing, absolutely  
18 agonizing to see the lack of ability to deal with individual  
19 legal needs of the women who come in to see us in the variety of  
20 problems in which they face themselves.

21 So I would be delighted, enthusiastic to work on a  
22 program in tandem with a local Legal Service organization. More

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1 often than not, when they are involved and are issues, they are  
2 involved against us, either suing or representing the  
3 respondents in a paternity action.

4 I would like to have aggressive, competent legal  
5 service lawyers who care about poor folks -- and there are many  
6 in this country -- arranged as allies and let's fight for better  
7 legal services for poor and poor working women. Thank you.

8 CHAIRMAN WITTGRAF: Thank you, Mr. Goldsmith.

9 Ms. Palmer.

10 MS. PALMER: Sorry to be late.

11 CHAIRMAN WITTGRAF: No problem.

12 MS. PALMER: I was a victim of separation and divorce  
13 in 1976. I contacted Legal Service for protection from abuse.  
14 I was told at that time that I needed to get private legal  
15 counsel.

16 Then, in 1977, when I got a divorce I was told they  
17 didn't handle divorces; you will have to find private legal  
18 counsel.

19 Then, in the next two years I had a problem with non-  
20 compliance of child support and when I contacted the Legal  
21 Service offices, they told me that they did not handle child  
22 support issues; I had to have private legal counsel.

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1 I was frustrated. I didn't have any money. I mean,  
2 literally, I took food out of my children's mouths to pay an  
3 attorney. That is why I am sitting here today, speaking to you,  
4 because I couldn't provide an attorney, so I therefore learned  
5 how to do child support on my own, and non-compliance with child  
6 support, and then I turned around and put forth knowledge that I  
7 have learned helping other people to do the same things.

8 Now, when we look at child support, we have 50 states;  
9 they all deal with it separately. And then with another  
10 problem, in Pennsylvania, we have 67 counties who all deal with  
11 child support in a different manner.

12 So, that makes it a little bit difficult because what  
13 I do now in Allegheny County would be taught different in Beaver  
14 and so forth.

15 We have a problem with custody issues. We have  
16 problems with parental kidnapping. My main practice has been  
17 child support, but over the Christmas Holidays we had several  
18 kidnappings -- parental kidnappings. When the clients called  
19 Legal Service, they referred them to me.

20 I don't have an attorney, really, to take this case  
21 load on. We taught the clients how to go pro se, and how to go  
22 to motions court, and what they should do.

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1           We were able to get one child back; one child we were  
2 unable to get back, but Legal Service were not there for these  
3 people and they had no place to turn. These people really did  
4 not have money to go out and hire an attorney. They were on  
5 welfare -- all these clients. They were on AFDC.

6           One client was a custodial father and one was a  
7 custodial mother. They did not have money. If you are on  
8 welfare, you don't have money for private counsel.

9           So, that is the problem I am seeing. I met with our  
10 local Legal Service office this past month and I questioned why  
11 they were continually cutting back on services.

12           They said that originally they had 88 attorneys and  
13 now they have 40 attorneys, and that they had 3,000 protection  
14 from abuse lawyers last year -- and that is what they are  
15 focusing on mainly, are the PFAs.

16           Child support is not a priority. That was clear to me  
17 back in 1977 and 1978. Child support was never a priority for  
18 Legal Services, otherwise I wouldn't be standing here today.

19           So that is a lot of the things that we deal with.  
20 Those who don't mean, what I have is a non-label self-help  
21 program that we assist on the issues of child support and we  
22 have gotten into custody. Mainly, it is the rights of shared

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1 parenting, or what is called partial custody in Pennsylvania.

2 We help the clients to initiate an order, to enforce  
3 an award, to confirm custody or to file modification of contempt  
4 on their custody orders. I have since gotten my training in  
5 family mediation, and a lot of times I am able to mediate out  
6 some of the problems of custody.

7 But if I were not there, these people would not have  
8 anyone else to turn to. 80 percent of my clientele are of AFDC,  
9 zero income, or unemployment. The other 40 percent are of  
10 marginal income, of \$1,000 to \$1,200 a month.

11 That is not a lot of money when you are feeding a  
12 family that you could go out and pay an attorney. These are  
13 just some of the problems that we have seen that is going on.

14 Speaking with Ms. Bitner, who is our attorney at Legal  
15 Service in the Pittsburgh office -- to come up, and frankly, she  
16 said, "Rose, you know more about child support at this time than  
17 I do." She could not believe some of the new issues that have  
18 happened, and legislation that has been brought forth.

19 She says, "I really have got to get up to date." She  
20 said she wanted to meet with me more on a month-to-month basis.

21 When I first formed the organization, I asked Legal  
22 Service for their help. Well, I didn't get it at that time.

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1           As the organization grew, most of my referrals are  
2 from Legal Services and Legal Aid in the Allegheny County, or  
3 the court system. Last year, we dealt with 5,369 clients.

4           Out of those, 1,362 were direct client contact with  
5 either a child support or custody issue.

6           Right now, I have a law student program that fulfills  
7 the need of those who need representation in the court. In  
8 Allegheny County, we have, or in Pennsylvania, an administrative  
9 process. You have a three-tiered system.

10           One is the first level, you go before Domestic  
11 Relations Officer. If you don't come to an agreement at that  
12 level, you go before a hearing officer, who is an attorney, who  
13 can make a recommendation to the court, that becomes the order  
14 of the court in ten days, if no exceptions are filed to that  
15 order.

16           If exceptions are filed to that order, then it goes up  
17 before a judge. Right now, I have two law students and they are  
18 over-burdened with filing exceptions, or with vacating an order,  
19 or helping with the custody issue. It is really a problem that  
20 Legal Service needs to look at and state that these clients are  
21 there, and we are not helping them.

22           Last year, Allegheny County collected close to

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1 \$71 million in child support. That is not even enough to  
2 scratch the surface. There is a lot out there that needs help,  
3 that is not getting the services they need. The Legal Services  
4 offices needs to help these clients who cannot afford to pay for  
5 private legal counsel, and in some way, work hand in hand with  
6 our organization.

7 When I comment that we need to work more closely, the  
8 director of Legal Services says -- we do, we refer everybody to  
9 you. That is not working very closely with what we are doing.  
10 We need to work a little better so that the clients get served  
11 better.

12 That is all I have to say. Thank you.

13 CHAIRMAN WITTGRAF: Thank you, Ms. Palmer.

14 Ms. Murphy, would you like to make some remarks?

15 MS. MURPHY: I would echo the apology for being late.

16 I want to first tell you a little bit about myself. I  
17 experienced a similar situation as Rose related to you. I was  
18 divorced, I had three children.

19 I had a child support award of \$325 a month for the  
20 three children, which was not being met. I approached Legal  
21 Services, also, and this was back in 1979. I was told that I  
22 was making just above the amount of money that would allow me to

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1 be eligible for your services.

2 Not to say that it wouldn't take very much to put me  
3 on welfare at that time.

4 As a result, after remarrying, I was given a lot of  
5 moral support by my current husband, into pursuing the child  
6 support issue, and ran into numerous difficulties.

7 I then convinced myself that the only way I could do  
8 something about it, other than signing away one-third of the  
9 child support that was owed to my children, to a private  
10 attorney to help me with the case, I took on the issue myself  
11 and represented myself in court numerous times, and was  
12 successful in getting my child support through a series of  
13 garnishments.

14 I, too, felt that what I have learned as an individual  
15 needed to be passed on to other women in my situation so that  
16 they wouldn't have to go through the same trauma and emotional  
17 trauma that I went through.

18 As a result, I started a child support group in  
19 Virginia, and testified before Congress on the 1984 amendments  
20 in 1983 and 1984. At that time, we found that there was a need  
21 to set up a child support network.

22 We have successfully set this up without any

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1 tremendous amount of funding simply because there are numerous  
2 millions of women out there that need help, and we are all  
3 helping each other.

4 We are not funded; we are non-profit and we depend on  
5 each other. I believe that this is an off-shoot of a new under-  
6 class that is growing.

7 I think that when Congress opened up the child support  
8 agencies in the State to the non-welfare clients, even though it  
9 had always been available, there were barriers. The 1984  
10 amendments removed those barriers, but I don't believe that they  
11 actually had any idea of how many non-welfare cases out there  
12 were in need for these services.

13 The number of non-welfare cases has doubled since the  
14 1984 amendments went through. The number of welfare cases has  
15 stabilized, so that should tell you something. That should tell  
16 you that there are numerous non-welfare clients that are still  
17 not being reached because of lack of publicity, and those that  
18 do try to get assistance from Legal Services are still being  
19 told in many states that -- we don't handle child support cases.

20 Now, I am not saying that everyone of these cases that  
21 come to you are eligible for these services, but I think that it  
22 is an issue that you need to look at very closely.

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1           The expanding number of single poor female head-of-  
2 families with children has actually doubled since 1963. In the  
3 recent Congressional budget that was released, the number is 61  
4 percent, wherein in 1963 it was 32 percent.

5           Of these families, about 85 percent of that are on  
6 welfare, are there because they are not getting their child  
7 support awards enforced.

8           Now one of the recommendations that Mr. Goldsmith has  
9 made was getting to one that I have been trying to get support  
10 from your agency, and that is that I see that there is no  
11 significant problem that should stand in the way of Legal  
12 Services to enter into contractual or cooperative arrangements  
13 with the state agencies.

14           True, you are going to get some flack from some state  
15 administrators who think they are doing a terrific job. But the  
16 State of Virginia, for one, was ecstatic when I suggested to  
17 them that this was possible -- that you all were actually  
18 thinking of something like this.

19           The more help I can get, the better it is going to be  
20 for everyone.

21           We have right now in Virginia 14 Assistant State  
22 Attorneys General who have the responsibility of handling all of

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1 the cases, welfare and non-welfare cases that go to court.

2 That is just impossible to handle in an efficient  
3 manner. They do have contractual agreements with some  
4 Commonwealth Attorneys in Virginia, but then we have counties,  
5 one of which is the largest county in Virginia, where the  
6 Commonwealth Attorney has refused to answer the State Agency's  
7 phone calls, or their letters, and trying to get him to  
8 cooperate and enter into a contract arrangement to help them  
9 with their representation in court.

10 So you are going to run into this kind of problem at  
11 the state and county levels, but I encourage you, don't give up,  
12 because it is workable, it is feasible. You may not be able to  
13 serve all of the clients, but you can serve a great number.

14 I have an idea, and I don't even know if it would  
15 work. If Legal Services, as I understand, is limited to giving  
16 assistance to welfare clients and those up to 125 percent above  
17 poverty, if there could be some kind of contractual arrangement  
18 through the states to help specifically the welfare and those up  
19 to 125, then that would free up some of the other attorneys to  
20 help the non-welfare cases.

21 It is the non-welfare cases that are suffering. They  
22 are not getting hardly any representation because the state's

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1 benefit from the incentives and the caps on the incentives and  
2 the regulations that the Feds have passed down. It forces the  
3 states to work the welfare cases rather than non-welfare, which  
4 only ends up in those individuals, those in the grey area, if  
5 they don't get enforcement of their child support, they end up  
6 on welfare.

7 So we have to start promoting this program, as the  
8 child support enforcement program and try to prevent these women  
9 from going on welfare.

10 I appreciate the opportunity to speak to you all.

11 CHAIRMAN WITTGRAF: Thank you, Ms. Murphy. The Chair  
12 has a question for Ms. Roberts, or Mr. Goldsmith. Obviously, we  
13 have a sense of the success and the lack of success in Title 4-D  
14 programs across the states, like, Ms. Roberts, you indicated  
15 that most states, or many states, are quite good; others are  
16 not. Certainly, Mr. Owens efforts as well as Ms. Murphy's and  
17 Ms. Palmer's efforts suggest that the Title 4-D efforts are not  
18 particularly good in some jurisdictions.

19 Has anyone compiled, to your knowledge, any analysis,  
20 statistical or narrative, as to what the 50 states are doing  
21 under Title 4-D?

22 MS. ROBERTS: Yes. There are a number of sources of

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1 information. One is the Federal Office of Child Support  
2 Enforcement, within HHS, is required by law to issue an annual  
3 report to Congress that details, on a state-by-state basis,  
4 various statistics about the functioning of the program.

5 The latest one, I do not believe, has been printed  
6 yet, but the information is all available by simple phone call  
7 to the agency.

8 Secondly, the Congressional Research Service has  
9 recently compiled 150-page volume on the status of the program  
10 at this time, what issues it faces in the future, and that also  
11 has in it some statistics from OCSE on the various state  
12 performances.

13 There were oversight hearings held as part of the  
14 Welfare Reform Effort in 1988, which -- oh, several dozen people  
15 testified, which also will give you some flavor for this, and  
16 the Ways and Means Committee two years ago now did a report card  
17 on the states, where it ranked the states A through F on their  
18 efforts in this area by using the data that was available of the  
19 various services that were to be provided, and then ranking how  
20 the states were doing./

21 CHAIRMAN WITTGRAF: That was much more of an answer  
22 than I expected. Thank you.

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1 Mr. Goldsmith.

2 MR. GOLDSMITH: My only observation is, I would  
3 appreciate you would be careful with the results because they  
4 may be counter-intuitive -- that is to say, the states that are  
5 most cost-effective and most aggressive may be those that are  
6 generating the most demand for ancillary legal services, like  
7 medical bills and visitation and custody.

8 I know that we show very well cost-effectiveness and I  
9 would hate to, at the conclusion, jump to that those states  
10 doing a poor job would be those that would not necessarily most  
11 need the Legal Service participation -- it may not follow.

12 CHAIRMAN WITTGRAF: In fact, in the Great State of  
13 Indiana, because you are doing such a good job, that creates an  
14 even greater need for the involvement of Legal Service grantee  
15 attorneys.

16 MR. GOLDSMITH: Yes, sir.

17 CHAIRMAN WITTGRAF: Questions? Mr. Collins.

18 MR. COLLINS: I think it has been an inspiration to  
19 hear these five dedicated people, all approaching this one  
20 important problem from different perspectives.

21 The particular self-help groups were just wonderful.  
22 I think I saw a report by the Inspector General of the Health

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1 and Human Services Agency, suggesting that there was something  
2 like 55,000 Federal employees who owe something like \$240  
3 million in past child support, and two-thirds of the children  
4 and the wives of those employees are on welfare.

5 Now, if the Federal Government can't handle its own  
6 employees, there is something terribly wrong with the system. I  
7 would invite you to please continue to help us figure out how we  
8 can help you. You are doing wonderful work.

9 CHAIRMAN WITTGRAF: Mr. Gina?

10 MR. DANA: Ms. Roberts, did you indicate that the  
11 Federal Government and the State Government are spending  
12 \$1.6 billion?

13 MS. ROBERTS: \$1.16 billion.

14 MR. DANA: Mr. Goldsmith, your offices have taken the  
15 recovery from \$900,000 to \$30 million. Help a lawyer who  
16 doesn't understand this program. How much of that \$30 million  
17 goes to the county and how much goes to the non-clients? The  
18 poor Moms that you don't represent?

19 MR. GOLDSMITH: I tried to keep my comments brief,  
20 which makes them a bit confusing. Let me spend one minute on  
21 historical perspective. When I started in this program, the  
22 Federal Government gave me incentive only on dollars for AFDC

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1 moms.

2           Then, four or five years ago, they cut the incentive I  
3 got on the AFDC case and said you are going to need more  
4 incentive on non-AFDC cases. That is when 4-D offices, many of  
5 them, started aggressively offering services to working poor,  
6 middle class moms.

7           Those moms -- so, now my collections are about 50-50;  
8 \$15 million or so goes to AFDC moms, and -- in fact, that may  
9 answer your question -- \$15 million goes to non-AFDC moms.

10           The non-AFDC, \$15 million, the moms get most of the  
11 money. The AFDC, \$15 million, they get essentially \$50 a month,  
12 and the rest goes to offset welfare expenses.

13           MR. DANA: Of the \$15 million, how much of that  
14 represents the \$50 a month? Do you have a number as to how much  
15 of it actually --

16           MR. GOLDSMITH: No, sir, but it is a relatively small  
17 percent. Most of the money goes to local, state welfare and  
18 federal welfare -- the State general funds are the big winners  
19 in the program.

20           The Federal Government and often the local government  
21 are in marginal positions; state governments generally tend to  
22 make most of the profit in this system.

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1 MS. FULLER: We have the statistics for Federal on  
2 that. There was a report recently sent out by the American  
3 Public Welfare and it said that ten percent of the welfare cases  
4 generate the \$50 a month in this regard.

5 CHAIRMAN WITTGRAF: Of the AFDC cases, approximately  
6 ten percent get the \$50 pass-through.

7 MS. FULLER: That is right.

8 MR. OWENS: It is consistent in Ohio, as well.

9 MR. DANA: Maybe a follow-up question, Mr. Chairman.  
10 Is what you are saying that, of this \$1.16 billion that federal  
11 and state governments are investing in this undertaking, a  
12 relatively small percentage of the money recovered actually goes  
13 to the families who are -- to poor people?

14 MR. GOLDSMITH: Yes, and just as you think it is true  
15 from the Board's standpoint, the financing really drives many of  
16 the service delivery issues. So the Federal Government pays  
17 two-thirds of our administrative expenses. Thus, my suggestion  
18 that if you were ever to enter into child support enforcement,  
19 it seems to me there is some reason to have a relationship which  
20 might generate some reimbursement to services offices.

21 Of the money that we then spend -- and one reason both  
22 court opinions and our offices say that they represent the state

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1 is especially on the AFDC cases, government is our real client.  
2 They get most of the money. The mom gets very little of it.

3 She has already been advanced the money, the theory  
4 is, from welfare.

5 MR. DANA: If the Legal Services Corporation, one of  
6 the issues that is before us is the \$20 million set-aside. If  
7 we took \$20 million of scarce legal services money and invested  
8 it in child support, would the same result follow: That most of  
9 that money would tend to increase the public coffers and not go  
10 to help poor people.

11 MR. GOLDSMITH: The more I get into these questions,  
12 they don't lend themselves to easy answers. I don't want to  
13 take much time, let me just answer your question slowly.

14 I agree with local LSO Offices, that there is a unique  
15 service that 4-D does, that they cannot and should not  
16 replicate. We have legal authority that they don't have, unless  
17 they became a 4-D office.

18 However, the basis of my presentation is just that  
19 very effort of generating cash for welfare reimbursement  
20 generates a whole host of ancillary legal service problems for  
21 the mom. I would view the unique role you could play as  
22 addressing those issues which are kind of waved by the financial

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1 wand but they are not directly related to, so I would disagree  
2 with the thesis.

3 I would say that Legal Service, that your offices'  
4 would-be clients would not be directly related to the funding  
5 issue, and for AFDC moms, would not really generate as much cash  
6 as would solving their other problems.

7 I would see the Legal Service lawyer coming over and  
8 signing their client up for my administrative services and then  
9 handling collections of their medical bills --

10 MR. DANA: Your point was that you would rather, if I  
11 understood your point, was that you would rather not restrict  
12 the ear-marking to just child support, which you do, but you  
13 would direct it to the other problems that you don't address.

14 My sense is that -- I understand that point. I was  
15 focusing on, unfortunately, the proposal that is being advanced  
16 is to focus it only on child support, and the impression I get  
17 from what you have indicated is that that resource, that effort  
18 would be good for state and local and Federal Governments  
19 because it would increase the net return on their welfare  
20 payments but would provide only a marginal assistance to the  
21 poor people involved. Is that right?

22 MR. GOLDSMITH: It is almost right, except if you say

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1 that these people are AFDC and these are non-AFDC, and never the  
2 twain shall meet -- it is not an accurate view of the world.  
3 People are bouncing on and off and working moms that may be one  
4 week on, or one week off, or between 120 to 125 percent of  
5 poverty, can indeed be helped through more aggressive Legal  
6 Services which would not just result in more money to the State  
7 of Indiana.

8 So, I am not trying to side-step the question, but if  
9 you were careful about the cases you took, you could indeed  
10 increase the standard of living for the working poor mom.

11 MR. DANA: The people who are above 125 percent?

12 MR. GOLDSMITH: Or, who are bouncing back and forth,  
13 yes, sir. No, no, no; between 120 and 125 percent, or who are  
14 at 90 today and 110 tomorrow.

15 MS. MURPHY: I think what we are trying to get it at  
16 is that this segment of population that is in the grey area  
17 would benefit and the welfare coffers would not benefit. We  
18 would be able to maintain some substance of living economically  
19 sound, reasonable rate for these women to stay off of welfare if  
20 they were able to get some of these traditional services.

21 For instance, the state does not get any incentive  
22 money, I understand, for enforcement of medical arrears, or

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1 medical support payments. So this is money that is going out of  
2 this poor woman's pocket, that is not even being pursued by any  
3 state by the child support agencies, because they don't get any  
4 incentive for collecting on that.

5 So, if Legal Services could take up the slack, in  
6 addition to child support, or vice-versa, whichever one you want  
7 to do --

8 CHAIRMAN WITTGRAF: Ms. Roberts -- I am sorry.

9 MS. ROBERTS: I think we have sort of come to the  
10 heart of the matter which is, if we had unlimited resources, I  
11 think all of us could sit down and come up with how to spend  
12 those resources to get the most child support out there.

13 But, the reality is we don't have unlimited resources.  
14 The question then becomes do you allocate resources essentially  
15 from one group of low-income people to another group of low-  
16 income people? We could have a long philosophical debate about  
17 that.

18 I think there are points to be made on both sides, but  
19 I think the question for you is, given how difficult a decision  
20 that is, does it make sense for you as a Board to require people  
21 to allocate resources in that direction, despite their best  
22 judgment of what local conditions are?

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1           Or, do you say, as has been the tradition in this  
2 program, because we are allocating scarce resources, we have to  
3 let the people who are closest to the system's daily operation  
4 figure out what is the best use of those.

5           It may well be that in some places the 4-D system is  
6 such a shambles that the programs can and should allocate  
7 resources to child support enforcement activities.

8           It may also be true that in the area the 4-D system is  
9 functioning well enough and the housing system is a problem,  
10 that you want to be sure that when that low-income mother walks  
11 in and she needs help fighting an eviction, you don't end up  
12 having to turn her away because the resources have been  
13 allocated to child support enforcement, even though the child  
14 support agency is capable of doing a good job there.

15           It is a very hard cut to make, but I continue to  
16 believe out of my experience of being in Legal Services for 20  
17 years, that in the end that is best made at the local level, by  
18 the clients, the resources and the people in the local programs  
19 who can make an assessment of those difficult questions.

20           CHAIRMAN WITTGRAF: Mr. Collins?

21           MR. COLLINS: The methodology which is applied in  
22 making those decisions in the complex allocation of scarce

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1 resources would be a benefit to us all. I, for one, would like  
2 to have the methodology which is employed.

3 Second, I am not convinced and have never been that  
4 middle class lawyers, or upper class lawyers, are in the best  
5 position to judge what is best for the clients as to the  
6 allocation of resources or anything else.

7 I think that we must develop a mechanism to which Mr.  
8 McGelfen referred this morning, to have the clients help us make  
9 those decisions on perhaps the more than likely basis that it is  
10 the clients who feel the unmet need.

11 MS. MURPHY: I think that this is where self-help  
12 groups and child support advocate groups would greatly benefit  
13 you with the knowledge and education that they have obtained,  
14 the information. We do not simply listen to what the  
15 bureaucrats tell us.

16 We have grown in our knowledge of how the system works  
17 and how it doesn't work. We could probably give you, from our  
18 perspective, some of the stumbling blocks that the bureaucrats  
19 may try to put in your way that would not be quite evident to  
20 you if you didn't have any inside working knowledge of the  
21 system.

22 CHAIRMAN WITTGRAF: At this time, let me thank the

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1 five of you very much and very sincerely on behalf of the Board.  
2 Just as we have indicated to the earlier morning presenters, we  
3 sincerely appreciate your taking the time to be with us.

4 We are learning, as you can tell from our questions,  
5 and we hope, as I have said before this morning, that this is  
6 the beginning of a learning process and certainly not the end in  
7 and of itself.

8 We appreciate your willingness to kind of sit on the  
9 panel together. I think that has been more productive for the  
10 nine or ten or eleven of us, as opposed to isolating you in your  
11 different perspectives, based on your different experiences.

12 With that in mind, looking to the body assembled, it  
13 is the Chairman's hope this afternoon to do similarly with the  
14 two halves of the so-called drug panel, to join them; likewise,  
15 the two halves of the so-called agriculture panel, to join them.

16 Going beyond Mr. Collins' last question or comment  
17 regarding methodology, if it appears to be practical it is the  
18 Chairman's intent to take the two o'clock and two-thirty panels  
19 regarding the changing face of poverty, and the legal services  
20 program perspective and to attempt to put those at 1:15, rather  
21 than 2:00 or 2:30, or 2:25 or 2:45 -- to take the broader  
22 comments that come out of those and suggesting to anybody who is

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1 here who will be making presentations under those headings to be  
2 responsive to the questions or comments of Mr. Collins, which I  
3 think some of the rest of us share.

4 If it is possible, I think it hinges perhaps on the  
5 availability of Nicholas Eberstadt. If at all possible, at  
6 1:15, we will go to Panels 7 and 8 before we come back to Panels  
7 5 and 6, and then Panels 9 and 10. Are you all thoroughly  
8 confused?

9 (General laughter.)

10 Let me try it, again. We would like to begin at 1:15  
11 with Panels 7 and 8, if at all possible. Then, moving to  
12 combine Panels 5 and 6, and then combine Panels 9 and 10.

13 Is anybody who is directly affected in those panels  
14 particularly confused?

15 (No response.)

16 CHAIRMAN WITTFGRAF: If not, we are recessed until  
17 1:15. Thank you.

18

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## A F T E R N O O N   S E S S I O N

(1:25 p.m.)

1  
2  
3           CHAIRMAN WITTGRAF: We will begin this afternoon. If  
4 you will assume your seats we will be most appreciative, so we  
5 can begin.

6           My understanding is that the five of you represent the  
7 perspective of the local legal services program or grantees. I  
8 hope between the five you, you have a sense of how you are going  
9 to divide your time and who is going to be lead off and who is  
10 going to be clean up.

11           I don't see any board members coming this way at this  
12 time. I think we are ready to proceed if the lead off batter is  
13 ready.

## PRESENTATION BY LILLIAN JOHNSON

14  
15           MS. JOHNSON: I have the privilege of being the lead  
16 off person. Thank you very much for the opportunity to present  
17 a legal services program perspective. We are very pleased for  
18 this opportunity.

19           While we would love to have the opportunity to explore  
20 in detail the complexity of the components that make up the  
21 national delivery system for legal services, we understand that  
22 time constraints are what they are. We have decided to limit

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1 ourselves to a short overview of some of the key components of  
2 the legal services delivery system.

3 In particular, myself and my fellow panelists will  
4 focus in on the role of clients not only as recipients of legal  
5 services, but also as people who have a direct interest in our  
6 priorities and how we allocate our resources.

7 We would like to also give an overview of some of the  
8 barriers associated with providing legal service to specialized  
9 communities, namely the migrant farmworkers. We would like to,  
10 also, speak briefly about the importance of national and state  
11 support to our delivery system. Finally, we would like to share  
12 with you some of the challenges facing legal services programs  
13 and the management of limited resources and expanding and  
14 increasing needs for more resources.

15 We have taken this opportunity to also provide you  
16 with some visual aids that will give you a comprehensive, give  
17 you a more graphic impression of the complexity of the  
18 comprehensive national delivery system that we represent.

19 To my far left is a U.S. map that identifies the  
20 locations of all of the main offices funded through the Legal  
21 Services Corporation, as well as each of the branch offices.  
22 You will be able to determine that there are legal services

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1 programs serving clients in every county in the United States  
2 and its territories. We have also taken the time to identify in  
3 a more graphic form where the delivery of legal services dollars  
4 are coming from.

5 We have taken a limited approach to provide you with  
6 information concerning three different states. My own home  
7 state of Arizona where you can see that we are very dependent  
8 upon federal dollars to provide legal services to low income  
9 people. In Minnesota you will see that they are not as  
10 dependent in terms of the current availability of resources,  
11 however the need is continuing to be met by additional revenue  
12 being provided through state or private sources. You will see  
13 that in Massachusetts they have a corresponding less dependency  
14 on the actual legal services monies, but they have a lot more  
15 clients to represent.

16 My own experience as a legal services lawyer began  
17 some time ago. Fifteen years ago as a matter of fact. I began  
18 to pursue my legal career at a very young age, primarily because  
19 of two incidents in my life.

20 As a young high school student I understood and  
21 appreciated what impact the change in the laws would have on me  
22 in that my principal advised the mostly black students in our

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1 high school that we no longer were prohibited from using the  
2 public facilities in the parks and in the local restaurants  
3 because the laws had changed.

4 I also recall an incident in my life where I had to  
5 share my already crowded bedroom because my cousins were evicted  
6 illegally from the home in which they were sharing with their  
7 parents.

8 I decided to pursue a legal services career when I had  
9 the opportunity to attend the University of Chicago Law School  
10 and saw the kind of difference that the people who were working  
11 in the clinics were having on the lives of low-income people.

12 I began after my graduation from law school in 1975 to  
13 be associated as a staff attorney with the Legal Assistance  
14 Foundation of Chicago. After about three or four years I was  
15 promoted and became a managing attorney, also at the Legal  
16 Assistance Foundation of Chicago.

17 After a very brief stint with the Chicago Regional  
18 Office of the Legal Services Corporation I began what is now a  
19 seven-year career as Director of Community Legal Services in  
20 Phoenix, Arizona.

21 It is the experience throughout my legal services  
22 career that there certainly are not enough resources to provide

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1 assistance to low-income people. But it also has been my  
2 experience that this comprehensive system represented by local  
3 programs and national and state support centers, and special  
4 projects to deal with the special problems of special civil  
5 legal needs, populations like migrant farmworkers and urban  
6 Indians, is the best, most comprehensive system of its type.

7 In Arizona, we have been undergoing a process to  
8 identify the availability of resources to provide legal  
9 assistance to our clients for the past eighteen months. In  
10 1985, my board of directors decided to pursue an extensive  
11 survey and discovered that there was an increasing number of  
12 clients who had need of legal services.

13 We began also to understand and appreciate that it was  
14 an ongoing process and, therefore, we have renewed our efforts  
15 to survey our client community and involve our private legal  
16 community and the social service agencies in helping us to  
17 identify the most appropriate ways of serving our clients.

18 I look forward to the opportunity of exploring in more  
19 detail the ways, the methods that we are employing in Arizona to  
20 deal with the increasing various problems of our client  
21 community and if time permits I would appreciate having a minute  
22 or so to share that with you.

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1 CHAIRMAN WITTGRAF: Do you want to do that now, Ms.  
2 Johnson, or do you want to wait?

3 MS. JOHNSON: I want to wait.

4 CHAIRMAN WITTGRAF: Okay.

5 PRESENTATION BY ROBERTA PATRICK

6 MS. PATRICK: I am Roberta Patrick from Iowa City,  
7 Iowa. I am from the heartland of America. I am a former  
8 client-member of the board of directors of Legal Services  
9 Corporation of Iowa.

10 I served as a client-member since 1964. This was  
11 before the state agency was formed in 1977. I raised three  
12 children as a single parent. I am now 74-years old, so you can  
13 see that I have a deep concern and interest in this agency.

14 I want to thank you for allowing me the opportunity to  
15 appear before you today and I want to thank my regional  
16 director, Randy Yules for making arrangements for me to be here.

17

18 I will be speaking to you as a client-member. I will  
19 refer to my agency as LSCI, Legal Services Corporation of Iowa.  
20 It is a statewide organization that provides legal services in  
21 98 of Iowa's 99 counties.

22 LSCI's board of directors is composed of thirty

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1 individuals. Eleven of these are clients. From 1977 until  
2 December of 1989, I served on the board of directors. During my  
3 years of service on LSCI's board I was at different times the  
4 board's present, the board's secretary and the board's  
5 treasurer.

6 In 1974, I became a legal aid client when I sought  
7 representation in obtaining custody of my grandchild. My  
8 lawsuit, a suit which was ultimately decided by the Iowa Supreme  
9 Court, was successful and I raised my grandson from the small  
10 child to the college freshman he is today.

11 In December of 1989, I resigned my position on LSCI's  
12 board of directors due to the fact that I was no longer  
13 qualified on the basis of excess assets. My ineligibility was  
14 caused by the fact that I inherited \$8,000, which I then set  
15 aside to ensure that my grandson would be able to finish college  
16 education.

17 However, on the basis of my income alone and in my  
18 heart I have been an always will be a legal services client. I  
19 am very proud of the number of years that I served on the board  
20 of directors and within legal services.

21 As new members of the National Legal Services  
22 Corporation board of directors, you no doubtedly are the

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1 recipients of much information from many different people as to  
2 how legal services can be improved. In my comments today I will  
3 speak to you as a legal services recipient and attempt to impart  
4 to you some understanding of the meaning of legal services  
5 programs to low-income people and what I have seen firsthand  
6 about the people who work for and are served by the legal  
7 services programs.

8 Iowa was hard hit by the downturn in the farm economy  
9 in the 1980's. An estimated eighteen percent of the population  
10 in Iowa lived in poverty in 1985 making the state one of the  
11 poorest in the nation. Iowa is also a very rural state. Half  
12 of the state's population reside in rural areas.

13 Rural America has recently been described as America's  
14 third world. A world of limited housing, marginal medical care,  
15 and inadequate nutrition.

16 For many of Iowa's poor, LSCI and the dedicated men  
17 and women who work it are the court of last resort, the last  
18 place to which they can turn for justice. LSCI's ability to  
19 serve Iowa's poor, however, has been deluded by serious funding  
20 problems.

21 In 1982 and '83, LSCI was forced to close five of its  
22 fifteen offices, abandoning vast geographical areas and large

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1 numbers of clients. For the past year and a half we have been  
2 fighting to avoid additional office closings.

3 It is obvious to even the most disinterested observer  
4 that local programs need more money. Since 1986, LSCI's federal  
5 allocation has only increased by 4.5 percent. During this same  
6 period, leases, salaries, libraries, phone systems, and  
7 insurance costs have all gone up in price.

8 When revenue increases do not keep pace with the cost  
9 of doing business, the money has to come from somewhere and that  
10 somewhere unfortunately is usually from staff reduction and  
11 office closure. In Iowa, office closure was devastating to the  
12 poor.

13 The tasks before this board are numerous. You must  
14 remember that the function of this agency is to serve low-  
15 income people. You must bring stability to legal services, both  
16 nationally and locally so that the programs can better respond  
17 to the legal problems of the poor. You must restore credibility  
18 to the National Legal Services Corporation. You must endeavor  
19 to redirect the attention of Congress to the real and pressing  
20 needs of the poor by removing Washington politics from the  
21 debate on how best to serve the poor. You must develop within  
22 yourselves a sense of pride in your local programs.

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1           In conclusion, I want to say that the men and women  
2 who work for Legal Services Corporations all throughout the  
3 United States and those who serve on boards of directors are  
4 committed to giving high quality service to the poor. All of  
5 them deserve your recognition, your support and your assistance.

6

7           I wish you success. I thank you very much for the  
8 opportunity to be here today.

9           CHAIRMAN WITTGRAF: Thank you, Ms. Patrick.

10

PRESENTATION BY VALLANO SAUCEDO

11

12           MR. SAUCEDO: Bienvenidos a nuestra comunidad.  
13 Welcome to our community. Thank you very much for this  
14 opportunity to talk about migrant legal services. This  
15 afternoon I am going to try to give you a brief overview of  
16 migrant legal services.

16

17           I am Vallano Saucedo. I graduated from UC Berkeley in  
18 1973 and from the Stanford Law School in 1976. I have been in  
19 legal services for fourteen years with the last ten with  
20 California Rural Legal Assistance. I am the director of  
21 California Rural Legal Assistance, Migrant Farmworker Project  
22 and work in the Fresno office.

22

Before sharing with you an overview of legal services

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1 for farmworkers, I want to share with you my special affinity  
2 with migrant farmworkers. I was born in Tornillo, Texas. For  
3 those of you who do not speak Spanish, Tornillo translates into  
4 Screw, Texas. I grew up as a migrant farmworker.

5 At that time we traveled from West Texas to Central  
6 California and back. We picked oranges, cherries, apricots,  
7 pears, prunes. Our specialty was tree crops. In the mid-  
8 1960's we moved to Central California and from there we migrated  
9 to Northern California, Oregon and Washington.

10 The conditions that we faced were intolerable. I can  
11 remember that the housing was very poor. When there was no  
12 housing we made housing out of pallets, out of boxes, we lived  
13 in barns and tool sheds. When there was nothing else available,  
14 we lived in our car. There were no toilets in the fields and  
15 there was no water.

16 I can remember our families exposed to pesticides and  
17 on several occasions we were actually poisoned.

18 Most of the work that we did was done by piece rate  
19 and everyone worked, even my little brothers and sisters. There  
20 were seven of us children with my mother and father. Seldom did  
21 we earn the minimum wage.

22 If we had problems with poor housing or if our wages

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1 were not being paid we didn't have any recourse. At that time  
2 we couldn't turn to anyone for help. A lot of that was due to  
3 the fact that we lived in isolated labor camps and many times  
4 when we traveled to a community we did not know anyone other  
5 than perhaps the farm labor contractor who had recruited us  
6 there or the employer who had recruited us there. Short of that  
7 we didn't know anyone else there.

8           The living and working conditions have not changed for  
9 farmworkers. The housing is still deplorable. Many of our  
10 clients still live in labor camps that are no more than  
11 abandoned hotels, motels, and in many of the reported cases we  
12 have seen instances of peonage where farmworkers have been  
13 recruited to places, promised wages, and then kept against their  
14 will.

15           With respect to wages, we still find that many wages  
16 are not being paid, farmworkers are being underpaid, and many  
17 times, as I said before, they are recruited with promises that  
18 they will earn the minimum wage and many times they do not even  
19 when they work with their children in the fields. Farmworkers  
20 are still being exposed to pesticides.

21           There is a need for migrant legal services. Our  
22 funding for migrant legal services has been approximately \$9 and

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1 a half million for the last few years. There was a small  
2 increase this year.

3 I want to emphasize that migrant clients are not like  
4 other clients. There are special barriers. I did not learn how  
5 to speak English until I went to school. My mother and father  
6 speak broken English at best. That problem still exists.

7 I mentioned isolation in rural areas. That still is  
8 the case.

9 There is high mobility so that even though we can file  
10 an action in one place on behalf of migrant farmworkers we still  
11 have to maintain contact with them when they move to other  
12 states, so that many times that litigation is that much more  
13 difficult.

14 There is also that continued dependence on employers,  
15 on rancheros, on farm labor contractors. Very little has  
16 changed.

17 I want to comment on the kind of litigation that we do  
18 and our success rate. A lot of the litigation that is done is  
19 around the Migrant and Seasonal Agricultural Worker Protection  
20 Act, AWP. I want to say that we typically win about 90 percent  
21 of those cases. This is a much higher success rate than for  
22 many other private lawyers, private practitioners.

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1           Of the reported cases, our track record in AWPA cases  
2 is excellent. It is out of 26 we have won 23. This success  
3 rate reflects the high quality of work done by migrant program  
4 staff and their high level of dedication.

5           Attempts have been made to create an image that  
6 migrant legal services attorneys are out to get agricultural  
7 employers. That the cases that are filed are frivolous. The  
8 record is just the contrary. The facts and the information has  
9 been manipulated. There are employers who comply with the law  
10 and there are others who don't.

11           The fact is it is the ones who don't that hurt the  
12 entire industry. They are the ones who fail to pay the minimum  
13 wage, hire unscrupulous farm labor contractors, house  
14 farmworkers in deplorable conditions. I also want to add that  
15 we play by the same rules as everyone else.

16           The so-called reforms are nothing more than a proposed  
17 separate, but unequal system of justice for farmworkers under  
18 the guise of reform.

19           It reminds me of when I was growing up in Texas. See,  
20 on my birth certificate it says that I am Caucasian, although I  
21 am of Mexican descent. But after Brown versus Ford in the 50's,  
22 the way that the schools were integrated is that the black

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1 school children were brought into the Mexican schools because we  
2 were Caucasian.

3 The self-proclaimed performers would create a system  
4 of second class rights for second class citizens. Again, under  
5 the guise of reform.

6 We are at a very important juncture in the history of  
7 farmworker rights. Two years ago I became a farmworker, a  
8 migrant, once again. In celebration of the 200th anniversary of  
9 the signing of the constitution I traveled to Philadelphia and I  
10 was struck by Ben Franklin's remarks upon the conclusion of the  
11 constitutional convention.

12 At the beginning of the convention Ben Franklin  
13 observed a carved sun on the head rest of GEN Washington's chair  
14 and wondered whether it was a setting or a rising sun. But upon  
15 the signing of the constitution he was sure that it was a rising  
16 and not a setting sun for the fledgling nation. So, let it not  
17 be said years from now that we permitted the sun to set on the  
18 rights of farmworkers in the guise of reform.

19 Thank you for the opportunity. Welcome to our  
20 community.

21 CHAIRMAN WITTGRAF: Thank you, Mr. Saucedo.

22 PRESENTATION BY JOHN G. BROOKS

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1           MR. BROOKS:    Mr. Chairman, members of the board,  
2 thanks for the opportunity that we all have to talk with you  
3 today, which I hope will be helpful in clarifying what the  
4 actual delivery system is.    I mean it is only the beginning of  
5 a dialogue, I hope it will go on.

6           My name is John G. Brooks.   I am from Boston and I am  
7 here to speak today about support centers, both national and  
8 state, which is such an important ingredient of the legal  
9 services delivery system.   My particular credential today is my  
10 membership on the board of the National Consumer Law Center,  
11 located in Boston.

12           I am also a member of the board of directors of the  
13 Greater Boston Legal Services, one of the major users of the  
14 expertise of the support centers.   I am also past president of  
15 NLADA and of the Boston Bar Association.   I am currently an  
16 active member of the sections on the delivery services of both  
17 the Boston Bar Association and the Massachusetts Bar  
18 Association, a large part of whose function is to recruit and  
19 stimulate pro bono lawyers to supplement the legal services  
20 staff lawyers.

21           Time is short, so I want to be brief in my remarks and  
22 leave a few thoughts with you to be supplemented by a statement,

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1 written statement, which I appreciate -- which I hope will be of  
2 some help to you. I offer it to you for later reading.

3 First thought is why support centers, what do they  
4 have. Having been in private practice in Boston for more than  
5 50 years I have observed from various vantage points the  
6 extraordinary metamorphosis from the old-fashioned legal aid,  
7 privately done and privately financed, to the present greatly  
8 advanced and highly integrated delivery system financed to such  
9 a great extent by public dollars.

10 At the same time there has been an extraordinary  
11 proliferation of legislation from the Congress and the state  
12 legislatures accompanied by a complex maze of rules and  
13 regulations from the multitude of administrative agencies which  
14 didn't even exist fifty years ago on such matters as housing  
15 codes, consumer credit, debt collection rules and so forth.

16 To an increasing extent, these rules and regulations  
17 have directly affected the lives and often the basic necessities  
18 of the poor in housing, medical care, subsistence, for instance.  
19 It is hardly surprising that the inevitable conflicts between  
20 the good intentions of the legislators and of the community on  
21 the one hand, and on the other hand the parsimony of budget  
22 conscious administrators vitally affect poor people. Whether we

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1 like it or not, the only practical recourse for those people is  
2 through legal assistance.

3 This can no longer be reasonably provided as in the  
4 older simpler days by individual lawyers like you and me who  
5 used to be able to rely on our general expertise and common  
6 sense. Today legal services for the poor, poverty law, often  
7 requires a sophistication to handle matters which even the few  
8 program lawyers who have been specially trained need help for  
9 the further specialization and experience of the support  
10 centers.

11 The stated purpose of the Legal Services Act is to  
12 provide support for quality legal services to the poor. That is  
13 right at Section 1001, paragraph 2. Since the support is being  
14 provided by public money it also provides that the delivery  
15 system supplying such services be both economical and effective,  
16 Section 1007. That is where the support centers come in.

17 With their wealth of experience and material they can  
18 save local staff lawyers research and drafting time, as well as  
19 being able to guide the local lawyers to more effective advocacy  
20 for their clients. In this way scarce legal services dollars  
21 are leveraged and stretched.

22 The current delivery system has grown and the support

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1 centers have come into being one by one to fill particular  
2 needs. As far as I know none has been conceived as a need that  
3 ought to be. It is a matter of experience and the need for any  
4 perceived to which the support centers have been created to  
5 meet.

6 I can't help paraphrasing the offerers that if there  
7 were no support centers now, we would have to invent them just  
8 to get the job done economically.

9 It has been proven that they are desireable by the  
10 demand from the field and I can attest to that as from my  
11 vantage point as the director of the Greater Boston Legal  
12 Services, which uses the facilities of the National Consumer Law  
13 Center, the National Housing Law Center and others. That is a  
14 pretty sophisticated program in Boston. It is a big one and a  
15 good one.

16 I think there has been no criticism of the quality of  
17 the staff. It has been attested to by the field and by the  
18 monitoring reports from the corporation monitors from time-to-  
19 time. Now, that is why.

20 What do they do? I think I will leave most of that to  
21 my statement and merely say now that, very briefly, they provide  
22 training to field program attorneys. They provide written

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1 material in book form or in periodic circulars. I have here  
2 examples of this from the National Consumer Law Center, which  
3 incidentally, Will Ogburn, my director, says he will supply to  
4 each member of the corporation for reference.

5 They are very useful bibles in the fields. They  
6 provide daily quick answers to numerous requests, the telephone  
7 is ringing all the time from field programs, from pro bono  
8 lawyers around the country, asking for advice and material from  
9 the support centers who have them in their libraries. Beyond  
10 that they provide in depth research and advice on more complex  
11 issues. Finally, they occasionally become co-counsel in major  
12 cases where the local programs cannot handle the whole problem.

13

14 There are two class actions which are described in my  
15 statement, which I would like to share with you now, but I am  
16 afraid I can't take the time for it. But I just would like to  
17 note that class actions are an enormously efficient way to  
18 handle large numbers of problems.

19 The one particularly noted in my statement is one  
20 where something on the order of 5,000 clients were served in one  
21 class action which originated when a large number of programs,  
22 field programs, in Virginia came up with the same kind of a

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1 problem in an unscrupulous mortgage financing situation.  
2 Questions came into the Consumer Law Center which realized that  
3 this was coming in from so many different sources, different  
4 programs, that the only sensible thing was to put it together  
5 into a class action. No one client could possibly have  
6 supported sufficient litigation to do the job.

7 The National Consumer Law Center undertook to co-  
8 counsel that because they tried very hard and couldn't find pro  
9 bono counsel to do it and they did try very hard. As a result,  
10 they got after some years of litigation in the bankruptcy court  
11 where they got an extraordinarily good settlement for these poor  
12 people who were being dispossessed by foreclosures on the basis  
13 of injurious loans. It was a mess and they cleared it up with a  
14 wonderful settlement.

15 Now, this is a very sketchy outline of what they do  
16 and I am sorry it has to be so sketchy, but I commend my  
17 statement for a little more detail. I do want to extend to you  
18 as some of the preceding speakers have a very cordial invitation  
19 to visit any of the support centers, national, state and also  
20 the local program in Boston and anywhere else, which I think  
21 will give you a good view of what actually happens and the kind  
22 of cases, and the caliber of the people who are involved, the

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1 staffs.

2 I just repeat again the hope that this will be the  
3 beginning of a constructive dialogue where we want to help you  
4 and hope you will help us. I thank you very much and am glad to  
5 answer questions if they turn up later. Thank you.

6 CHAIRMAN WITTGRAF: Thank you, Mr. Brooks. Mr.  
7 Rothschild?

8 PRESENTATION BY TOBY ROTHSCHILD

9 MR. ROTHSCHILD: Once again thank you for the  
10 opportunity to appear this afternoon. My name is Toby  
11 Rothschild and I am the executive director of the Legal Aid  
12 Foundation of Long Beach.

13 When I graduated from the U.C.L.A Law School in 1969 I  
14 wanted to represent consumers having problems with credit, debt  
15 collection, fraudulent sales practices and the like. I felt  
16 that legal services was the ideal place to have such a practice.

17

18 So, I became a VISTA volunteer and worked for, I think  
19 at the time it was, \$225 a month as an attorney at the East L.A.  
20 Legal Aid office. I later moved to Legal Aid in Long Beach and  
21 became a staff attorney there. I should add that during that  
22 time I made extensive use of the facilities of the National

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1 Consumer Law Center.

2 In 1973, I became the director of the Long Beach  
3 program, a position that I still hold. In addition to my work,  
4 I have also been very active in the organized bar chairing  
5 several committees of both the state and local bar associations.  
6 I currently serve as the secretary/treasurer of the Long Beach  
7 Bar and was honored a couple of months ago by that association  
8 as its attorney of the year for 1989.

9 In the few minutes that I have today I would like to  
10 share with you some of the concerns that I feel as a manager of  
11 a legal services program. The Legal Aid Foundation of Long  
12 Beach is a small program with six attorneys and one office. As  
13 I discussed these thoughts over the last few days with some of  
14 my colleagues from larger programs it confirmed for me that my  
15 concerns are shared and, in fact, magnified in those programs.

16 In the best of times managing such an enterprise is a  
17 very difficult task. We are faced every day with demand which  
18 far exceeds any ability of any program to deal with. Clients  
19 arrive in our office daily with serious legal problems,  
20 evictions from substandard housing, denial of vital benefits,  
21 severe abuse and beating by spouse or lover, the list goes on  
22 and on.

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1           Even by developing new more efficient means of serving  
2 large numbers of clients there is no way we can help them all.  
3 The resulting stress on both staff and management is high.  
4 Funding is always short for training and for new equipment.  
5 Working with various funding sources is a constant struggle.  
6 Keeping the operation going is very difficult.

7           The role of the Legal Services Corporation in such an  
8 environment should be to provide support and assistance to  
9 programs in addition to providing funding. Instead the Legal  
10 Services Corporation has taken countless actions that by design  
11 or by insensitivity severely impede the management of our  
12 programs. A review of the past six months or so presents  
13 several graphic examples.

14           The refunding application, which we are all in the  
15 middle of, is a prime example. The application for funding has  
16 become a monster dreaded by programs large and small. Let me  
17 share some numbers with you that may explain that.

18           In 1981, the Legal Services Corporation grant to the  
19 Legal Aid Foundation of Long Beach in 1990 dollars was \$995,000.  
20 The application, including grant assurances, special conditions  
21 and so forth, came to 22 pages. Today the total grant has  
22 shrunk to \$820,000 while the paperwork has grown to 193 pages.

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1           As I say, mine is a small program. At Legal Services  
2 Corporation of Iowa, for example, the current application  
3 exceeds 2,000 pages. I am advised that some programs measure  
4 their applications not in pages, but in inches.

5           Keep in mind that the entire document then must be  
6 sent to each of the 20 or 30 or more board members of each  
7 program for their review prior to its submission to the  
8 corporation. The cost of preparing, copying and sending these  
9 volumes of paper and of volunteer board members reviewing them,  
10 both in money and in time, takes away from the resources  
11 available to serve our clients.

12           The refunding application, along with other requests  
13 for information, for large volumes of information, causes us to  
14 spend more and more time gathering information and less and less  
15 time serving clients.

16           The corporation frequently requests information which  
17 would be easy to compile if it were requested in advance.  
18 Unfortunately, it is not requested until after the fact and  
19 compiling it, reconstructing the information is difficult, if  
20 not impossible.

21           Another example of the problem is the declination of  
22 representation report. In January, programs received a

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1 directive to collect and report extensive data regarding the  
2 clients rejected by the program. To get the required  
3 information, program staff would have to ask intrusive personal  
4 questions of countless people who had either just been or about  
5 to be denied service.

6           The General Accounting Office in its 1988 report on  
7 Legal Services Corporation information gathering indicated  
8 clearly that LSC needs to carefully test the cost of information  
9 gathering efforts against the benefits of those efforts.  
10 Clearly, as promulgated, the Declination of Representation  
11 Report would fail such a test.

12           We have been advised that changes in the report are  
13 coming and that we will begin gathering the data next week, but  
14 we still have not seen the revisions. I discovered yesterday  
15 that LSC staff did meet last week with representatives of the  
16 field to discuss this issue and I hope that we will see a more  
17 careful analysis and a more measured pace of implementing such a  
18 massive effort of gathering information.

19           These and other information requests reflect the fact  
20 that as far as we can tell, no one in a leadership position at  
21 LSC has ever worked in a legal services office. They have no  
22 sense of how the office functions and how information is

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1 gathered and retained. Consultation with representatives of the  
2 field should help LSC get better information with less  
3 difficulty and less interruption for field programs.

4 But at LSC, unlike any other governmental agency, not  
5 only is experience no valued, it seems to be a disqualification  
6 for employment or consultation. Time does not permit me today  
7 to detail even a fraction of the problems caused in managing a  
8 local program by intervention from LSC. Funding cut offs with  
9 warning, intrusive and hostile monitoring and countless other  
10 problems from LSC all make the difficult job of managing a legal  
11 services program even harder.

12 For the new board of directors and a new staff  
13 leadership, my message to you today is work with us, not against  
14 us. We have a remarkable resource of dedicated staff and  
15 committed volunteers who want to do the best possible job of  
16 delivering efficient and effective legal services to the poor of  
17 this country.

18 It has been said by many others before me, but let me,  
19 too, invite you. Come visit our offices. See for yourself how  
20 we function. Help us and let us help you to do an even better  
21 job of ensuring equal justice for the nation's poor and  
22 disadvantaged.

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1           CHAIRMAN WITTGRAF: Thank you, Mr. Rothschild. Thank  
2 all five of you. At this point, before we move to Mr. Houseman  
3 and Mr. Eberstadt, let's see with those five presentations if  
4 any of the members of the board here have any comments or any  
5 questions. Ms. Pullen?

6           MS. PULLEN: This morning we heard a great deal about  
7 the local control and not earmarking funds. This afternoon we  
8 have heard some about programming is already earmarked. I  
9 wonder whether anyone would comment on whether earmarking of  
10 migrant workers and Native American programs should continue  
11 since we were told all morning that we should not be earmarking?

12           MR. SAUCEDO: Let me address that. There are others  
13 also that can address that, and that can also be addressed in  
14 the Ag Issues Panel.

15           With respect to the specialized funding for migrants  
16 in particular the history behind that is that there was a study  
17 done by this corporation, excuse me, by the Congress called the  
18 1007H study that identified the access to legal services  
19 problems that migrants and other specialized populations have.  
20 It was a direct result of that study that those funds were  
21 earmarked in that fashion.

22           The needs and the kinds of barriers that were

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1 identified then continue to exist. So, as far as I know, that  
2 is the purpose behind earmarking those funds.

3 CHAIRMAN WITTGRAF: Ms. Johnson?

4 MS. JOHNSON: And might I add that even those funds  
5 have to be allocated by the local board of directors, because  
6 that is directed at that specialized population. It does not  
7 take it outside of the responsibility of the local board of  
8 directors to allocate it in accordance with the priorities of  
9 the program.

10 So, it still is locally controlled and locally dealt  
11 with to identify the most serious problems facing those  
12 particular special populations.

13 MR. SAUCEDO: Let me also address that question of  
14 priority setting in that context, and I will do it specifically  
15 in our situation.

16 The vast majority of the migrant farmworkers that we  
17 see are monolingual, Spanish, speakers. The priority setting  
18 process that we have laid out takes that into consideration. So  
19 that everything that we do is done in a bilingual fashion. Our  
20 staffs in the various offices are bilingual not only in the form  
21 of written, but also spoken language.

22 I should also tell you that with respect to our board

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1 of directors, when we have board meetings, we have the  
2 simultaneous translation equipment so that everything is done in  
3 terms of Spanish and English. We do contact the farmworker  
4 community, the migrant farmworker community so that they can  
5 enable us to set the kinds of priorities based on the  
6 experiences that they are having out in the fields.

7 CHAIRMAN WITTGRAF: Mr. Molinari?

8 MR. MOLINARI: I had expected that there would be some  
9 reference made to the change of case load as a consequence to  
10 the new immigration laws, particularly as it affected migrant  
11 workers, but I have not heard that. I would imagine there would  
12 have been some impact.

13 Could somebody address for us how that has changed the  
14 case load that confronts you?

15 MR. SAUCEDO: The most dramatic change is that there  
16 has been an increased need for our services. So that in terms  
17 of the money, the funds that we have to be able to meet that  
18 need, there has been that threshold change. With respect to the  
19 kinds of issues, the problems that we are encountering, the  
20 problems are pretty much the same that are faced by previously  
21 ineligible workers, are the same as those that we had been  
22 representing in the past. So that in the areas of housing,

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1 wages, and all of that, we are seeing those problems.

2 With respect to the increase it is fairly obvious that  
3 now that they have in a sense come out from underneath the  
4 shadows of existence, they are in a position to better assert  
5 their rights. So, we have seen that subsequent change in terms  
6 of the increased need for services.

7 MR. MOLINARI: But I was making reference with the  
8 thought of the question, don't you have substantial numbers of  
9 individuals who are claiming citizenship rights under the new  
10 immigration laws which would put a greater case load on you?

11 MS. SAUCEDO: Yes, that's exactly right.

12 CHAIRMAN WITTGRAF: Further questions? Mr. Dana?

13 MR. DANA: Just one. Mr. Saucedo?

14 MR. SAUCEDO: Yes.

15 MR. DANA: You indicated that in your view of the  
16 McCollum-Stenholm amendment was, I think, separate, establishing  
17 a separate but unequal legal system. Could you amplify on that?

18 MR. SAUCEDO: Yes. Again, there are other folks that  
19 are going to talk about that in the Ag Issues. But right now  
20 the way our system operates in terms of case management is that  
21 we have a system of internal checks and balances to review the  
22 merits of cases. Before any action is filed we make sure that

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1 the facts in the law square up so that we bring meritorious  
2 actions.

3           There are specific issues in the Stenholm-McCollum  
4 amendment that could negatively impact that. For example, with  
5 respect to the solicitation, I am not real sure what the thrust  
6 of that is, but in terms of our program there is a very large  
7 need to be able to engage in community education activities so  
8 that as I mentioned based on my own experience when we traveled  
9 to places and we did not know where local resources were,  
10 through community education and those kinds of things it can be  
11 dealt with. But I am afraid that with the solicitation one,  
12 that could become a very big barrier.

13           The other one that strikes me as being odd is  
14 specifically requiring that any and all systems of alternative  
15 dispute resolution be used before an action can be filed.  
16 Again, referring to my own state, not only in the state court  
17 systems do we have some alternative dispute resolution  
18 mechanisms, but it seems to me that the requirement that we  
19 exhaust all of those before any litigation can be filed would  
20 further -- would actually increase the cost of litigation.

21           If we were to engage in something like that, part of  
22 the difficulty would be, as I mentioned before, the mobility of

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1 clients. That is at the time that an incident happens in your  
2 service area and by the time it gets resolved there could be a  
3 space of some months, possibly longer, and many times these  
4 folks have moved to other places so that the expense of bringing  
5 them in and litigating those cases can be a problem. If we are  
6 asked to exhaust all available alternative dispute resolution  
7 mechanisms, that could be a substantial problem.

8 CHAIRMAN WITTGRAF: If you, ladies and gentlemen,  
9 don't mind, I would just assume that you remain seated where you  
10 are. With Mr. Houseman's cooperation we are going to proceed  
11 with what has been characterized as panel 8. Let Mr. Houseman  
12 make his comments. Nick Eberstadt will be coming in making some  
13 comments of a similar nature. I think it may be then that  
14 following those two additional presentations we may have some  
15 more questions that we may want to turn to the five of you to  
16 help us with.

17 So, if you don't feel too conspicuous there, and if  
18 you can fight off nodding through the next couple of presenters,  
19 with all due respect to Mr. Houseman and Mr. Eberstadt, we would  
20 ask you to do so. You don't have the benefit of any coffee, I  
21 am sorry.

22 I think though coming off the heels of Mr. Dana's

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1 question, among other things, Mr. Houseman is prepared to talk  
2 about the so-called McCollum-Stenholm reforms. Mr. Houseman?

3 PRESENTATION BY ALAN HOUSEMAN

4 MR. HOUSEMAN: Thank you. Yes. Let me first address,  
5 I think my time is over, I have two things and I am going to do  
6 them rather quickly.

7 First, I want to address the McCollum-Stenholm  
8 reforms. Let me begin, however, with a little bit of  
9 introduction about myself.

10 I grew up in Colorado Springs, Colorado where I was  
11 born and raised. I attended Oberlin College and Wayne Law  
12 School where I held a field fellowship in social welfare law. I  
13 began legal services in 1966 when I began working in Cleveland,  
14 Ohio on behalf of welfare recipients. In 1968, I was a fellow  
15 in Detroit. In 1969, I started Commission of Legal Services. I  
16 directed it until 1976 when I came to the Legal Services  
17 Corporation as the director of the research institute. An  
18 entity that no longer exists at the Legal Services Corporation.

19 Since late 1981, I have been the director of the  
20 Center for Law and Social Policy, which is a program from which  
21 my colleague, Paul Roberts, this morning comes. I have been  
22 involved in legal services, representing poor people, in short,

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1 since 1966.

2 I became involved in representing poor people because  
3 I participated through my church, the United Church of Christ,  
4 in a summer program in Cleveland, Ohio working with welfare  
5 recipients. The summer, incidentally, when there was so-called  
6 civil disorders in Cleveland, Ohio. I experienced firsthand not  
7 only the problems of welfare recipients, but the problems  
8 plaguing our cities.

9 I also, incidentally, teach at Georgetown Law School  
10 and I have taught at the University of Michigan, Wayne State Law  
11 school. I have a wife and two kids and I have been married for  
12 23 years.

13 Now, let me turn to a rather different subject than I  
14 was originally going to address, which is the McCollum-Stenholm  
15 amendments. What I am going to do is go through very briefly  
16 each of these and make a few comments on them as I go.

17 Earlier today we were told that these amendments were  
18 not extreme and that they applied to every other federal  
19 program. These statements, as I will show, are either extremely  
20 misleading or flatly false. So, let's start.

21 First, I am going in an order that I chose, they  
22 appear in several different forms, so I will identify the order

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1 as I go.

2 One of the McCollum amendments, the first one I will  
3 call it, would require local program boards to decide what  
4 specific cases could be brought by program attorneys. Well,  
5 there are a number of problems with that amendment. It would  
6 also, by the way, require that every class action be approved by  
7 a local program board.

8 There are a number of problems with that amendment,  
9 but the most fundamental problem is that local program boards  
10 under a series of ethical opinions issued by the American Bar  
11 Association and consistent with the ABA standards for providers  
12 of civil legal services to the poor, local boards cannot review  
13 specific cases and act ethically. Nor can attorneys serve on  
14 local boards and act ethically if they review specific cases.

15 Local program boards can and do determine priorities  
16 in allocation of resources. They decide broad policy matters,  
17 including the types of cases and matters that the program will  
18 handle. They assure the financial integrity of the programs,  
19 but they don't decide which specific cases they are to bring.

20 Well, this amendment would put local governing bodies  
21 in direct conflict with the state and American Bar Association  
22 ethical rules. It is unnecessary as well.

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1           Second, the so-called protection or prohibition  
2 against theft and fraud. If there was ever a series of  
3 amendments that is deceptive, it is this. This amendment does  
4 two or three different sets of activities. First, it imposed  
5 federal criminal statutes on legal services programs. That, by  
6 the way, is totally unnecessary. Already the five federal  
7 criminal provisions of fraud and embezzlement apply to LSC funds  
8 according to a June 5th, 1989 letter from the LSC general  
9 counsel.

10           Second, this amendment would impose a host of civil  
11 statutes, not federal criminal statutes, on legal services.

12           Interestingly enough, most federal programs are not  
13 covered by these host of federal-civil standards. There is a  
14 direct problem for legal services that nobody bothers to  
15 discuss. That is that they would provide a private right of  
16 action specifically rejected by Congress, which would subject  
17 programs to harassing lawsuits by disgruntled defendants and  
18 others who do not approve of the activities of legal services  
19 programs.

20           Third, these so-called criminal statutes would require  
21 that all OMB circulars apply to LSC funds. Aside from the fact  
22 that there are six different sets of OMB circulars that are

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1 internally inconsistent, substantially internally inconsistent,  
2 the fact of the matter is that under your regulation, part 1630,  
3 these OMB standards already apply to legal services funds to the  
4 degree they are relevant. You don't need this, it is totally  
5 unnecessary, and applying it would create inconsistencies and  
6 problems that would keep lawyers busy for months and months and  
7 months.

8           So, the fact is that these provisions have little to  
9 do with protecting LSC funds from theft and fraud. There has  
10 been no justification given by anybody for these provisions.  
11 For example, there was a letter from LSC staff to Representative  
12 Frank which cited only ten examples of alleged misappropriation  
13 or embezzlement, which occurred between 1980 and 1989. In all  
14 of these cases the program sought prosecution, took appropriate  
15 action to recover the funds that had been misappropriated. No  
16 different result would have occurred if LSC had the additional  
17 authority it now seeks.

18           The third set of amendments is a regulation on  
19 nonpublic resources. Let's be clear, first of all, what this  
20 would do. This would completely change the rules on the use of  
21 private funds by grantees. It would likely restrict both  
22 private funders and most IOLTA funds received by legal services

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1 programs. Today private funds are restricted under the LSC Act  
2 if they are provided for the provision of legal assistance and  
3 used for a prohibited purpose. Most LSC funds are public funds  
4 and are not restricted under Section 10C of the LSC Act.

5 In addition, some, today, private funds can be used to  
6 represent noneligible clients, such as aliens, such as the  
7 elderly and disabled, who always reject the means test. Then  
8 what would this amendment do? This would impose on all private  
9 funds regardless of purpose and all IOLTA funds the same  
10 restrictions that apply to LSC. No longer could programs serve  
11 elderly and disabled clients who do not meet the LSC financial  
12 eligibility guidelines, but who are still poor.

13 Private funds could no longer be used for alien  
14 representation currently allowed under the current LSC Act.  
15 You asked a question about alien representation. Today programs  
16 use private funds and IOLTA funds to represent aliens. Under  
17 this amendment they could not do so.

18 The fourth set of proposals is also very deceptive.  
19 It is on timekeeping. But this is not a proposal about  
20 timekeeping. This would require programs to maintain a  
21 nationally dictated system of detailed and unique timekeeping  
22 requirement which would obtain data from the time and cost for

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1 each case and activity by funding source. Let me say at the  
2 outset that many programs have timekeeping. Many have expensive  
3 systems based on the particular needs of those local programs.  
4 Some programs don't have timekeeping.

5 This proposed national timekeeping system is unique.  
6 No other publicly funded provider of legal services, nor any  
7 other federal or state government legal department, Department  
8 of Justice, state attorney general, city corporation counsel  
9 maintains the kind of timekeeping system that LSC wants to  
10 impose.

11 Moreover, it is flatly inconsistent with the General  
12 Accounting Office study which will be made reference. A  
13 national system of detailed timekeeping is not necessary to  
14 assure effective accountability. Today there are provisions in  
15 part 1630 of your regulations and the audit of the required  
16 timekeeping if you are going to use different sets of funds.  
17 Every grantee must have some timekeeping system in place in  
18 order to segregate various sets of funds. We don't need it. It  
19 is, in effect, a bad faith effort to harass programs and uncover  
20 data to manipulate it for improper purposes.

21 Fifth, the so-called prohibition on redistricting  
22 activities. This is probably the most controversial in some

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1 sense, other than the agriculture provision, let me just start  
2 by describing it and then say a few things about redistricting.

3 First, what would this do? This would prohibit any  
4 legal services grantee or contractor from using LSC, private or  
5 public funds, to participate in any voting rights representation  
6 involving redistricting. Or in representation influence the  
7 timing or matter of the taking of a census. Let's start with  
8 where we are, understand where we are going with this.

9 In the first place, Congress has never indicated that  
10 redistricting cases are inappropriate activities for legal  
11 services programs. Indeed, the current act permits  
12 redistricting activities.

13 Second, redistricting cases have not been a major  
14 focus of legal services program activity. We have heard a lot  
15 about it this morning, about this. If you look carefully at  
16 that data, they indicate that over a period of four years, only  
17 slightly more than ten percent, 34 out of 325, of all legal  
18 services programs was involved in any redistricting activity.  
19 Over this period these 34 programs each handled an average of  
20 fewer than three redistricting cases.

21 To put these figures into perspective, during the  
22 period 1980 to 1984 legal services programs nationwide handled a

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